

**CONFIRMATION HEARING ON FEDERAL  
APPOINTMENTS**

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

SECOND SESSION

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JANUARY 24, 2024

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**Serial No. J-118-2**

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**PART 15**

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Printed for the use of the Committee on the Judiciary



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# CONTENTS

## OPENING STATEMENTS

	Page
Durbin, Hon. Richard J. ....	1
Graham, Hon. Lindsey O. ....	7
Cornyn, Hon. John ....	4
Lee, Hon. Michael S. ....	6

## VISITING INTRODUCERS

Romney, Hon. Mitt, U.S. Senator from Utah	
Prepared statement .....	29
Barrasso, Hon. John, U.S. Senator from Wyoming .....	3
Fischer, Hon. Deb, U.S. Senator from Nebraska .....	2
Lummis, Hon. Cynthia M., U.S. Senator from Wyoming .....	4

## NOMINEES

Allen, Hon. Ann Marie McLiff .....	11
Questionnaire .....	30
Responses to written questions .....	71
Additional materials .....	114
Bazis, Hon. Susan M. ....	9
Questionnaire .....	115
Responses to written questions .....	171
Additional materials .....	216
Gonzalez, Ernest .....	10
Questionnaire .....	217
Responses to written questions .....	283
Additional materials .....	317
Meriweather, Hon. Robin Michelle .....	14
Questionnaire .....	325
Responses to written questions .....	371
Rankin, Hon. Kelly Harrison .....	12
Questionnaire .....	423
Responses to written questions .....	507
Additional materials .....	550
Schydlower, Hon. Leon .....	13
Questionnaire .....	551
Responses to written questions .....	602
Additional materials .....	631



## NOMINATION HEARING

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WEDNESDAY, JANUARY 24, 2024

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

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

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

Also present: Senators Barrasso, Fischer, and Lummis.

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

Chair DURBIN. The hearing of the Senate Judiciary Committee will come to order. Today we have six judicial nominees. Judge Susan Bazis, nominated to the District of Nebraska. Mr. Ernest Gonzalez, nominated to the Western District of Texas. Judge Ann Marie McIff Allen, nominated to the District of Utah. Judge Kelly Rankin, nominated to the District of Wyoming. Judge Leon Schydlower—I hope I pronounced that correctly—also nominated to the Western District of Texas. And Judge Robin Meriweather, nominated to the U.S. Court of Federal Claims. Congratulations to all the nominees and their families.

As Senator Cornyn pointed out last week, several Senate Republicans, including himself and Senator Cruz, have identified well-qualified candidates for district court vacancies in their States. In fact, each of today's district court nominees has received blue slips from their Republican home State Senators. So I'd like to thank my colleagues from Nebraska, Texas, Utah, and Wyoming, as well as President Biden for this good-faith bipartisan effort to fill these vacancies.

I took that approach myself during the Trump administration, and I pointed out that we filled all eight district court vacancies in Illinois during those 4 years. Many of my Democratic colleagues did the same. Those efforts in today's panels are further proof that blue slip tradition can work as intended when we have bipartisan cooperation. I continue to urge my colleagues to make similar efforts in their States.

I'm now going to turn to Senator Graham for opening remarks.

Senator GRAHAM. If it's okay, Mr. Chairman, could we hear from our two colleagues, and I'll make an opening statement so they can

go on about their business. Certainly short, but let them go and do—speak.

Chair DUBIN. I invite Senator Fischer and Senator Barrasso to speak. Who's first? Senator Fischer, please.

**STATEMENT OF HON. DEB FISCHER,  
A U.S. SENATOR FROM THE STATE OF NEBRASKA**

Senator FISCHER. Thank you, Mr. Chairman, and thank you Ranking Member Graham. I'm here to express my support for Judge Susan Bazis as she pursues confirmation to the judicial vacancy in the United States District Court for the District of Nebraska. I was honored to recommend Judge Bazis for this position to the White House last year.

Judge John Gerrard, who previously served in this seat, assumed senior status last year. He has served Nebraskans justly and faithfully for the past three decades. Judge Gerrard leaves behind an incredible legacy. He must be followed by an exemplary candidate with undeniable skill and integrity, and Judge Bazis is exactly that.

She has a keen legal mind, and tremendous expertise and competence in applying the law. She has decades of experience as an attorney, a judge, and a public servant. Judge Bazis is exceptionally qualified. The American Bar Association Standing Committee recommended her unanimously as "well qualified"—the highest possible rating. Her record speaks for itself. Judge Bazis has served as a Federal magistrate judge for the District of Nebraska for 7 years. She's already highly familiar with the court, its processes, and its immense caseload.

Unlike other district courts across the country, Nebraska's district judges intentionally use the court's magistrate judges to their fullest extent. This ensures maximum efficiency for the court. Judge Bazis is accustomed to a busy docket of cases she must address quickly and thoroughly. This has prepared her well for the demands of Nebraska's Federal bench.

Over the course of her lengthy career, Judge Bazis has had well-rounded experience in both criminal and civil law. Before she was selected for her current position, she was a Nebraska county court judge for Douglas County for nearly a decade. Her experiences not only reflected in her legal abilities, but also in her fair-minded temperament, her professional character, and her integrity.

As part of her role as a magistrate judge, Judge Bazis has demonstrated initiative and skill in a broad range of areas. Not only does she work tirelessly to administer justice impartially, but she works to make the court system more productive and effective. She focuses on ensuring security in the courts, and using technology to increase judicial efficiency. She's also a member of the Consortium of Tribal, State, and Federal Courts, where she works to improve the working relationship among the courts. She's dedicated to strengthening public trust in the judicial system and expanding access to that system.

Judge Bazis' qualifications and commitment to upholding our laws and our constitution. Leave no questions about her ability to take on this role as a Federal judge. Her confirmation to Nebras-

ka's Federal bench is also urgently needed to ensure that we fill this outstanding vacancy in a timely manner.

I encourage all of my colleagues to enthusiastically support this nomination. I offer my sincere congratulations to Judge Bazis for this honor, and I unequivocally recommend her for this seat. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Fischer. Of course, we're happy to have you here and as part of the program. We understand that the schedules of all of our visiting Senators sometimes don't allow them to stay for the hearing, but we appreciate your being here.

Senator FISCHER. Thank you, Senator.

Chair DURBIN. Now, I'm recognizing the Senators from Wyoming. Senator Barrasso.

**STATEMENT OF HON. JOHN BARRASSO,  
A U.S. SENATOR FROM THE STATE OF WYOMING**

Senator BARRASSO. Thank you, Mr. Chairman. Thank you to the Committee for giving me this opportunity, and it's a great honor to join Senator Lummis in introducing Judge Kelly Rankin at this hearing today. I want to share my great appreciation to you personally, Mr. Chairman. For almost a year, we have talked about this well-qualified and bipartisan nominee, and now that the White House has made the nomination, I want to thank you for expediting the process, and thank you for all of your efforts.

I wholeheartedly support the nomination of Kelly Rankin. I've known him for many years. Great to see his wonderful family here today as well. I'd like to recognize his wife, Cindy, is here. She's a speech pathologist at Cheyenne McCormick Junior High and Central High School. Many of you may also recognize the two sons that are here; both participated as Senate pages. They went on the Senate floor with us.

Harrison, currently a junior at the University of Wyoming, participated as a page sponsored by Senator Mike Enzi, and I sponsored Sam as a page in 2021. Sam is currently a freshman at the University of Wyoming. Now, Kelly's mom, Mandy, worked here in the Senate for many years, working with then Wyoming Senator Malcolm Wallop.

As you can tell, Kelly Rankin's roots to our great State run deep. He's a Wyoming native, born and raised in Sheridan, went on to attend the University of Wyoming, where he earned his bachelor of science degree and a law degree. His life has been dedicated to public service; greatly respect Kelly Rankin's knowledge of the laws, dedication to the Constitution.

For nearly 30 years, he has been a respected member of the Wyoming State Bar, served at almost every level of government, and he's going to bring years of valuable experience to the Federal bench. Judge Rankin started his career as a deputy county attorney, spent nearly 18 years prosecuting cases in State and Federal courts.

In 2008, he was confirmed by the Senate with a voice vote to serve as U.S. attorney for Wyoming. He went on to work as the counsel for the then Democrat Governor of Wyoming, Dave Freudenthal. And I should add that Kelly has significant bipartisan support. Governor Freudenthal and Wyoming Democrat Governor

Mike Sullivan both strongly support the nomination. And Governor Sullivan was also President Bill Clinton's Ambassador to Ireland.

Currently, Kelly serves as the chief United States magistrate judge. Mr. Chairman, Judge Rankin has my full support, his impressive record, incredible professionalism, and unwavering commitment to the Constitution will make him a great member of the Federal bench. I ask each of you to support and quickly pass his nomination. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator. Senator Lummis.

**STATEMENT OF HON. CYNTHIA LUMMIS,  
A U.S. SENATOR FROM THE STATE OF WYOMING**

Senator LUMMIS. Chairman, and Ranking Member Graham, I wholeheartedly join my colleague, Senator Barrasso, and thank you for the opportunity to introduce Judge Kelly Rankin to this Committee. I could not be more supportive of Judge Rankin's nomination to the U.S. District Court for the District of Wyoming.

For the last 11½ years, Judge Rankin has served the people of Wyoming as a magistrate judge, deciding matters in criminal and civil cases, spanning from Cheyenne in southeast Wyoming to Yellowstone National Park in the northwest. He has even been called upon by the Districts of Colorado and New Mexico to assist with caseloads in those jurisdictions. He's the past United States attorney, an important matter of public service, also, counsel to the Governor and Park County attorney in Cody, Wyoming.

While Judge Rankin has a wealth of experience in the law and the administration of justice, it is his judicial temperament and character that are most impressive. A judge must be quick to listen, slow to speak, and have an innate drive to understand all sides of an issue. Through all the opportunities I've had to interact with Judge Rankin over the years, I have found that he is a fine exemplar of all these qualities. Most importantly, I believe Judge Rankin will faithfully interpret the U.S. Constitution, the laws enacted by Congress and the precedents of the U.S. Supreme Court and the 10th Circuit Court of Appeals.

I also believe he will continue to be a committed public servant to the people of Wyoming, and a very impressive member of the judiciary of whom you will be proud. I'm certainly proud to recommend Judge Rankin for your consideration. I join Senator Barrasso in enthusiastic support of his nomination, and I'm happy to take any questions from this Committee. Thank you, Mr. Chairman. I yield back.

Chair DURBIN. Thanks, Senator Lummis. We welcome our friends who've spoken on behalf of the nominees. We know they have to leave, but you're always welcome at the Committee. Now we have Senator Cornyn who will introduce Mr. Gonzalez and Judge Schydlower.

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

Senator CORNYN. Well, thank you, Mr. Chairman, for allowing me to introduce these two outstanding consensus nominees from Texas, Judge Leon Schydlower and Ernest Gonzalez.



Judge Schydlower has been nominated to fill the vacancy in the El Paso Division of the Western District of Texas. Actually, El Paso is closer to the Pacific Ocean than it is to the eastern tip of Texas, which is Beaumont, to give you an idea of where it's located. It's way out there.

This nominee has a unique and extremely impressive resume that illustrates his long-standing commitment to the rule of law and the people of this great country. Since 2015, he's served as a U.S. magistrate judge, which we heard a lot about here a moment ago. As a magistrate judge, he has helped resolve complex discovery matters, held hundreds of hearings, and earned the respect of the El Paso Bar for his work.

As though being a magistrate judge isn't enough responsibility, especially one located on the U.S.-Mexico border, Judge Schydlower has also served in the U.S. Air Force Reserve Judge Advocate Corps since 2010. He currently holds the rank of Lieutenant Colonel.

Before his current role as a magistrate judge, this nominee spent part of his career in private practice handling complex Federal criminal defense cases, commercial litigation, and international business disputes. While in private practice, Judge Schydlower continued to pick up cases on what is called the Criminal Justice Act Panel.

As my colleagues know, CJA attorneys ensure that criminal defendants get the representation that they are entitled to under the Sixth Amendment of the Constitution of the United States. Before returning home to Texas, Judge Schydlower also served as a special assistant United States attorney for the U.S. Attorney's Office in Hawaii.

And I'd like to note that this nominee has served in not just one, but two branches of the United States military. From 1996 to 2004, he served in the U.S. Navy and attained the rank of lieutenant before he was honorably discharged. I know he'll have to field some tough questions today, but I promise I won't ask Judge Schydlower whether he prefers the Air Force or the Navy.

On a personal note, I enjoyed speaking to the judge about his military service and hearing about the service of his father, who I understand who is watching from home. Judge Schydlower's father retired as a colonel in the United States Army—mine retired as a colonel in the United States Air Force—and Judge Schydlower saw a living example of what it means to serve the country with distinction. So Judge, welcome to you and your family, and congratulations.

I also have the privilege of introducing Ernest Gonzalez, who's been nominated to fill the vacancy in the Del Rio Division for the Western District of Texas. Those who aren't familiar with Texas geography, El Paso and Del Rio have some heavy dockets because of their proximity to the U.S.-Mexico border. So these are very important positions that are being nominated for today.

Mr. Gonzalez has spent most of his career in public service as well. He currently serves as a senior advisor to the Department of Justice's Criminal Division as part of the Narcotics and Dangerous Drugs Section. Before that, he served for two decades as an assistant U.S. attorney in the Eastern District of Texas, where he man-

aged one of the largest dockets of any Federal prosecutors in the Department of Justice.

With over 230 jury trials, Mr. Gonzalez investigated and prosecuted some of the most dangerous cartel members around the world. He became one of the Nation's most prolific cartel prosecutors in the process. Mr. Gonzalez previously served for 3 years as a U.S. attorney for the Western District of Texas in Del Rio, and 6 years as the assistant district attorney in Bexar County.

Throughout his career, Mr. Gonzalez has prioritized training our law enforcement partners in other countries to establish strong bilateral cooperation on shared law enforcement and national security matters. One of the things I appreciate about Mr. Gonzalez is his commitment to helping train young prosecutors and law enforcement personnel.

As we all know, it's harder and harder for lawyers to get trial practice in courtrooms. It's easier in the criminal dockets than it is in the civil dockets these days, but I think it's absolutely essential that we continue to train the next generation of advocates in our courts, and Mr. Gonzalez has spent quite a bit of time doing that.

He graduated from the University of Texas at San Antonio in 1987, and the Thurgood Marshall School of Law in 1993. His temperament, his knowledge of the law, and ability to handle a large docket will serve the Del Rio Division of the Western District well. So Mr. Gonzalez, congratulations to you and your family on this nomination, and I look forward to supporting your nomination.

Chair DURBIN. Thanks, Senator Cornyn. Next is Senator Lee, here to introduce Judge McIlff Allen.

**OPENING STATEMENT OF HON. MICHAEL S. LEE,  
A U.S. SENATOR FROM THE STATE OF UTAH**

Senator LEE. Thank you, Mr. Chairman. It's a pleasure to be here today, and I'm so grateful to President Biden for his willingness to nominate Judge Anne Marie McIlff Allen to the U.S. District Court for the District of Utah.

I've known Judge Allen for 30 years. She and I were law school classmates. And Judge Allen, even back then, had the perfect temperament for a judge, never drawing attention to herself, always prepared. She had a steady, quiet, and always dignified approach, one that inspired respect from all of her classmates. We, over time, got to know Judge Allen's husband, and soon came to realize that they were the power couple.

You know, there were a small handful of people in law school who were married to another law student, but the Allens were the power couple of our law school. Randy was a year ahead of us, and we always went to Randy for sage-wise advice, which he always had. He's very smart. I told them at the time, "It's almost not fair for the two of you to be married to each other. You're going to mess up the gene pool for everybody else's kids."

And speaking of that gene pool, we're pleased here to have all three of the Allen's kids, and as well as the spouse of their two married kids. We've got Matthew and his wife Louisa, and we've got Lauren and her husband Will. And we have Eliza, and we're looking for that someone special out there someday.

The Allens also apparently have more in common with Judge Rankin than I would've realized because like Judge Rankin, Judge Allen has two children who have served as Senate pages. Lauren and Eliza were both here as pages. I was frankly kind of offended that Matthew never expressed interest, but we'll take that up for a different day. In any event, the Allens are here in full support. I've asked them to serve in the same role as Taylor Swift in the cheering section of a Chief's game. That'll be sure to happen.

[Laughter.]

Judge Allen brings a wealth of experience and background to this as a practicing lawyer, as someone who's served in the public and private sector, as someone who's been the general counsel of Southern Utah University, who's handled clients and matters in a wide range of civil, criminal, and family court matters, and as someone who brings a wealth of experience as a judge over the last few years.

She is very well suited for this position, and if confirmed, will be filling a role that will be stationed in Southern Utah, our first full-time post for that position from the outset, being based in St. George, Utah. So, it's without hesitation and with great pleasure that I introduced Judge Ann Marie McIff Allen to this Committee. Thank you.

Chair DURBIN. Thank you, Senator Lee. Senator Romney was unable to join us in person today, but he asked the statement of introduction and support for Judge McIff Allen be entered into the record, which will happen without objection.

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

Chair DURBIN. We have one other nominee that I'd like to personally introduce. Today, we'll hear from Judge Robin Meriweather, nominated to the U.S. Court of Federal Claims. Judge Meriweather received her undergraduate degree from the University of Michigan, and her J.D. from Yale Law School.

After graduating law school, she clerked for then Judge Merrick Garland on the U.S. Court of Appeals for the DC Circuit. Judge Meriweather then entered private practice at Jenner & Block here in DC, focusing on complex civil litigation and matters involving constitutional, statutory, and regulatory claims.

She joined the U.S. Attorney's Office for the District of Columbia in 2007, where she spent 6 years serving as deputy chief of the civil division; 2017 became a magistrate judge on the U.S. District Court for the District of Columbia. In her time on the bench, she's presided over several trials and has issued more than a thousand orders. Congratulations, Judge Meriweather to you and your family. I look forward to hearing your testimony.

And now as the nominees approach the table, I would ask Senator Graham if he has 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'll be very quick. Sort of two good news stories and one not so good. Good news is that the Committee has been able to work with the White House, through you, to get qualified nominees from red States, and I appreciate my colleagues for being able to do that. Mr. Chairman, I

know you're instrumental in getting some of these people over the line, so thank you. And to my colleagues, I really do appreciate that, it's good for the Committee.

Next week, some good news. This Committee will come together in a bipartisan way to push hard against the social media companies in this country that are pretty much unregulated, unaccountable. And I look forward to that hearing big time, and I appreciate you working with us to put that hearing on. So if you're doing nothing next week, next Wednesday, you might want to watch this because I think there'll be some good information coming about from the hearing as to what the country needs to do to deal with social media. We're also involved in negotiations about Ukraine, Israel, Taiwan, and a border.

Not so good news: Behind me, I have two charts, and I'll be quick.

[Poster is displayed.]

Senator GRAHAM. The average number of people paroled during the Obama-Trump Presidency was about 5,600. This was supposed to be done on an individual case-by-case basis. Two unique factors, one, unique humanitarian need or a special benefit to the country, by Statute, is supposed to be an individual analysis. As you can see from the charts behind me, the Biden administration has had a 20,000 percent increase in parole. They've paroled over 800,000 people in FY 2022, over 800,000 people in FY23. Calendar FY23 was about 1.2 million.

This has got to stop. This is an abuse of the law. There's a lawsuit pending about blanket parole, but I cannot in good conscience vote for a bill that does not restrict and bring the Biden administration back in line with the law when it comes to parole. This has been abused way too long. Over 2 million people have been paroled into the country. And here's my concern: no matter what you do with asylum, and we've done some really good stuff on the asylum reform, expedited removal, if the parole tool is not addressed, it can undercut everything we've achieved.

So, Mr. Chairman, to you and your colleagues, I would like to get a deal on the border that will open up money for Ukraine, Taiwan, and Israel, but we have to deal with the abuse of parole to get there. And the proposals on the table are short of what I think we need. So I just want to bring it to your attention that I think every Republican is committed to making sure that parole is not being abused, will not be abused in the future as it has been in the past. Thank you.

Chair DURBIN. Senator Graham, you've been forthright in your position on this issue, and I respect you for it. I'm not a party to the actual negotiation that's taking place. There are three Senators who are involved in it, and it's being led on your side by, I think, someone who's respected by your members, and I respect him as well. And I hope that they can come forward with a proposal. I don't know what it will include in terms of parole or any other issue, and I'll wait and see that that comes forward.

One of the areas that is contingent on this effort is the aid to Ukraine. If you're following it in the news, you know that they're fighting for their lives, and they're falling behind in terms of the volume of warheads and other things being thrown at them. I wear

this little lapel pin and others like it as a reminder of my commitment to the Ukrainian people against Vladimir Putin.

I hope we can work out these issues on border security and other issues still pending. But remember, this is a matter of life and death for thousands of people in Ukraine who are fighting every day for their survival. So we'll, at this point ask the nominees to come forward to the witness table to be sworn in. Please remain standing when you arrive at your chair. You've seen this done before. Will someone please close the door? Thank you very much. Please raise your right hand.

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect that all nominees, thank goodness, have answered in the affirmative, and each will now have an opportunity to make an opening statement. Judge Bazis, please proceed with your opening statement.

**STATEMENT OF HON. SUSAN M. BAZIS, NOMINEE TO SERVE AS  
UNITED STATES DISTRICT JUDGE FOR THE  
DISTRICT OF NEBRASKA**

Judge BAZIS. Thank you, Chairman Durbin, and Ranking Member Graham, as well as all of the other Members of the Judiciary Committee for holding this hearing today. I want to thank President Biden for nominating me, and I want to thank my home State Senators Deb Fischer and Pete Ricketts for their support of my nomination. I want to further thank Senator Fischer for her kind words today. I also want to thank Judge Gerrard for taking senior status, for if that had not happened, I would not be here today.

I would not have gotten here without the love and support of my family. I want to thank my mother who, unfortunately, passed away 12 years ago. My mother was an extraordinary woman who instilled in me, as well as all of my siblings, a strong work ethic to always treat others how you want to be treated. She would've loved to have been here today, and I know she is here with me in spirit. Thank you to my father and stepfather who passed away long before my mother, who both taught me that hard work pays off, and that you need to have some fun along the way.

I want to thank my husband, who I have been happily married to for the last 24 years. We became friends in high school, and he has been my biggest cheerleader and supporter in everything I've done ever since then, and I would not be here today without his love and support. To his mother, I want to thank her for her love and support, and really stepping in as a second mother to me after my mother passed away. I will never be able to truly express how much that has meant to me, and I appreciate all her love and support.

I also want to thank all of our friends who have supported me during this process. To everyone watching at home, the rest of my family; all of my brothers and sisters, and their spouses, as well as my nieces, nephews, cousins, and my last living aunt who will turn 100 in April—so happy early birthday, Aunt Pat—thank you for all your love and support, and I would not be here without you.

I want to thank all of the lawyers that I have worked with who have mentored me in my career. I have been fortunate to work with and learn from some of the best and brightest lawyers in Ne-

braska. I would not be here without meeting and learning from each and every one of you.

I want to thank my State court family that I worked with for almost 10 years. This includes not only the judges I worked with, but all of the staff and lawyers that made the highest volume court in the State operate smoothly every single day. I want to express how I truly appreciate all of the support you have given me throughout my time as a State court judge, as well as the presiding judge of that court, and through this process.

I also want to thank my Federal court family, which also includes the staff and lawyers who keep the Nebraska Federal Courts running smoothly every single day, and for all of their support that they have given me throughout this process. It means the world to me.

I also want to give a special thanks to my judicial assistant, my courtroom deputy, and my law clerk for their support during this process, and for everything they do each and every day for me. It has been an absolute pleasure to work with all of you so closely for the last 7 years. I look forward to the Committee's questions. Thank you.

Chair DURBIN. Thank you very much, Judge Bazis. Mr. Gonzalez.

**STATEMENT OF MR. ERNEST GONZALES, NOMINEE TO SERVE  
AS UNITED STATES DISTRICT JUDGE  
FOR THE WESTERN DISTRICT OF TEXAS**

Mr. GONZALES. 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'm sincerely grateful to Senator Cornyn and Cruz, my home State Senators, for their steadfast support and endorsement of my nomination as a district court judge. I would also like to thank President Biden for this nomination, which is truly an honor.

I am acutely aware that this opportunity is a result of the exemplary values instilled by my parents, Ramiro and Enedelia Gonzalez. As immigrants and former farm workers with a sixth-grade education, my parents sought a better life for themselves and their seven children in this great Nation. Their emphasis on diligent study and education as a gateway to broader opportunities has been a guiding principle for me. Despite their passing, their spiritual influence continues to provide unwavering guidance.

Allow me to introduce my wife, Leticia, whose constant support has been a source of inspiration throughout our many years of marriage. Our pride and joy, our daughter, Chelsea, who recently achieved her master's degree, and dedicates herself to serving the visually challenged community as a low vision therapist.

Allow me also to acknowledge my brother, Jose Luis Gonzalez, an assistant United States attorney in the El Paso Texas office, and his wife Dr. Yvonne Maldonado, as well as my sister, Dr. Elizabeth Gonzalez, and my niece Catherine. I would like to express my gratitude to their unwavering, steadfast support. I would also like to extend my thanks to my siblings and others that are watching back home. My 81-year-old mother-in-law, Gloria, and the pray-

er partners at St. Mark's Catholic Church for their constant prayers.

Recognition is also due to my colleagues at the Narcotics and Dangerous Drug Section here in Washington, DC, and the U.S. Attorney's Offices in the Eastern and Western District of Texas for their support. I am indebted to the role models throughout my legal career with special acknowledgements to the U.S. attorneys and the district judges in the Eastern and Western Districts of Texas for their invaluable guidance.

Senators, I look forward to answering your questions.

Chair DURBIN. Thank you very much, Mr. Gonzalez. Judge McIff Allen.

**STATEMENT OF HON. ANNE MARIE McIFF ALLEN,  
NOMINEE TO SERVE AS UNITED STATES DISTRICT JUDGE  
FOR THE DISTRICT OF UTAH**

Judge ALLEN. Good morning, Chair Durbin, Ranking Member Graham, and Senators. Thank you for your invitation to appear before you today as you consider my nomination as a district court judge for the District of Utah. I acknowledge the important constitutional checks and balances that this Committee's work embodies. I am grateful to President Biden for his nomination. Thank you, Senator Lee, for your warm introduction. I am humbled by your, and Senator Romney's, support.

I appreciate the support of my fellow southern Utah judges, lawyers, court staff, and everyone at home. My parents, Kay and Renee McIff, have both passed on, but are with me in spirit. They were born and raised in southern Utah farming families who were part of the western pioneer legacy.

My father's early childhood was spent in a home with no indoor plumbing, and they plowed their fields with a horse because there was no money for a tractor. My mother's parents were beekeepers on the southwest desert of Utah, and both families had to start over from scratch after the fathers, my grandfathers, returned from service in the Second World War. But they had great wealth in the values of integrity, faith, and hard work, and if confirmed, I will be so pleased to serve in the same place where these special people lived their lives.

My dad eventually became a lawyer in southern Utah, and when I was a small girl, he would often bring me to court with him. The reverence and decorum of the courtroom left a strong impression on me from an early age. Every day now in my southern Utah courtroom, I remember those lessons, and I work to stay true to the values of fairness and dignity that I witnessed as a young girl sitting next to my dad.

Thank you also to the entire McIff and Allen families who are uniformly filled with rock solid contributors. My husband of 30 years, Randy Allen, is here with me today. He has been my best friend and biggest supporter since we met in the college library so many years ago. All of my children and their spouses are here, and I am grateful to them for traveling across the country to be with me.

My son, Matthew, is in medical school, and his wife Louisa, is in law school. My daughter, Lauren, is also in law school, and her

husband, Will, will start medical school in the fall. My daughter Eliza, is an undergraduate student in nursing. They are all great people, and it is my privilege to be their mom.

I love the people of the State of Utah, and of this great country, and I have no agenda other than to serve as an honorable judge. I look forward to answering your questions.

Chair DURBIN. Thank you very much, Judge. Judge Rankin.

**STATEMENT OF HON. KELLY HARRISON RANKIN, NOMINEE TO  
SERVE AS UNITED STATES DISTRICT JUDGE  
FOR THE DISTRICT OF WYOMING**

Judge RANKIN. Good morning, Chair Durbin, Ranking Member Graham, and distinguished Members of this Committee. It is an honor to appear before you. I want to extend a hardy thank you, special thank you, to Senators Barrasso and Lummis, and their staffs, for their support. And thank you, Senator Barrasso, and Senator Lummis, for the very kind introductions this morning. I thank President Biden for this profound honor of his nomination. I would also like to extend my deep appreciation to Governor's Dave Freudenthal and Mike Sullivan, for their tremendous support. Without the generous support of each of these people, I would not be here today.

I have several family members with me this morning. First, my wife, Cindy; she has been the love of my life and partner in all things for the last 30 years. I can't thank her enough for her love and support during our journey together.

My two amazing sons, Harrison and Sam, are here from college. They are so excited to be back on Capitol Hill today. I'm so proud of my boys and all their life journeys, and thank you for keeping your dad grounded at all times. My mother, Mandy, and father, Jerry, are also here. My parents instilled in me the value of hard work, treating everyone with kindness, and the importance of public service. Their unwavering support and love have brought me here today.

My sister, Emily, is here. She is a remarkable attorney with a remarkable career of service to others, and she's an even better mother to her 10-year-old son. My brother, Mike, is with us. He too is an attorney. He also is a retired FBI agent following a decorated period of service and career of service to our Nation. Today, he provides his security expertise to the NFL. He too is an incredible father. Thank you each of you for being here, and thank you for your love and support.

I also want to extend a heartfelt thank you to my other family members who are watching from afar. Please know that I very much appreciate all your love and encouragement, and I would not be here without each of you.

And to my amazing court family, I also would not be here without you. This includes my incredible judicial colleagues. Thank you, each of you, for your counsel, mentorship, and friendship. I want to especially recognize and honor the distinguished career of Judge Nancy Freudenthal. She's the seventh district judge in our court's 134-year history, and the first woman to serve in that role. It's an honor to be nominated to take her place. Judge, thank you for your service to our court and Nation.



And a special thanks to our terrific clerk of court, Maggie Botkins, and her staff. I'm fortunate to work with each of you. I also want to acknowledge my wonderful chamber staff, John, Joe, and Neon, and all of our former law clerks for their friendship and many meaningful contributions to our court.

I want to extend a special thank you to all of the dedicated and hardworking attorneys of the Wyoming State Bar. I am proud to be a Wyoming lawyer. There are many others who have had a profound impact on me. To all of you, thank you.

And finally, to those who have passed along your prayers and well wishes, your support is very much felt and appreciated. Thank you to the Committee for holding this hearing today, and I look forward to answering your questions.

Chair DURBIN. Thanks, Judge Rankin. Judge Schydlower. Did I get close in pronouncing your name correctly?

Judge SCHYDLOWER. Very close, Mr. Chairman.

Chair DURBIN. Thank you, please—

Judge SCHYDLOWER. Schydlower.

Chair DURBIN [continuing]. Proceed.

**STATEMENT OF HON. LEON SCHYDLOWER, NOMINEE TO  
SERVE AS UNITED STATES DISTRICT JUDGE FOR THE  
WESTERN DISTRICT OF TEXAS**

Judge SCHYDLOWER. Chairman Durbin, Ranking Member Graham, and distinguished Members of the Committee. I cannot express in words how honored I am to be before you this morning. Senator Cornyn, thank you for that wonderful and gracious introduction and your reference to my father. I'm profoundly grateful to you and Senator Cruz for recommending me to President Biden. I would also like to thank the Texas Federal Judicial Evaluation Committee who screens, evaluates, and recommends Federal judicial candidates to Senators Cornyn and Cruz. And finally, I thank President Biden for nominating me to be a United States District Judge for the Western District of Texas.

With me this morning is my family. My wife, Lisa, is my life partner, best friend, and love of my life. We were high school sweethearts, and we've been married 27 years. She's been my ultimate rock and support. I would not be here without her. Our oldest daughter, Katrina, is here; she's a third-year law student in Houston. Our younger daughter, Alexandra, is here. She just graduated from Texas A&M last month, and our youngest, Dan, is here. He's a freshman at the University of Texas.

My parents, Manuel and Elizabeth, are watching live from El Paso, and I'd like to thank them for all the love and support they've given me my entire life. My dad spent his life pursuing service of this country and his community. A pediatrician, he retired from the U.S. Army as a colonel after 20 years of service, and spent the remainder of his career as a medical school professor and dean of admissions.

He was and is my inspiration for military and public service. My mom is the heart and soul of our family. My brother and sister are watching from Texas, and I thank them for the—their love and support. I also thank my father- and mother-in-law, Hank and Cindy Felix, for their nearly lifelong support and love.

Finally, I'd like to thank my court family, including my judicial colleagues and friends for their mentorship and friendship. I pay special tribute to my close-knit chambers family, Erica Portillo and Veronica Medina, for their unbelievable professionalism, excellence and dedication. Erica's been with me 17 years now. I also thank the rest of my family members and friends watching from El Paso and around the country.

And finally, I'd like to say I'm honored to nominate to fill the seat of United States District Judge Philip R. Martinez, who we lost tragically and prematurely at the young age of 63 in 2021. I thank President Biden for nominating me to fill Judge Martinez's shoes, and I know at the outset, I will never truly fill them. I look forward to answering the Committee's questions.

Chair DURBIN. Thank you very much. Judge Meriweather.

**STATEMENT OF HON. ROBIN MICHELLE MERIWEATHER,  
NOMINEE TO SERVE AS JUDGE OF  
THE UNITED STATES COURT OF FEDERAL CLAIMS**

Judge MERIWEATHER. Thank you, Chair Durbin, Ranking Member Graham, and all Members of the Committee for giving me the privilege of appearing before you, and for considering my nomination. I also would like to thank you, Chair Durbin, for the kind words of introduction. Thank you to President Biden for the honor of this nomination.

I am grateful to have the support of my family and friends today, both with me here and watching virtually from Michigan, Illinois, Ohio, Virginia, the Carolinas, and a few other States in this country.

I am particularly delighted to share this moment with my father, Jesse Meriweather, who traveled here from Romulus, Michigan undeterred by sleet and snow. My father and my late mother had an unshakeable belief in my potential, pride in my achievements, and a commitment to giving me a chance to pursue my dreams. Through education and hard work, they strove to give me opportunities that exceeded what they could have dreamed of when they were children. Without that foundation, I would not be sitting before the Committee today.

I would also like to introduce my husband, Jay Bonds, who after 17 years of marriage and many life changes, remains my true-life partner and true friend. My 10-year-old daughter is also present here with me today. She brings joy and pride to my heart.

Since I began my legal career as a law clerk 25 years ago, through my time in private practice, the Justice Department, and as a magistrate judge, I have worked with extraordinary judges, attorneys, paralegals, and staff who have mentored, inspired, trained, and supported me. I lack the time to list them all by name, but they have each touched my life in many ways, and made me a better judge, lawyer, and person.

I also greatly appreciate my wonderful colleagues and the staff at the District Court for the District of Columbia who support and collegiality throughout my time as a magistrate judge has been invaluable. I would also like to acknowledge and thank my current and former law clerks, some of whom are present today, and my amazing current and former courtroom deputies.

It has been an honor to serve as a magistrate judge in the District Court for the District of Columbia, and it would be an honor to serve as a judge on the United States Court of Federal Claims.

Thank you again to the Committee. I look forward to answering your questions today.

Chair DURBIN. Thank you very much, Judge Meriweather. Every nominee goes through a long investigation and questioning process. So the abbreviated experience today should be no reflection on the fact that they've filled out questionnaires and answered many questions to reach this point. The major question, which most of us have is for Judge McIff Allen, and that of course, is some insight into Mike Lee as fellow law student. We just wonder if he was as shy, reserved then as he is now? We'll hold that question.

[Laughter.]

Chair DURBIN. Judge, you've spent a significant time serving the State of Utah as both a prosecutor and criminal defense attorney. There's often concern on this Committee as to whether or not someone ends up prejudiced one way or the other after going through those experiences. Can you tell me what you learned, and how you would balance your experience with the cases that you may face?

Judge ALLEN. Thank you, Senator, for the question. I credit as one of the good fortunes of my legal career that I had a significant stint as both a criminal defense attorney and as a prosecuting attorney.

When I was a criminal defense attorney, I was tempted to believe that that was certainly the more difficult role. And then when I became a prosecutor, I understood that there were plenty of difficulties in both roles, plenty of challenges, and plenty of opportunities to do good in the law. So I am grateful that I had the perspective that both of those roles brought, and I think it has made me a stronger judge, and will continue to benefit and inform my perspective if I'm so fortunate to be confirmed for this role.

Chair DURBIN. Mr. Gonzalez, let me follow up with the same type of questioning. Over the course of 29 years, as a prosecutor, you've tried more than 250 jury trials to verdict, more than 120 State jury trials, and more than 135 Federal jury trials, a more amazing and remarkable amount of a courtroom experience.

And so the question obviously is, would a criminal defendant appearing before you believe he has even a fighting chance for justice? What's your answer?

Mr. GONZALEZ. Yes, he would, Chairman. Every time I approach a case, I approach a case as an individual case. I evaluate the case individually. I evaluate the evidence individually. I evaluate the individual that's before me, and I make an assessment and a judgment as to how to proceed with that case. And I think that that would serve me well as a judge. I would be able to look at the case, judge the case, judge the individual in front of me, and enforce the law impartially and fairly.

Chair DURBIN. Judge Bazis, I've been looking through here for the statement about your experience. You've tried approximately 150 cases to verdict in courts of record. As a State court judge for nearly 10 years, you've presided over 545 cases, and as a Federal magistrate judge since 2017, presided over 5 trials. Tell me about that experience as you move forward to a district court level.

Judge BAZIS. Well, obviously, I have had a lot of trial experience, both as a judge and as a litigator. That all has prepared me to be in a court that has trials, and being able to use all of that experience that I have gained to—and in our district, we are having trials both civil and criminal, and we have a very heavy docket. And so that experience that I already have would serve me well if I'm so fortunate to be confirmed to the district court.

Chair DURBIN. Thank you. Judge Meriweather, you're moving to or want to move and aspire to the Court of Claims, which is a little different world than you've been serving in as magistrate. What are the major differences?

Judge MERIWEATHER. Thank you, Chair Durbin. The biggest difference between the district court and the Court of Federal Claims is that the Court of Federal Claims solely hears cases brought against the United States that are civil. So, there is no criminal docket. I currently have a criminal docket as a magistrate judge.

Conveniently, my background before becoming a magistrate judge was entirely civil in nature. I have 25 years, if you add it all up together, of experience doing complex civil litigation, and that has prepared me very well, should I be so fortunate to be confirmed, to be a judge on the Court of Federal Claims.

Chair DURBIN. Thank you. I'll just say in closing, Judge Rankin, I've had many conversations with Senator Barrasso about your background. And I've reviewed it carefully, and I think that the White House has made a good choice, and I'm glad that you're here. And thank you Judge Schydlower as well. I'm going turn to Senator Cornyn at this point.

Senator CORNYN. Thank you, Mr. Chairman. As you pointed out, it's a long road to get here. A lot of scrutiny, a lot of vetting. Both Judge Schydlower pointed to the Federal Judicial Evaluation Committee that Senator Cruz and I have appointed; a bipartisan committee of the best lawyers in the State of Texas who evaluated both Mr. Gonzalez and Judge Schydlower's credentials, and recommended them to us.

And we agreed with that recommendation, and made that recommendation to the President, and he nominated each of these outstanding candidates. So once again, it demonstrates we can actually get along and get things done here in a bipartisan way, and I'm really very pleased with both of these nominations.

But Mr. Gonzalez, Chairman Durbin, pointed out your extensive trial experience and Judge Bazis talked about hers. You know, as a recovering judge and lawyer myself, I have a strong bias that judges ought to have tried as a lawyer jury trials before they take the bench and then preside over those trials. But can you talk a little bit about that experience, and what sort of insight that's given you that you will now use in your capacity as a Federal district judge?

Mr. GONZALEZ. Sure. It's been mentioned that I've had all these jury trials, and obviously I've been successful in prosecuting large drug conspiracies, international drug conspiracies, and traveled all over South America doing this.

But I don't do these things alone. A jury trial requires a team. So I've always been very fortunate to surround myself with other individuals that are part of my team. And not only do they learn

from me, as you mentioned, as a mentor, to that individual, but I also learned from them because those individuals also bring their own set of skills. And it's a team effort.

So what I've learned through my trial experience is it's not one person alone. It takes a team. Not only your co-counsel, your second chair that's with you, putting the case together, trying the case, convincing the jury, but also your staff that works behind the scenes. Your paralegals, your legal assistants, your IT people setting up your presentation.

Throughout my tenure now, almost three decades, presentation of a case to a jury has changed. When I first started, we had an ELMO, and we flopped that thing and we've flopped the evidence on the ELMO, and that's all we had. Now we have PowerPoints, and we have all this electronic equipment to use to present evidence to a case. So I would look for individuals that had that kind of talent to surround myself so that we could present the case more efficiently and more concisely so that the jury would understand what we were doing.

So although those numbers may seem like they're large numbers of jury trials, I didn't do that alone. I did it with a great group of people surrounding me.

Senator CORNYN. Judge Schydlower, both you and Mr. Gonzalez have been nominated to border courts, and I'm not sure most of the Members of the Committee really fully understand the nature of the docket that you have in El Paso and that you have in Del Rio. Could you describe the docket that you have?

Judge SCHYDLOWER. Yes, Senator Cornyn. We are on the Texas-Mexico border, and El Paso is the epicenter of a lot of what goes on there. Our docket is overwhelmingly criminal, as you might imagine, and it's always been since dating back to the 1970's. It's probably 75 to 80 percent criminal.

So, what we as judges have to do is bear that in mind. We've got to take the cases as they come to us, we process them, and we close them, bearing in mind, though, that there is a civil docket on the other side that we need to get to and we have to get those cases accomplished.

So, it's twofold handling an enormous criminal docket, which is nonstop, but at the same time taking care to ensure that our responsibility to handle the civil docket is done.

Senator CORNYN. A lot of drug and immigration cases.

Judge SCHYDLOWER. That's correct, along with gun cases and human smuggling cases.

Senator CORNYN. And Mr. Gonzalez, I'm not sure people appreciate the personal danger associated with doing prosecuting drug cartels like you've done. Could you spend 30 seconds explaining what that's meant in your personal experience?

Mr. GONZALEZ. Yes, Senator. I've been personally threatened on five occasions. On two occasions, I had to move out of my home with my wife and child, and live outside of my home for several months at a time. My wife and my daughter have always been supportive and never questioned my dedication to public service, my dedication to doing this job.

But it is a dangerous job, and I have had the occasions of being threatened on five occasions and twice, having to be deputized as

a U.S. Marshal to carry a gun, to wear a bulletproof vest at all times, being escorted to court and home. And changing my way of life; taking a different route home, turning on my alarm when we're at home, not just at night. So, yes, it is a dangerous role to be a drug prosecutor on the border.

Senator CORNYN. Thank you.

Chair DURBIN. Thanks, Senator Cornyn. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chairman. As the nominees may know if they've watched prior nomination hearings like this one, I want to begin my questioning by discussing what I consider is an important issue for the Federal judiciary, and that's the topic of clerk diversity. Not just diversity of folks who are serving on the bench. I'm speaking to law clerks that provide an invaluable service.

As many of the candidates who appear before us know from personal experience, serving as a Federal clerk can be a powerful start to a legal career, whether you stay in the public service side or whether you pursue a private sector career. Young lawyers with the opportunity to receive important guidance and mentorship from a judge is a tremendous help, especially early in a career.

But too often, the statistics show us that diverse young lawyers are not afforded the same opportunities to clerk despite being equally qualified for these positions. And with that said, my question for each of you is this: Do you believe diversity within the judiciary is important? If so, why? If not, why not? And what would you do if confirmed to contribute to the diversity within your chambers? We'll start with Judge Bazis.

Judge BAZIS. Thank you. I do think diversity is important for the whole court system, from staff to judges, because I think it's important that the community sees that there are people like them that are within the court system. I think it gives some credibility to the court system from that perspective. And as to clerks, I think it is important to have different perspectives and views within your chambers. And so for me, if I was fortunate to enough to be confirmed, I would cast a wide net in order to interview a diverse group of people.

Senator PADILLA. Okay. Thank you, Mr. Gonzalez.

Mr. GONZALEZ. For some of the same reasons, Senator. I think for three basic reasons. I think that diversity in the judiciary, as well as law clerks, brings with it different perspectives. Different perspectives from different walks of life to the issues that the court has to deal with on a daily basis.

Second, it gives the public confidence that their interest and their views are going to be considered by the court seriously and fairly. And lastly, diversity in the judiciary as well as in law clerks exemplifies the diversity that exists in this great Nation, and it also is reflective of the community that we have to serve.

Senator PADILLA. Thank you.

Judge ALLEN. Thank you for your question, Senator. I agree with the comments of my fellow nominees, and I would add that I believe, and in my experience, diversity brings strength. I have had the great privilege of having mentored over the course of many years a diverse set of individuals from all walks of life. I would continue that commitment in my chambers, were I to be confirmed.

Senator PADILLA. Thank you.

Judge RANKIN. Senator, Thank you for your question. I, too, agree with my fellow nominees. Diversity is important. It's a reflection of who we are as citizens of this great country. It's a reflection of the litigants that come before us in the courtroom. During my nearly 12 years as a magistrate judge, I routinely hire folks of different backgrounds and experiences. Our chamber staff is diverse, and it's an opportunity for different experienced people to come before the court and work for the court. So I do think it's important that I would continue in that effort, if so lucky to be confirmed.

Senator PADILLA. Thank you.

Judge SCHYDLOWER. Senator, I join what my colleagues have said already. I would also add that there are opportunities for judges to attend functions where they can have one-on-one communication with law students. I attended one last April that was open to everybody, but there was a particular reach out to underrepresented communities in law schools where the judges had a chance to sit down, explain what judges are looking for when they interview law clerks, and give the law students ideas about the tools that they might need to make them the most qualified candidates when the time came for applying for law clerkships.

Senator PADILLA. Okay.

Judge MERIWEATHER. Thank you, Senator. I agree with my colleagues about the importance of diversity. It helps bolster public confidence in the courts. I believe the courts are a place where people want to be heard. And when a person appearing in court sees that the people who are listening to what they are presenting to the court come from a variety of backgrounds and experiences, I think that enhances their ability to feel confident that they will be heard fairly and impartially, and will not be disregarded because of what their life experiences are, where they come from, where they reside, or other unique aspects. So, I really believe that diversity helps with that.

In terms of what I would personally do if confirmed as a magistrate judge, I have hired law clerks from a variety of backgrounds and experiences. If confirmed to the Court of Federal Claims, I would hope to continue to do so.

In addition, I have repeatedly participated in panels that try to bring awareness about clerkship opportunities to law students here in DC, to hopefully expand the applicant pool so that students who perhaps might not have personal connections to attorneys and judges can learn what a clerkship entails and hear from judges about how they can perhaps better position themselves to have a chance at such a wonderful job opportunity. Thank you.

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

Chair DURBIN. Thank you, Senator.

Senator CORNYN. Mr. Chairman. I neglected to make unanimous consent request with involving some letters in support of Mr. Gonzalez's nomination. May I make those?

Chair DURBIN. Of course.

Senator CORNYN. Briefly, Mr. Chairman, I'd ask unanimous consent that letters from the League of United Latin American Citizens, the Hispanic National Bar Association, and the Mexican

American Bar Association of Texas be made part of the record. They all relate to Mr. Gonzalez's nomination and confirmation.

Chair DURBIN. Without objection. So ordered.

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

Chair DURBIN. Senator Lee.

Senator LEE. Judge Allen, getting back to Senator Durbin's original question. Can you just confirm to the Committee that I was a very mousey wallflower, unopinionated, and afraid to express myself in law school?

Judge ALLEN. Thank you, Senator. I wish I could do that.

Senator LEE. It was worth a try. Worth a try.

Chair DURBIN. Reminder that the witness is under oath.

[Laughter.]

Senator LEE. You've been involved in, as a lawyer and as a judge, about 75 trials. Is that right?

Judge ALLEN. Correct.

Senator LEE. A lot of cases never make it to trial. They either settle before they get there, or in many cases, they're resolved by a dispositive motion. In many cases, summary judgment is evolved. The parties get to the point after conducting discovery that they conclude there's no genuine issue of material fact, and one of them files a motion for summary judgment.

When there's a close case or an arguably close case on a Rule 56 motion, do you have any opinion on what's worse, granting a meritorious dispositive motion on a Rule 56 or failing to grant one that is meritorious?

Judge ALLEN. Well, Senator, I appreciate the question, and I'm certainly cognizant of the dilemma that you have posed there. And I can tell you that I find no virtue in either option that you've given me. I have litigated summary judgment motions as a lawyer. I have ruled on them as a judge, and it is my intention in all of those circumstances to get it right. It is not my inclination to take the easy way out. And getting it right on summary judgment is a heavy lift.

Senator LEE. Right.

Judge ALLEN. But I study the issues carefully, and I'm aware that some believe that having one's day in court is the automatic out in a close case.

Senator LEE. And what do you mean by that when you say, "having one's day in court"?

Judge ALLEN. Meaning denying the motion for summary judgment.

Senator LEE. And thus allowing the case to proceed to trial?

Judge ALLEN. Correct. If you deny the motion for summary judgment, the case proceeds. I think some believe it will likely settle, and so that's the safer option.

Senator LEE. So is that what you referred to a minute ago when you said, "the easy way out"?

Judge ALLEN. Correct.

Senator LEE. Because it's easier to deny the motion for summary judgment than to grant. Why is that?

Judge ALLEN. Well, because it takes a lot of heavy lifting to carefully review the filings, and to write the significant order in support of a granting of a motion for summary judgment.



Senator LEE. So that's more likely to involve an opinion rather than just a simple order saying there's—

Judge ALLEN. Correct. And judges with busy dockets—I think everyone wants to get it right, of course. But judges with busy dockets may err on the side of caution and say, "Let me deny the motion. That's just a really quick order." But I believe that the more courageous approach is to carefully consider those issues and really to make the ruling that is demanded by the law and the facts.

And were I to be so fortunate as to be confirmed into this role, I would continue my commitment to not taking the easy way out, and to making the brave decision in whichever manner the law and the facts support, and then standing behind that, whatever comes.

Senator LEE. So, if I understand you correctly, there, neither one is more defensible than the other. They're both bad. They're both equally indefensible, but—

Judge ALLEN. Yes, absolutely.

Senator LEE [continuing]. The temptation is greater to deny the motion.

Judge ALLEN. In my experience, that is absolutely the case, Senator.

Senator LEE. And so as it in other words, the judge needs to look out for that temptation among judges because if you do that, the case may well settle long before it gets to trial.

Judge ALLEN. Correct.

Senator LEE. By the way, what tends to take more time? Your average criminal case, or your average civil case, or is there a difference?

Judge ALLEN. In the judicial or in the lawyering context?

Senator LEE. In the judicial context.

Judge ALLEN. In my experience, civil cases have more nuances, more heavy lifting in terms of the handling of those matters. Certainly, all are important, and I give full attention to all matters before me, but they usually have the more dense subject matter in terms of preparation.

Senator LEE. Right. Some of that probably relates to the prevalence of the dispose of motion in civil litigation, not as much of that, you have other kinds of motions?

Judge ALLEN. Certainly. Certainly.

Senator LEE. All right. I see my time's expired. Thank you. I was hoping you could confirm the wallflower thing, but, you know, worth a shot.

[Laughter.]

Chair DURBIN. Senator Kennedy.

Senator KENNEDY. Congratulations to each of you. Judge Meriweather, you've been nominated to the Court of Federal Claims. Is that right?

Judge MERIWEATHER. Yes, Senator.

Senator KENNEDY. How many motions have you argued in the Court of Federal claims?

Judge MERIWEATHER. I have argued hundreds of motions involving complex civil claims in numerous courts. The Court of Federal Claims is not one of those courts.

Senator KENNEDY. Okay. So, the answer's zero?

Judge MERIWEATHER. That is correct, Senator.

Senator KENNEDY. Okay. How many cases have you tried in the Court of Federal claims?

Judge MERIWEATHER. I have tried a civil case in the District Court for the District of Columbia. Most of my cases have been resolved on motions. None of those cases have been in the Court of Federal Claims, although they involve similarly complex matters under civil laws.

Senator KENNEDY. So, the answer's zero?

Judge MERIWEATHER. That is correct, Senator.

Senator KENNEDY. Tell me the grounds for granting a new trial in the Court of Federal Claims?

Judge MERIWEATHER. All of the trials in the Court of Federal Claims are bench trials, and the Court of Federal Claims, although it is not bound by the Federal Rules of Civil Procedure, its rules mirror those rules when applicable. So, it's my understanding that the same rules that would apply in the district court are also applied in that context. But if I were presented with a motion for a new trial, should I be confirmed as a judge on the Court of Federal Claims, I would of course consult the rules of the Court of Federal Claims.

Senator KENNEDY. So what are the grounds for granting a new trial?

Judge MERIWEATHER. My understanding is that a new trial, you would have to comply with the applicable rules.

Senator KENNEDY. I know that, but what are they? What are the grounds? You said that the rules are identical to the Court of Federal Claims and Federal District Court. I'm not sure that's accurate, but just tell me what are the grounds for granting a new trial in the Court of Federal Claims?

Judge MERIWEATHER. Senator, that is not an issue I have had occasion to consider before, despite my extensive civil experience and my familiarity, not only with the Federal Rules of Civil procedure, but I've also reviewed the Rules of the Court of Federal Claims. But if I were presented—

Senator KENNEDY. I'm sorry—

Judge MERIWEATHER. Go ahead.

Senator KENNEDY. No, you go ahead. You go ahead.

Judge MERIWEATHER. I did not mean to speak over you, Senator.

Senator KENNEDY. That's Okay. You go ahead, and I want you to finish your answer.

Judge MERIWEATHER. So I would, if I were presented with that question, should I be confirmed, I would, again, consult the rules and follow the precedent.

Senator KENNEDY. All right. Let me be sure, Judge, I understand your testimony. Can you tell me one single ground for granting a new trial in either a Federal District Court or the Court of Federal Claims as we sit here today?

Judge MERIWEATHER. Yes. If there were gross misapplication of the law, certainly a litigant would argue for—

Senator KENNEDY. Anything else?

Judge MERIWEATHER [continuing]. A new trial.

Senator KENNEDY. They're like six or seven of them. Can you tell me any others?

Judge MERIWEATHER. Trials are so infrequent in the civil context, and I have—although I have presided over bench trials and a jury trial, I have not been presented with a motion to have a new trial——

Senator KENNEDY. Okay.

Judge MERIWEATHER [continuing]. So I've not——

Senator KENNEDY. Okay. What's a contract of adhesion?

Judge MERIWEATHER. Senator, I'm familiar with contract law. The concept of contracts of adhesion——

Senator KENNEDY. Yes. You're going to see a lot of that. That's what Federal Court of Federal Claims does. What's the contract of adhesion?

Judge MERIWEATHER. Senator, the Court of Federal Claims does handle a lot of procurement cases. Those typically turn on interpretations.

Senator KENNEDY. Yes, ma'am, but I'm going to run out of time. What's the contract of adhesion? If you don't know, just tell me.

Judge MERIWEATHER. Senator, despite my extensive civil experience, including dozens of cases that include contract cases, I have not dealt with the question of what a contract of adhesion. But should it be presented to me, I would——

Senator KENNEDY. Sure. You'll look it up. Okay. Do you remember a case judge called *United States v. Allen*?

Judge MERIWEATHER. Yes, Senator.

Senator KENNEDY. You were reversed in that case, weren't you?

Judge MERIWEATHER. I made a pretrial detention decision for, I believe, five defendants. I believe that Judge Allen was one of the defendants for whom the district judge disagreed——

Senator KENNEDY. Yes, ma'am, but you were reversed?

Judge MERIWEATHER. My pretrial detention ruling, I believe was.

Senator KENNEDY. Do you remember a case called *United States v. Johnston*?

Judge MERIWEATHER. I have had multiple *United States v. Johnston*. Are you referring to the pretrial detention matter?

Senator KENNEDY. Well, in this case, you had a defendant who was charged with traveling with intent to engage in illegal sexual conduct with a kid, and the defendant also testified that he, "had a sexual interest in minors," and even had a sexual relationship with his daughter. Do you remember it now?

Judge MERIWEATHER. Yes, Senator.

Senator KENNEDY. Okay. And you were reversed in that case, weren't you?

Judge MERIWEATHER. I made a narrow decision in *Johnston* that he should be released for 21 days——

Senator KENNEDY. Yes.

Judge MERIWEATHER [continuing]. And placed on home incarceration——

Senator KENNEDY. Right.

Judge MERIWEATHER [continuing]. So that he could get cancer treatment that he had been unable to——

Senator KENNEDY. You——

Judge MERIWEATHER [continuing]. Receive.

Senator KENNEDY [continuing]. Wanted to let him go out for 21 days. Is that correct?

Judge MERIWEATHER. I don't think that's an accurate characterization.

Senator KENNEDY. Well, that's what the district court judge said. The district court said no way am I letting this guy out on the street for 21 days.

Judge MERIWEATHER. The district court judge concluded that his life was not at risk because he had had the medical appointment that he had not had when he appeared before me, before the appeal. So, under those new facts, the factual predicate from my temporary release decision no longer existed.

Senator KENNEDY. That's not the way I read it, Judge. Do you remember a case called *United States v. Voucher* and *United States v. Patel*? You were reversed in those cases, too, from trying to let somebody go, weren't you?

Judge MERIWEATHER. In those two cases, my flight risk assessment under the Bail Reform Act, I believe, was reversed by the district judge.

Senator KENNEDY. Okay. I'm out of time. Thanks, Mr. Chairman, for your indulgence.

Chair DURBIN. Senator Welch.

Senator WELCH. Thank you. Judge Meriweather, I just want to tell you that I get nervous every time Senator Kennedy starts asking these legal questions. I'd flunk. All right. So thank you, and you did very well. I want to just congratulate all of you for being here, and express my gratitude to you for the service that you provide and the service you hope to give.

I want to start with Judge Bazis. I was a former public defender, so I really appreciate that as part of your resume. In your capacity as a judge, how does the experience you had as a public defender and as you know, many public defenders now being nominated, and also, many prosecutors, that criminal justice background is obviously helpful. But how does it inform you in your responsibilities as a judge?

Judge BAZIS. In a couple of ways. First, the experience that I gained by being a public defender and the trial experience that I received, I would've not gotten anywhere else—

Senator WELCH. Right.

Judge BAZIS [continuing]. Quite honestly, so. And having to be prepared in every single case because every case I had was set for trial, and that was about a thousand cases per year in the Public Defender's Office. So that experience, obviously, to a trial judge was very helpful.

Also, knowing and understanding the procedures within the courts to apply those. But also I appeared after leaving the public defender's office in front of a lot of judges, and there were things I liked they did, and things that not so much. And so, what my clients wanted and what I wanted was someone who was going to be fair and impartial, listened to the facts of the case, feel that the lawyers and the defendant were being heard, as well as the prosecutor, and making a just, and fair determination. And so that's what I've tried to do for the last 17 years as a judge.

Senator WELCH. Thank you. And Mr. Gonzalez, you were a prosecutor—or are, so same question. You know, you've got in the judicial system, you're defending or prosecuting, and it's a shared experience.

rience even though you're on opposite side. So just tell the Committee, if you would, how your experience as a prosecutor would inform you in the role of the decider.

Mr. GONZALEZ. Yes, Senator. I've been fortunate to—everywhere that I've gone, I've had a very robust docket. So I've carried a lot of cases. My last case review had 150 cases, 900 defendants. That gives me the opportunity to communicate with opposing counsel, listen to their views, listen to the person that they're representing, their views and what is it that they don't understand. And sometimes I've had the opportunity to converse with the defendants and explain the criminal justice system, explain the sentencing manual, the sentencing guidelines to them.

So, I get a good idea of what a defense attorney goes through in representation of that defendant, and as a judge, I would be sympathetic to that. I would be sympathetic to the role that the defense attorney has to play, as well as the prosecutor. Having the experience that I have of over three decades, I would use that experience. And I've also been before a lot of judges, and I've seen some judges with compassion, and caring, and kindness. And I would probably model myself after them, and try to be fair, and impartial, and everything.

Senator WELCH. Thank you. And Judge, is it Schydlower?

Judge SCHYDLOWER. Yes, sir.

Senator WELCH. Yes. And you've had a lot of Federal court litigation experience, and just tell us how you would see yourself acting in the role of judge?

Judge SCHYDLOWER. Well, the best predictor of how it would be as a district judge is the last 8 years that I've served as a U.S. magistrate judge. And 8 years ago, I had to transition from being an advocate who loved trying cases to being a neutral arbiter. And that was a transition. I loved being a lawyer, and I loved trying cases. But I set that aside, and I made that determination before I became a judge that I would have to set that aside. And I think it's been a good transition, and I'm proud of the record that I've had.

Senator WELCH. Okay. Thank you very much. I yield back, Mr. Chairman.

Chair DURBIN. Thank you, Senator Welch. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Congratulations to all of the nominees. Thank you all for being here. Judge Bazis, if I could just start with you. I want to ask you about this case, *United States v. Bartunek*, I think it is, from 2017. Do you remember this case?

Judge BAZIS. I do.

Senator HAWLEY. This is a case in which you granted pretrial release to the defendant. It was a child pornography case. Does that sound right?

Judge BAZIS. Yes.

Senator HAWLEY. Now, you said in your responses to the panel's questions that the defendant had no criminal convictions, and had lived in Nebraska his entire life, and that he owned the home he was living in, and was employed.

I understand, however, at the time that you granted him release, the Omaha Police Department had an open investigation regarding

the sexual assault of a 7-year-old child, in which he was the suspect, and that was in the presentence report. So just walk me through your thinking.

Judge BAZIS. During the hearing, I asked for additional information from the Government and they couldn't give it to me. So we didn't have a lot of facts in regards to that. So the facts and circumstances, there was no additional information that was provided to me at that time.

Senator HAWLEY. So you didn't know he was the subject of the investigation?

Judge BAZIS. There may have been a mention, but the question I had was, well, what does that mean? Has there been a report made? Is he truly the suspect, or was his name just mentioned? What were the circumstances? And at that point in time, there was no additional information that could be given.

Senator HAWLEY. I see. So it looks like to me, according to the revised PSR, "the Omaha Police Department has an open investigation regarding the sexual assault of a 7-year-old child," who's then identified with initials, in which the defendant is the subject. But you're saying that that—you thought that that was not sufficient in order to guide your judgment?

Judge BAZIS. Was that the presentence report, which would have happened after sentencing versus the pretrial report, which is what I would get prior to bond setting,

Senator HAWLEY. "Offers the following objections to the revised PSR; the defendant objects to the inclusion of any reference," and then it goes on to quote this material about the sexual assault. So you're saying you didn't have that information?

Judge BAZIS. Correct. That would've been after sentencing.

Senator HAWLEY. Okay. So you weren't aware that?

Judge BAZIS. At sentencing. Prior to sentencing, after a plea, is when that information would——

Senator HAWLEY. Okay. So when you granted pretrial release, you were not aware that he was under investigation for the assault of a 7-year-old?

Judge BAZIS. Based on what you're saying, and that's a PSR, then no.

Senator HAWLEY. Well, I'm asking is your memory any different? I mean, I can give these questions to you for the record, if that would be more helpful. I just want to clarify the facts because I just want to make sure. If you're telling me you didn't know about it, that's a very different thing.

Judge BAZIS. Well, I don't believe I did.

Senator HAWLEY. Okay. Well, I tell you what, I'll give you some questions for the record on this, and that way—so that you don't have to just rely on your memory.

Judge BAZIS. And I can go back and look at the presentence report——

Senator HAWLEY. That'd be great. That would be great.

Judge BAZIS [continuing]. And the pretrial report, which would tell me that.

Senator HAWLEY. Great. Fair enough. Thank you. Judge Meriweather, let me just ask you in my short remaining time here. I think Senator Kennedy was asking you about this case, *United*

*States v. Johnson*, where you recommended the release of a sexual predator to get medical treatment. Is that right? Do I have the right case?

Judge MERIWEATHER. Senator, I recommended a 21-day—a temporary release for medical treatment after holding multiple hearings, and giving the Government multiple opportunities to get Mr. Johnson to his appointments. Because as I noted in the opinion, I thought the charges were deeply disturbing. I take very seriously the danger to the community.

And I found when I balanced the four factors that I had to consider under the Bail Reform Act, that it was only his history and characteristics, which was that at the time that issue was before me, he had an urgent need for diagnostic and cancer treatment. That—

Senator HAWLEY. Let me just add—I'm sorry to interrupt you. I'm almost out of time. I just want to make sure I understand the sequence because I might, as to my questions in Judge Bazis, I might not have the sequencing right. So you can correct me here.

So I thought the Government filed an emergency appeal of your release order, and you were overturned by the DC District judge because for among other reasons, the predator here had been caught in a sting operation. He'd admitted to sexually abusing his 8-year-old daughter. He had been previously court martialled for molesting a child when he was in the Air Force. That child was his adopted daughter, and he claimed to have sexually molested other children.

And the Government thought that releasing him was a terrible idea. The district court agreed with him—them rather, agreed with the Government. So, I just wonder, in light of all of that, as you look back on it now, do you think it was a bad decision to recommend release for him?

Judge MERIWEATHER. Two things. First, all of the abuse that was alleged was horrific. The charges that were in front of me did not involve the molestation of his daughter, which I believe had happened 15 years earlier. And my decision was not based solely on the nature of the charges, that's but one of four factors that the Bail Reform Act required me to consider.

The factual predicate, as I highlighted in that opinion, I found it very challenging to even entertain the idea of releasing someone charged with such heinous crimes, as well as someone who had a history, decades earlier, of abuse.

But I found that his own interest and self-preservation would—paired with stringent conditions, being under the custody of his wife for a limited period of time, and only allowed to leave his home to go to the doctor in order to get the timely cancer treatment that he needed. That despite three opportunities, he was unable to get through no malicious intent of the Government—

Senator HAWLEY. Can I just ask this, Mr. Chairman, it's my last question. Can I just ask, I thought that he was getting cancer treatment, but your judgment was he wasn't getting—not for the right kind, but he was getting treatment. Is that accurate?

Judge MERIWEATHER. No. That was the change between my ruling and the time of the reversal. I gave the Government three opportunities to take him to the doctor, and I kept him detained. De-

spite it, he did not get to the doctor. I ordered him temporary released so that he could see a cancer specialist, because cancer is a time-sensitive issue, as many of us know with loved ones who are survivors of cancer. And then the next day, he got to the doctor.

Had he been to the doctor, I would not have released him for 21 days. I didn't feel that he needed a specific doctor, which was the facts that were presented to the district judge. It was that he sees any doctor so that he could timely have his cancer addressed. Unfortunately, that did not happen before he saw me.

So, I made the very difficult decision of ordering temporary release under stringent conditions so that could happen. It then happened, and so the need for it no longer existed. Had he seen the doctor before I ruled, I would have denied his motion, and I would've ordered that he remained detained.

Senator HAWLEY. Thank you.

Chair DURBIN. Thank you for that explanation, Judge. I just note here in the notes when you disclosed this case, which you did to the Committee, you said, "A significant factor in my ruling was that jail officials had repeatedly failed to transport the defendant to medical appointments, and he had a private physician who could properly conduct testing and treatment."

You did not release him—using that word in its entirety—but it was for home treatment, home incarceration, for this period of time. Is that correct?

Judge MERIWEATHER. Yes. That's correct, Senator.

Chair DURBIN. Thank you very much. I believe that's all the Senators who are going to be attending this hearing. And I want to thank all the nominees, and their family and friends for their patience during this.

One quick logistical note. Questions for the record will be due to the nominees by 5 p.m. on Wednesday, January 31. And the record will likewise remain open until that time to submit letters and materials. With that, the meeting is adjourned.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]



**Statement of Introduction and Support for Judge Ann Marie McLiff Allen  
Senator Mitt Romney**

It is my honor to introduce Judge Ann Marie McLiff Allen—a native of my home state—to the committee and offer my full support for her nomination to serve as United States District Court Judge for the District of Utah.

Judge Allen has had an impressive career as a prosecutor, public defender, private civil attorney, and General Counsel for Southern Utah University—and she currently serves as associate presiding judge on Utah’s Fifth District Court.

Furthermore, she has used her skills and talents to serve the community as a trustee of SUU, a commissioner on the Judicial Performance Evaluation Commission, and a Rotarian. She earned her law degree from the J. Reuben Clark Law School at Brigham Young University and, like me, studied English at BYU for her undergraduate education.

Looking over her record and qualifications, it is clear that Judge Allen is exceptionally qualified to serve on the federal bench. She is an exemplary jurist and I have no doubt that she will serve our state and country with honor and integrity as a District Court Judge.

I urge the committee to approve her nomination, and I look forward to supporting her when it is considered by the full Senate.

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).  
  
Ann Marie McIff Allen (Ann Marie McIff)
2. **Position:** State the position for which you have been nominated.  
  
United States District Judge for the District of Utah
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.  
  
Utah State Fifth District Court  
40 North 100 East  
Cedar City, Utah 84720
4. **Birthplace:** State year and place of birth.  
  
1972; Richfield, Utah
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.  
  
1994 – 1997, Brigham Young University J. Reuben Clark Law School; J.D., 1997  
1990 – 1994, Brigham Young University; B.A., 1994
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.  
  
2020 – present  
Utah State Fifth District Court  
40 North 100 East  
Cedar City, Utah 84720  
Judge

2016 – 2020  
Southern Utah University  
351 West University Boulevard  
Cedar City, Utah 84720  
General Counsel (2018 – 2020)  
Special Counsel and Director of Ethics and Compliance (2016 – 2017)

2014 – 2020  
Garfield County, Utah  
55 South Main Street  
Panguitch, Utah 84759  
Deputy County Attorney

2014 – 2016 (approximately)  
Southern Utah University  
351 West University Boulevard  
Cedar City, Utah 84720  
Adjunct Instructor

2013 – 2016  
Ann Marie McIff Allen, Attorney at Law  
51 East 400 North #1  
Cedar City, Utah 84721  
Attorney

2007 – 2013  
Iron County, Utah  
82 North 100 East, Suite 201  
Cedar City, Utah 84720  
Deputy County Attorney

2004 – 2007  
Allen Law, P.C.  
415 North Main Street, Suite 303  
Cedar City, Utah 84721  
Attorney

2001 – 2004  
Jensen, Graff and Barnes, L.L.P.  
250 South Main Street  
Cedar City, Utah 84720  
Attorney

1999 – 2001  
Utah Valley University (Utah Valley State College at the time of my employment)

800 West University Parkway  
Orem, Utah 84058  
Adjunct Instructor

1997 – 1998  
Brigham Young University J. Reuben Clark Law School  
341 East Campus Drive  
Provo, Utah 84602  
Adjunct Instructor

Other Affiliations (Uncompensated)

2012 – 2016  
Southern Utah University  
351 West University Boulevard  
Cedar City, Utah 84720  
Trustee

2013 – 2016  
Southwest Technical College (Southwest Applied Technology College during my service)  
757 West 800 South  
Cedar City, Utah 84720  
Trustee

2013 – 2016  
Canyon Creek Services (Canyon Creek Women's Crisis Center during my service)  
297 North Cove Drive  
Cedar City, Utah 84720  
Board Member

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

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

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

National Judicial College, Handling Capital Cases Course Scholarship (2023)

Utah State Bar Litigation Section Judicial Excellence Award (2022)

Utah State Bar Litigation Section Judicial Excellence Award (2021)

Utah State Bar Litigation Section Judicial Excellence Award (2020)

Utah's "Legal Elite" in Criminal Law (2016)

National Advocacy Center Scholarship (2009)

Scott M. Matheson American Inn of Court Officer (2006)

Brigham Young University Journal of Public Law  
Articles Editor (1996 – 1997)

Brigham Young University J. Reuben Clark Law School Representative to the American Bar Association (1995 – 1996)

Brigham Young University Academic Scholarship (1990 – 1994, partial or full tuition coverage for some semesters during this period of time)

Sterling Scholar Runner-Up Academic Scholarship (1990)

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

American Bar Association (possibly student member 1995 – 1996)

Association of Title IX Administrators (2016 – 2018)

Legislative Process Committee, State of Utah (1997 – 2000)

National Association of College and University Attorneys (2016 – 2020)

National Judicial College, Handling Capital Cases Course (2023)

Southern Utah Bar (2020 – present)

State of Utah, Judicial Council, Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts ("Indigent Defense Committee") (2011 – 2015)

State of Utah, Judicial Nomination Commission, Fifth District (2010 – 2012)

State of Utah, Judicial Performance Evaluation Commission (2010 – 2017)  
Vice Chair (2015 – 2017)

Utah State Bar (1998 – present)

Modest Means Committee Co-Chair (2021 – present)  
Litigation Section (2020 – present)

Utah State Courts

Facilities Committee (2023 – present)  
Green Phase (post-Covid-19 Workgroup) (2021)  
Self-Represented Parties Committee (2021 – present)

Women Lawyers of Utah (2017 – 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.

Utah, 1998

There have been no lapses in membership.

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

United States District Court for the District of Utah, 2007

My registration is currently lapsed, as I am a sitting state court judge.

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.

Brigham Young University J. Reuben Clark Law School Alumni Association (1997 – present); class representative to the Board of Directors (2003)

Cedar City Rotary Club, Paul Harris Fellow (2003 – present)

Cedar Middle School, Parent Teacher Student Association, President (2010 – 2011)

Friend of the Children's Justice Center Friends, Board of Directors (2003)

Southern Utah University Emeriti Association (2020 – 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 these 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, prior to the time of my membership, Rotary International amended its constitution to open membership to all sexes.

**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.

Based upon my recollection and a thorough review of my files and searches of publicly available databases, I have identified the following responsive materials, but it is possible that there are more materials that I have been unable to recall or identify.

State of Utah, Judicial Council, Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts, Report (Oct. 26, 2015). 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.

Based upon my recollection and a thorough review of my files and searches of publicly available databases, I have identified the following responsive materials, but it is possible that there are more materials that I have been unable to recall or identify.

Personal Statement and Testimony, Utah Senate Judicial Confirmation Committee Hearing (Aug. 13, 2020). Personal Statement and recording 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.

Based upon my recollection and a thorough review of my files and searches of publicly available databases, I have identified the following responsive materials, but it is possible that there are more materials that I have been unable to recall or identify.

March 18, 2023: Panelist, "Conversation with the Courts," Utah State Bar Spring Convention, St. George, Utah. I was part of a panel of judges who gave practical advice to lawyers about interfacing with the courts. I have no notes, transcript, or recording. The address for the Utah State Bar is P.O. Box 142330, Salt Lake City, Utah 84114.

December 3, 2021: Panelist, "Professionalism and Civility in Remote Court Hearings," Southern Utah Bar Association, St. George, Utah. I was part of a panel of judges who gave practical advice to lawyers about handling remote hearings with professionalism and civility. I have no notes, transcript, or recording. It appears that the Southern Utah Bar Association has no physical address.

May 20, 2016: Guest Speaker, Graduation Speech, Mountain Springs Preparatory Academy, Cedar City, Utah. Notes supplied.

April 11, 2014: Guest Speaker, Southern Utah University, Cedar City, Utah. I gave a speech about leadership and empowerment with a focus on the advancement of women. I have no notes, transcript, or recording. The address for Southern Utah University is 351 West University Boulevard, Cedar City, Utah



84720.

March 31, 2011: Guest Speaker, Southern Utah University, Cedar City, Utah. I spoke at the “Women’s Week” conference, and my presentation was entitled, “Women in the Law: Lessons from Local Prosecutors.” I have no notes, transcript, or recording. The address for Southern Utah University is 351 West University Boulevard, Cedar City, Utah 84720.

June 2009 (specific date unknown): Panelist, “County Government,” Utah Girls State, Utah American Legion Auxiliary, Cedar City, Utah. The panel was on the roles of various county employees. I have no notes, transcript, or recording. The address of the Utah American Legion Auxiliary is P.O. Box 148000, Salt Lake City, Utah 84114.

June 1990 (specific date unknown): Speaker, Richfield High School Graduation, Richfield, Utah. I was the senior class president and gave a speech at the graduation ceremony generally about high school and the future. I have no notes, transcript, or recording. The address for Richfield High School is 495 West Center Street, Richfield, Utah 84701.

- 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.

Based upon my recollection and a thorough review of my files and searches of publicly available databases, I have identified the following responsive materials, but it is possible that there are more materials that I have been unable to recall or identify.

*Governor Appoints New Judge to the Fifth District Court in Southern Utah*, St. George News (July 27, 2020). Copy supplied (reprinted in multiple outlets).

*Longest Standing Utah University President Focuses on Growth*, SUU News (Mar. 14, 2019). Copy supplied (reprinted in multiple outlets).

*‘I Don’t Want to Be Held Back by This’: Sexually Assaulted When She Was a Freshman, This Utah Student Is Now Celebrating Graduation*, The Salt Lake Tribune (Aug. 3, 2017). Copy supplied.

*Attorney Ann Marie Allen Joins SUU Team*, SUU News (Mar. 18, 2016). Copy supplied (reprinted in multiple outlets).

*Prosecutor Profile – Ann Marie Allen Deputy County Attorney*, The Prosecutor: Newsletter of the Utah Prosecution Council (June 2013). Copy supplied.

*SUU Welcomes New Trustee, Cedar City Local*, SUU News (Nov. 2, 2012).  
Copy supplied.

*Clark Found Guilty on All Charges*, The Spectrum (July 3, 2010). Copy supplied.

*Girl Donates Locks Out of Love*, The Spectrum (July 22, 2009). Copy supplied.

*Man Pleads Guilty to 5 Felonies*, The Spectrum (May 19, 2009). Copy supplied.

*Attorney's Office Takes on New Personnel, Personality*, The Spectrum (July 8, 2008). Copy supplied.

*Addicts Get Intense Treatment*, The Spectrum (May 19, 2008). Copy supplied.

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

I have served as a Utah District Court Judge since 2020. I was appointed by Governor Gary Herbert and confirmed by the Utah State Senate. The District Court is the highest level of trial court in the state. It is a court of general jurisdiction, encompassing a broad range of civil matters, including commercial, real property, water, probate, and domestic matters; as well as criminal matters, including felonies and capital cases. I have these additional special duties: Fifth District Associate Presiding Judge, Drug Court Judge, and Water Judge.

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

I have presided over four criminal jury trials. I have presided over approximately 40 bench trials of various kinds.

I have also presided over at least a couple thousand criminal cases which have been concluded by judgments pursuant to plea bargains. These have included misdemeanor, felony, and capital cases. I have presided over hundreds of civil cases including commercial, real property, water rights, collection and other types of litigation, as well as domestic cases, probates, protective orders, civil commitments, adoptions, guardianships, and other types of civil matters, which have been concluded by judgments and decrees entered pursuant to rulings on motions or pursuant to stipulations of the parties.

- i. Of these cases, approximately what percent were:

jury trials:	5%
bench trials:	95%

ii. Of these cases, approximately what percent were:

civil proceedings:	50%
criminal proceedings:	50%

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

As a State District Court Judge, I do not write opinions. I do issue rulings, orders, and judgments. Most of these are minute rulings, or are prepared by counsel for the prevailing party and submitted to the court for review and execution. All are unpublished.

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 v. Schmidt*, No. 201500564 (Fifth District Court, Iron County, State of Utah), *appeal filed*, No. 20230714 (Ut. Ct. App). Order supplied.

I presided over the jury trial of Mr. Schmidt on the charge of first-degree murder. The State alleged that Mr. Schmidt was angry at the victim for not paying a debt, and that Mr. Schmidt fatally struck the victim with his vehicle, after which Schmidt fled the scene. Mr. Schmidt asserted that he was not the person driving the car that struck the victim. Before trial, I denied Mr. Schmidt's motion to suppress, which contended that two witnesses' identification of Mr. Schmidt should be excluded pursuant to Utah Rule of Evidence 617. The jury found Mr. Schmidt guilty of murder. On July 26, 2023, I imposed the statutorily defined sentence, an indeterminate term of 15 years to life in prison. Mr. Schmidt has filed an appeal, which is pending.

Prosecution:

Chad Dotson  
Shane Klenk  
Samuel Woodall  
Iron County Attorney's Office  
62 North 100 East #201  
Cedar City, UT 84721  
(435) 865-5310

Defense Counsel:

Clifford Gravett

132 West Tabernacle, Building B  
St. George, UT 84770  
(435) 628-4411

Shane Manuele  
427 South Main Street, Suite 306  
Cedar City, UT 84720  
(435) 572-4434

2. *State v. Anderson*, No. 201500370 (Fifth District Court, Iron County, State of Utah), *appeal filed*, No. 20220407 (Ut. Ct. App).

I presided over the jury trial of Mr. Anderson on one count of first-degree aggravated sexual abuse of a child and two counts of second-degree sexual abuse of a child. The State alleged that Mr. Anderson had sexually abused a child who lived in his neighborhood while she was watching a movie in his house. Mr. Anderson denied this allegation at trial. The jury found Mr. Anderson guilty on all counts. On April 19, 2022, I imposed the statutorily defined sentence for each count: an indeterminate term of 15 years to life in prison for first-degree aggravated sexual abuse of a child, and indeterminate terms of one to 15 years in prison on each count of second-degree sexual abuse of a child, to run concurrently to each other but consecutive to the first-degree felony. Mr. Anderson has filed an appeal, which is pending.

Prosecution:

Chad Dotson  
Shane Klenk  
Trajan Evans  
Iron County Attorney's Office  
62 North 100 East #201  
Cedar City, UT 84721  
(435) 865-5310

Defense Counsel:

Troy Sundquist  
888 South Sage Drive, Suite 2B  
Cedar City, UT 84720  
(801) 518-8629

3. *State v. Mike*, No. 231500246 (Fifth District Court, Iron County, State of Utah).

I presided over the jury trial of Mr. Mike on charges of third-degree felony aggravated assault (domestic violence), third-degree felony obstruction of justice,

and class c misdemeanor intoxication. The State alleged that Mr. Mike had beaten the victim, his sister, causing serious bodily injury; and had altered the scene to conceal evidence prior to the arrival of law enforcement, all while he was significantly intoxicated. The jury found Mr. Mike not guilty of third-degree felony aggravated assault but guilty of the lesser-included charge of misdemeanor assault, guilty of obstruction of justice which was reduced to a misdemeanor because of the misdemeanor level of the related charge (assault), and guilty of intoxication. I imposed but suspended jail sentences for the misdemeanor convictions, gave credit for the jail time previously served, and placed Mr. Mike on privately supervised probation, requiring him to obey all laws; not consume alcohol or illegal drugs; obtain a domestic violence and substance abuse evaluation; and complete any recommended treatment.

Prosecution:

Chad Dotson  
Trajan Evans  
Iron County Attorney's Office  
62 North 100 East #201  
Cedar City, UT 84721  
(435) 865-5310

Defense:

Jeff Slack  
137 North Main Street  
Cedar City, UT 84721  
(435) 592-2697

Edward Flint  
132 West Tabernacle Street, Suite A  
St. George, UT 84770  
(435) 767-7841

4. *Cohen Braffits Estates Development, LLC v. Shae Financial Group, LLC*, No. 180500059 (Fifth District Court, Iron County, State of Utah), *appeal filed*, No. 20210448 (Ut. Ct. App.). Order supplied.

I presided over this complex, multi-party civil case regarding disputes arising from a loan and security interest in real property, with related proceedings in New York and Utah. Plaintiff sought declaratory and injunctive relief to invalidate the loan agreement it had entered with defendant, and to enjoin defendant from foreclosing on property pledged as collateral for the loan, comprised of thousands of acres of mountain recreational and residential property. The judge who preceded me on the case had issued a summary judgment ruling in favor of defendant and against plaintiff. I then ruled on several motions that followed,

including denying plaintiff's motion to set aside the summary judgment ruling. I also issued orders authorizing a sheriff's sale, denying relief under Rule 60(b), and denying a stay. An appeal is pending in the case challenging the summary judgment and denial of the motion to set it aside.

Plaintiff:

Sarah Elizabeth Spencer  
Heather Thuet  
Christensen & Jensen, PC  
257 East 200 South, Suite 1100  
Salt Lake City, UT 84111  
(801) 323-5000

Defense:

Michael N. Zundel  
77 North Foxhill Road  
North Salt Lake, UT 84054  
(801) 719-8386

G. Troy Parkinson  
Lundberg & Associates, PC  
3269 South Main Street, Suite 100  
Salt Lake City, UT 84115  
(801) 263-3400

5. *State v. Miller*, No. 211500106 (Fifth District Court, Beaver County, State of Utah).

I presided over this capital case, in which Mr. Miller was charged with first-degree felony aggravated murder, first-degree felony murder, and first-degree felony conspiracy to commit aggravated murder. The State alleged that Mr. Miller had shot and killed the victim in a plot to enable Mr. Miller's paramour, Ms. Woerth (*see State v. Woerth* discussed below), to acquire sole ownership of a house she owned jointly with the victim (her husband). Mr. Miller initially claimed he shot the victim in self-defense. I granted defendant's motion to seal two ex parte motions for funding of defense trial preparation activities, but I denied the two ex parte motions on the grounds that the authority to provide the requested funding rested with the Utah Indigent Defense Funds Board. Mr. Miller entered guilty pleas to amended charges of second-degree felony conspiracy to commit aggravated murder, first-degree felony murder stipulated to be reduced to second-degree felony manslaughter at sentencing, and first-degree felony discharge of a firearm with serious bodily injury. On November 6, 2023, I imposed the statutorily defined sentence for each count: an indeterminate term of one to 15 years in prison for second-degree felony conspiracy to commit

aggravated murder, an indeterminate term of two to 20 years in prison for second-degree felony manslaughter, and an indeterminate term of five years to life in prison for first-degree felony discharge of a firearm, all to run consecutively.

Prosecution:

Von Christensen  
Beaver County Attorney's Office  
P.O. Box 471, Beaver, UT 84713  
(435) 438-6441

Defense:

Rudy Bautista  
250 East 200 South, Suite 330  
Salt Lake City, UT 84111  
(801) 232-5311

Jeanne Campbell  
2825 East Cottonwood Parkway, Suite 500  
Salt Lake City, UT 84121  
(801) 856-9186

6. *State v. Woerth*, No. 211500125 (Fifth District Court, Beaver County, State of Utah).

I presided over this capital case, in which Ms. Woerth was charged with first-degree felony criminal solicitation, first-degree felony aggravated murder, and first-degree felony conspiracy to commit aggravated murder. The State alleged that Ms. Woerth solicited the murder of her husband in a plot to obtain sole ownership of a house she owned jointly with him, and that he was murdered by her paramour, Mr. Miller (*see State v. Miller* discussed above) pursuant to her solicitation. Ms. Woerth entered a guilty plea to first-degree felony criminal solicitation. On November 6, 2023, I imposed the statutorily defined sentence of an indeterminate term of three years to life in prison.

Prosecution:

Von Christensen  
Beaver County Attorney's Office  
P.O. Box 471  
Beaver, UT 84713  
(435) 438-6441

Defense:

Doug Terry  
 Ryan Stout  
 132 West Tabernacle, Building B  
 St. George, UT 84770  
 (435) 628-4411

7. *State v. Peters*, No. 211500548, Fifth District Court, Iron County, State of Utah.

I presided over this case in which Mr. Peters was charged with first-degree felony attempted murder, two counts of third-degree felony discharge of a firearm, and third-degree felony aggravated assault. The State alleged that Mr. Peters had attempted to kill his father by shooting at (but missing) him, had shot in the direction of one responding law enforcement officer, and had come toward another law enforcement officer while starting to raise his gun. Mr. Peters entered a guilty plea to first-degree felony attempted murder. I imposed the statutorily defined sentence of an indeterminate term of three years to life in prison.

Prosecution:

Shane Klenk  
 Iron County Attorney's Office  
 62 North 100 East #201  
 Cedar City, UT 84721  
 (435) 865-5310

Defense:

Matt Munsen  
 970 South Sage Drive, Suite 109  
 Cedar City, UT 84720  
 (435) 238-7734

8. *State v. Tessier*, No. 211500107 (Fifth District Court, Iron County, State of Utah), *aff'd*, No. 20220438 (Ut. Ct. App.).

I presided over this case in which Mr. Tessier was charged with two counts of second-degree felony criminal mischief, three counts of third-degree felony aggravated assault, and one count of third-degree felony failure to respond to officer's signal to stop. The State alleged that Mr. Tessier initiated an unprovoked attack on the victim, attempting to stab him in the neck; fled the scene; led law enforcement on a chase; and intentionally drove head-on into a law enforcement officer's vehicle. Mr. Tessier pleaded guilty to one count of second-degree felony criminal mischief, two counts of third-degree felony aggravated assault, and one count of third-degree felony failure to respond to officer's signal



to stop. I imposed the statutorily defined sentence for each count: an indeterminate term of one to 15 years in prison for second-degree felony criminal mischief, and three indeterminate terms of zero to five years in prison for third-degree felony aggravated assault and failure to respond to officer's signal to stop, all to run consecutively. An appeal was filed, challenging his sentence, resulting in affirmance.

Prosecution:

Trajan Evans  
Iron County Attorney's Office  
62 North 100 East #201  
Cedar City, UT 84721  
(435) 865-5310

Defense:

Jeff Slack  
137 North Main Street  
Cedar City, UT 84720  
(435) 592-2697

9. *Winston v. Iron County School District*, No. 220500048 (Fifth District Court, Iron County, State of Utah). Order supplied.

I presided over this civil case brought by Ms. Winston, in which she alleged emotional injuries caused by certain incidents involving her children. First, Ms. Winston brought intentional and negligent infliction of emotional distress causes of action against an individual defendant (unaffiliated with Iron County School District) who had kidnapped her five-month-old child; this individual defendant pleaded guilty to kidnapping in a separate, criminal case. Second, Ms. Winston brought a negligence cause of action against the school district, alleging that the district had allowed another of her children, who was five years old and attended school, to be picked up by an unauthorized adult (this person was not the same person who had kidnapped Ms. Winston's five-month-old child), causing Ms. Winston to be unable to locate the five-year-old child for a period of hours, resulting in emotional injury. The school district filed a motion to dismiss the negligence cause of action against it under Utah Rule of Civil Procedure 12(b)(6), arguing that Utah's Governmental Immunity Act provided governmental entities with immunity from causes of action seeking compensation for emotional damages. I granted that motion and dismissed Ms. Winston's cause of action against the school district. Ms. Winston then voluntarily dismissed her causes of action against the individual defendant who pleaded guilty to kidnapping in the separate, criminal case.

Plaintiff:

Lauren Hunt  
Julie Blanch  
Michael Young  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
(801) 532-1234

Defense:

Randall Kent  
Utah Attorney General's Office  
160 East 300 South  
Salt Lake City, UT 84114  
(801) 366-0353

10. *State v. Downey*, No. 221500068 (Fifth District Court, Beaver County, State of Utah). Order supplied.

I am currently presiding over this capital case, in which Mr. Downey is charged with first-degree felony aggravated murder and second-degree aggravated child abuse. The State alleged in its amended information and at the preliminary hearing, which I conducted, that Mr. Downey committed first-degree felony aggravated murder and second-degree aggravated child abuse, resulting in the death of his infant child. The State presented evidence that the infant had been physically abused, causing grave injury; that medical care had been avoided and refused; and that the condition of the child had been hidden. On March 31, 2023, I issued a memorandum decision and order binding Mr. Downey over on both charges. On November 13, 2023, the State filed an amended information charging one count of second-degree felony manslaughter, to which Mr. Downey pleaded guilty. Sentencing is pending.

Prosecution:

Leo Kanell  
Beaver County Attorney's Office  
P.O. Box 471  
Beaver, UT 84713  
(435) 438-6441

Defense:

Rudy Bautista  
250 East 200 South, Suite 330  
Salt Lake City, UT 84111

(801) 232-5311

Jonathan Nish  
257 East 200 South, Suite 1100  
Salt Lake City, UT 84111  
(801) 323-5000

- 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.

As a State District Court Judge, I do not write opinions. I do issue rulings, orders, and judgments. Most of these are minute rulings, or are prepared by counsel for the prevailing party and submitted to the court for review and execution. The Utah Courts do not maintain any readily accessible database of my rulings, orders, and judgments. Instead, case files are stored in the Utah Courts' X Change case management system.

On occasion I will draft my own written rulings or memorandum decisions in which I set forth the court's legal reasoning, of which I have provided the following:

1. *State v. Schmidt*, No. 201500564 (Fifth District Court, Iron County, State of Utah). Order previously supplied in response to Question 13c.

Prosecution:

Chad Dotson  
Shane Klenk  
Samuel Woodall  
Iron County Attorney's Office  
62 North 100 East #201  
Cedar City, UT 84721  
(435) 865-5310

Defense Counsel:

Clifford Gravett  
132 West Tabernacle, Building B  
St. George, UT 84770  
(435) 628-4411

Shane Manuele  
427 South Main Street, Suite 306  
Cedar City, UT 84720

(435) 572-4434

2. *Cohen Braffits Estates Development, LLC v. Shae Financial Group, LLC*, No. 180500059 (Fifth District Court, Beaver County, State of Utah). Order previously supplied in response to Question 13c.

Plaintiff:

Sarah Elizabeth Spencer  
Heather Thuet  
Christensen & Jensen, PC  
257 East 200 South, Suite 1100  
Salt Lake City, UT 84111  
(801) 323-5000

Defense:

Michael N. Zundel  
77 North Foxhill Road  
North Salt Lake, UT 84054  
(801) 719-8386

G. Troy Parkinson  
Lundberg & Associates, PC  
3269 South Main Street, Suite 100  
Salt Lake City, UT 84115  
(801) 263-3400

3. *Winston v. Iron County School District*, No. 220500048 (Fifth District Court, Iron County, State of Utah). Order previously supplied in response to Question 13c.

Plaintiff:

Lauren Hunt  
Julie Blanch  
Michael Young  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
(801) 532-1234

Defense:

Randall Kent  
Utah Attorney General's Office

160 East 300 South  
Salt Lake City, UT 84114  
(801) 366-0353

4. *State v. Downey*, No. 221500068 (Fifth District Court, Beaver County, State of Utah). Order previously supplied in response to Question 13c.

Prosecution:

Leo Kanell  
Beaver County Attorney's Office  
P.O. Box 471  
Beaver, UT 84713  
(435) 438-6441

Defense:

Rudy Bautista  
250 East 200 South, Suite 330  
Salt Lake City, UT 84111  
(801) 232-5311

Jonathan Nish  
257 East 200 South, Suite 1100  
Salt Lake City, UT 84111  
(801) 323-5000

5. *Ware v. Iron County*, No. 220500132 (Fifth District Court, Iron County, State of Utah). Order supplied.

Plaintiff:

Timothy Pack  
Scott Troester  
Clyde Snow & Sessions  
201 South Main Street  
Salt Lake City, UT 84111  
(801) 322-2516

Defense:

Barton Kunz  
299 South Main Street, Suite 1300  
Salt Lake City, UT 84111  
(801) 618-8741

Matthew Church  
 Carson Fuller  
 Manning Curtis Bradshaw & Bednar  
 201 South Main Street, Suite 750  
 Salt Lake City, UT 84111  
 (801) 303-0045

6. *State v. Scott*, No. 181500044 (Fifth District Court, Beaver County, State of Utah). Order supplied.

Prosecution:

Von Christensen  
 Beaver County Attorney's Office  
 P.O. Box 471  
 Beaver, UT 84713  
 (435) 438-6441

Defense:

Bryan Jackson  
 456 West 200 North  
 Cedar City, UT 84721  
 (435) 586-8450

7. *Utah Occupational Safety and Health Division v. The Pizza Cart*, No. 210500029 (Fifth District Court, Iron County, State of Utah). Order supplied.

Plaintiff:

Scott G. Higley  
 Utah Attorney General's Office  
 160 East 300 South, 5th Floor  
 Salt Lake City, UT 84114  
 (801) 366-0353

- 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, 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.

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 my substantive or procedural rulings.

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

As a State District Court Judge, I do not write opinions. I do issue rulings, orders, and judgments. Most of these are minute rulings, or are prepared by counsel for the prevailing party and submitted to the court for review and execution. The Utah Courts do not maintain any readily accessible database of my rulings, orders, and judgments. Instead, case files are stored in the Utah Courts' X Change 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.

As a State District Court Judge, I do not write 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.

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

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;

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

In my service as a Utah State District Court judge, I have never been asked to recuse myself from a case. I have, however, recused myself *sua sponte*, as provided for by Rule 2.11 of the Utah Code of Judicial Conduct, from the cases set forth below. In each instance I evaluated the pertinent information once it became known to me, and made the recusal decision in accordance with legal and ethical requirements.

The two primary locations where I hear cases have small populations: Cedar City has 37,000 people, and Beaver City has 3,000 people; thus, *sua sponte* recusal is sometimes necessary.

*State v. Hsuing*, No. 181500061 (Beaver County Fifth District Court). I recused myself because I had a personal connection with someone whose work had some connection to the litigation such that there could have been an appearance of potential conflict.

*State v. Picklesimer*, No. 181500062 (Beaver County Fifth District Court). I recused myself because I had a personal connection with someone whose work had some connection to the litigation such that there could have been an appearance of potential conflict.

*Ware, et al. v. Iron County and Cedar City*, No. 220500132 (Iron County Fifth District Court). I recused myself because, during the course of the litigation, a contested discovery issue arose that involved a number of individuals with whom I had a personal connection, and who had not previously been involved in the litigation.

*State v. Vollmar*, No. 231500033 (Beaver County Fifth District Court). I recused myself because I had a personal connection with someone whose work had some connection to the litigation such that there could have been an appearance of potential conflict.

*Carroll v. Carroll*, No. 184500051 (Beaver County Fifth District Court). I recused myself because I had a personal connection with someone who had been involved in the litigation.

*Littlefield v. Smith*, No. 200500015 (Iron County Fifth District Court). I recused myself because I had a personal connection with a party to the litigation.

*Kucifer v. Kucifer* No. 214500191 (Iron County Fifth District Court). I recused myself because I had a personal connection with someone who was involved in the litigation.

*Smith v. Smith*, No. 224500165 (Iron County Fifth District Court). I recused myself because one of the parties was an employee of the Fifth District.

*Matheson v Belliston*, No. 214500269 (Iron County Fifth District Court). I recused



myself because one of the parties was related to an executive administrator of the Fifth District.

*Heaton v. Heaton*, No. 214500257 (Iron County Fifth District Court). I recused myself because the parties were my neighbors.

*Brower v. Castaneda*, No. 214500067 (Iron County Fifth District Court). I recused myself because one of the parties was my neighbor.

*State v. Prisbrey*, No. 181500247 (Iron County Fifth District Court). I recused myself because the defendant was a close family member to an opposing party in a domestic matter in which I had been the lawyer, and he had testified at the trial. I recused in an abundance of caution to avoid the appearance of a potential conflict.

*Dhillon v. Perez, et al.*, No. 180500002 (Beaver County Fifth District Court). I recused myself because of a personal connection with someone involved in the litigation.

*Rocky Ford v. Kents Lake, et al.*, No. 100500156 (Beaver County Fifth District Court). I recused myself because I had been privy to some discussions of individuals involved in the case prior to my taking the bench.

*State v. Verrill*, No. 221500123 (Iron County Fifth District Court). I recused myself because an employee of the Fifth District was a witness in the case.

*Bradshaw v. Medrano*, No. 234500004 (Beaver County Fifth District Court). I recused myself because one of the parties was an immediate family member of an executive administrator in the Fifth District.

*Kinser v. Kinser*, No. 234500008 (Iron County Fifth District Court). I recused myself because one of the parties was an employee of the Fifth District.

*State v. Shumway*, No. 221500729 (Iron County Fifth District Court). I recused myself because an employee of the Fifth District had a family connection to the defendant and was likely to be a witness in the case.

**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.

Aside from serving as a State District Court judge, I have not held public office. I have had no unsuccessful candidacies for public 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.

To the best of my knowledge and recollection, I have not held office in or rendered service to any political party or election committee, nor have I held a position or played a role in a political campaign. My father served in the Utah legislature, and I attended some functions with him over the years of his service as a supportive family member; to the best of my knowledge and recollection, I did not speak nor take any active, public role at any of these functions.

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

2001 – 2004  
Jensen, Graff and Barnes, L.L.P.  
250 South Main Street  
Cedar City, Utah 84720  
Attorney

2004 – 2007  
Allen Law, P.C.  
415 North Main Street, Suite 303  
Cedar City, Utah 84721  
Attorney

2007 – 2013  
Iron County Attorney's Office  
82 North 100 East, Suite 201  
Cedar City, Utah 84720  
Deputy County Attorney

2013 – 2016  
Ann Marie McIff Allen, Attorney at Law  
51 East 400 North #1  
Cedar City, Utah 84721  
Attorney

2014 – 2020  
Garfield County Attorney's Office  
55 South Main Street  
Panguitch, Utah 84759  
Deputy County Attorney

2016 – 2020  
Southern Utah University  
351 West University Boulevard  
Cedar City, Utah 84720  
Special Counsel and Director of Ethics and Compliance (2016 – 2017)  
General Counsel (2018 – 2020)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

After I graduated from law school in 1997, I worked part time for a few years because I had three small children. I taught law courses at the BYU Law School and Utah Valley University.

In 2001, I started working at a law firm in Cedar City, Utah, that serviced the legal needs of businesses, governmental entities, and individuals in the broader southern Utah area. Although I became involved in a variety of types of matters, my primary responsibility was to do work under the firm's public defender contract in Beaver County.

As a public defender in Beaver County, I handled indigent defense cases from the most serious felonies to the lowest misdemeanors, and also handled parental defense and delinquency in juvenile court. While working in Beaver County, I became acquainted with lawyers who worked in the federal court in St. George, which led to my receiving a few CJA panel appointments for federal criminal defense.

Starting in 2004, I worked for Allen Law, P.C., which was affiliated with Barnes and Allen, L.L.P. Randy Allen (who is my husband), Keith Barnes, and I all worked in the same office and shared some cases and work. I continued doing indigent defense.

In 2007, I became a Deputy Iron County Attorney. I prosecuted all kinds of felonies and misdemeanors, handled the County's Drug Court, and conducted ongoing in-house training on issues like Fourth Amendment search and seizure, effective warrants, and other legal issues.

In 2013, I went back into private practice, serving a general clientele of those needing domestic work, estate planning, and litigation. I also associated with my father's law firm, The McIff Firm, on some civil cases. Additionally, I did legal work for a school district and became a part-time deputy county attorney for a neighboring county, a role which I retained until I took the bench in 2020. As the Deputy Garfield County Attorney, I prosecuted crimes as well as appeared regularly before the Utah State Tax Commission.

In 2016, the President of Southern Utah University appointed me as Special Counsel and Director of Ethics and Compliance, and eventually as the University's first General Counsel. In those roles, at various times, I handled the huge variety of legal issues faced by a university, including compliance with Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, the Americans with Disabilities Act, the Fair Housing Act and the Free Speech clause of the First Amendment; and also advised the university regarding complex contracts, policy development, and employment issues.

In 2020, I was appointed by Utah's governor to the Fifth District bench for the State of Utah. The District Court is the highest trial court of the state. My caseload consists of all kinds of criminal and civil matters. In addition to my regular judicial duties, I have been given special assignments: Drug Court Judge for Iron County beginning in 2020, Associate Presiding Judge in the Fifth District beginning in 2021, and Water Judge beginning in 2022.

- ii. your typical clients and the areas at each period of your legal career, if

any, in which you have specialized.

While in private practice I represented all types of clients, from indigent defendants to individuals with modest means, to small businesses, to governmental entities. As a prosecutor, I represented the counties for whom I worked. At SUU, I provided legal support to every unit across campus and regularly advised the President and Vice-Presidents.

- 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 have been involved in litigation, with frequent court appearances, for nearly my entire law practice. While working as legal counsel at SUU, I was not in court as frequently because of significant demands on my time on campus, and because Utah law dictates that only lawyers from the Attorney General's office can actually appear in court on behalf of state entities. However, I was still appearing in court in my capacity as a prosecutor for Garfield County.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 2%  |
| 2. state courts of record:  | 92% |
| 3. other courts:            | 5%  |
| 4. administrative agencies: | 1%  |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 25% |
| 2. criminal proceedings: | 75% |

- 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 not maintained a list of my trials, but I estimate that, over the course of my career as a prosecutor, defense attorney, and private civil attorney I handled approximately 75 trials of various kinds in the State District Court, the Justice Court, the Juvenile Court, and before the Utah State Tax Commission. In nearly every instance I was sole counsel. On two occasions that I can recall I was chief counsel with another attorney as associate 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. *State v. Fox*, No. 141600068 (Sixth Judicial District Court, Garfield County, State of Utah).

The State charged Mr. Fox with second-degree felony burglary and third-degree felony criminal mischief. The State alleged that Mr. Fox had broken into a cabin, stolen items, and vandalized the property; Mr. Fox's defense was that he was lost and only entered the cabin out of necessity. I prosecuted the case as Deputy Garfield County Attorney. I handled the preliminary hearing, during which Mr. Fox was bound over for trial. I handled the jury trial, for which I prepared the witnesses, evidence and exhibits; gave the opening and closing arguments; questioned all the witnesses; made all evidentiary and legal arguments; and handled the entirety of the trial alone. The jury convicted Mr. Clark on all charges, and he was sentenced to state prison, but that prison sentence was stayed, and he was ordered instead to serve six months in the county jail, with probation thereafter.

Date of Representation: 2014 – 2019

Judge: Hon. Wallace Lee

Defense:

Nicholas Chamberlain  
45 North Toquer Boulevard  
Toquerville, UT 84774  
(435) 673-8858

2. *Utah Schools for the Deaf v. Southern Utah University and Utah Shakespeare Festival*, No. 2:19-CV-00733-CW (United States District Court for the District of Utah).

In this federal civil case, plaintiffs – an organization supporting schools that educated deaf students, along with two schools for the deaf – claimed non-compliance with the Americans with Disabilities Act (ADA) and sought live sign language interpretation rather than use of personal, live captioning devices at the Utah Shakespeare Festival. The Festival had transitioned to offering personal technology devices for deaf patrons, with which the Festival sought to provide live captioning for any hearing impaired guest upon request, for any performance – in place of the prior approach which involved offering only a few performances with live sign language interpretation. The court denied plaintiffs’ motion for a temporary restraining order; and the plaintiffs voluntarily dismissed their claims. I was General Counsel for Southern Utah University, which is the umbrella organization over the Utah Shakespeare Festival. While I was not counsel of record for defendants in this case, as Utah law allows only the Utah Attorney General’s Office to appear as counsel of record for state entities in litigation, I was involved in legal work related to the matter; specifically, in response to requests for legal assistance from the Festival, I analyzed the legal standards under the ADA and advised the Festival as to options the Festival sought to explore, and related obligations. I aided in drafting private correspondence to attempt to resolve the issues with the plaintiffs. When the litigation arose, I advised and helped prepare draft responsive pleadings, though the court ruled on the restraining order motion immediately (as plaintiffs had requested), denying the plaintiffs’ motion, and the plaintiffs voluntarily dismissed their case at that time, so no responsive pleadings were actually submitted by defendants.

Date of Representation: 2019

Judge: Hon. Clark Waddoups

Plaintiff:

Jared Allebest  
212 East Crossroads Boulevard #207  
Saratoga Springs, UT 84045  
(949) 322-3991

Defense:

Meb Anderson  
Utah Attorney General’s Office  
351 West University Boulevard  
Bennion Admin Building, Suite 111  
Cedar City, UT 84720  
(435) 865-8056

3. *Metropolitan Water District v. Rocky Mountain Holding Trust*, No. 130500126 (Fourth Judicial District Court, Wasatch County, State of Utah), *rev'd sub nom. Metro. Water Dist. of Salt Lake & Sandy v. SHCH Alaska Tr.*, 2019 UT 62, 452 P.3d 1158 (2019)

I served as co-counsel for defendants in this matter. The matter involved a dispute over the Water District's assertions of regulatory authority under state and federal law to exercise significant control over servient landowners' activity in and around an easement owned by the Water District, through which the Salt Lake Aqueduct ran. Defendants were servient landowners. Plaintiff sought to shut down or severely restrict recreational activities operated as a business by defendants near plaintiff's aqueduct. My work in this matter was in a supportive role to the lead attorney. I conducted legal research, helped formulate strategy, and drafted portions of summary judgment memoranda and supportive affidavits. I assisted in hearing preparation. My representation continued through the conclusion of the trial court proceedings wherein summary judgment was granted in favor of plaintiff. The Utah Supreme Court ultimately reversed the district court, holding in defendants' favor on the bases we had asserted in the summary judgment phase.

Date of Representation: 2013 – 2017

Judge: Hon. Claudia Laycock

Plaintiff:

Shawn Draney  
Danica Cepernich  
Snow Christensen & Martineau  
10 Exchange Place, 11th Floor  
Salt Lake City, UT 84111  
(801) 521-9000

Defense Co-counsel:

Kay L. McIff (deceased)

Edwin Barnes  
Shannon Zollinger  
Clyde Snow & Sessions  
201 South Main Street, Suite 2200  
Salt Lake City, UT 84111  
(801) 322-2516

Perrin Love  
(formerly of Clyde Snow & Sessions)



Salt Lake County District Attorney's Office  
35 East 500 South  
Salt Lake City, UT 84111  
(801) 440-9001

4. *Grover v. Grover*, No. 144500059 (Fifth Judicial District Court, Iron County, State of Utah).

I was counsel for the petitioner, Ms. Grover, in this divorce case. I defeated a motion to dismiss based on jurisdiction and venue, conducted discovery, brought a motion to compel discovery which was granted, and tried the case. I called an expert witness in the trial. The court awarded Ms. Grover sole physical custody, child support, and a fair division of the parties' property.

Date of Representation: 2014 – 2016

Judge: Hon. Keith C. Barnes

Petitioner Co-counsel:

Justine Wayment  
51 East 400 North, Building 1  
Cedar City, UT 84721  
(435) 586-3300

Respondent:

Russell Monahan  
323 South 600 East, Suite 200  
Salt Lake City, UT 84102  
(801) 595-8600

5. *State v. Clark*, No. 101500240 (Fifth Judicial District Court, Iron County, State of Utah).

The State charged Mr. Clark with third-degree felony retaliation against a witness, third-degree felony possession or use of a controlled substance (methamphetamine), and misdemeanor possession of drug paraphernalia (methamphetamine pipe). The State alleged that Mr. Clark had sought to intimidate the confidential informant utilized by law enforcement in gathering evidence against Mr. Clark. I prosecuted the case as Deputy Iron County Attorney. I handled the preliminary hearing, during which Mr. Clark was bound over for trial. I handled the jury trial, for which I prepared the witnesses, evidence and exhibits; gave the opening and closing arguments; questioned all the witnesses; made all evidentiary and legal arguments; and handled the entirety of the trial alone. The jury convicted Mr. Clark on all charges. I represented the State in the sentencing; Mr. Clark was sentenced to 270 days in jail on the felony retaliation against a witness charge, with

credit for time served and eligibility for good time; prison time was suspended for both felonies, and jail time was suspended for the misdemeanor drug paraphernalia charge.

Date of Representation: 2010 – 2011

Judge: Hon. G. Michael Westfall

Defense:

Aric Cramer  
132 West Tabernacle Street, Building A  
St. George, UT 84770  
(435) 627-1565

Joann Secrist  
291 North 100 East  
P.O. Box 726  
Parowan, UT 84761  
(435) 477-8995

6. *State v. Miller*, No. 091500416 (Fifth Judicial District Court, Iron County, State of Utah).

In this criminal case, I was the sole prosecutor. Mr. Miller was charged with two counts of first-degree felony rape and two counts (pleaded in the alternative) of third-degree felony unlawful sexual activity with a minor. Mr. Miller, then age 21, initiated a relationship with a 15-year-old girl over social media and then engaged in sexual intercourse with her. I worked with law enforcement to prepare to present testimony under Rule 404(b) that Mr. Miller had committed similar acts against other alleged victims using a similar modus operandi involving social media communications. I also worked with law enforcement to find another alleged victim who had encountered Mr. Miller since the charges were filed, who was prepared to testify that Mr. Miller had made admissions to her regarding my case. Mr. Miller pleaded guilty to one count of third-degree unlawful sexual activity with a minor and was sentenced to the statutorily indicated zero to five years in prison.

Date of Representation: 2009 – 2011

Judge: Hon. G. Michael Westfall

Defense:

Jack Burns  
415 North Main Street, Suite 106  
Cedar City, UT 84721  
(435) 586-2725

7. *State v. Baldwin*, No. 071500283 (Fifth Judicial District Court, Iron County, State of Utah).

Ms. Baldwin was initially charged with second-degree felony illegal possession or use of a controlled substance (methamphetamine). She pleaded guilty, but her plea was held in abeyance so that she could enter the Drug Court program, with a promise from the State that if she completed that program, her case would be dismissed. I was a prosecutor in the Drug Court during most of Ms. Baldwin's participation. She received treatment and other services, was given regular drug tests, and completed community service. She finished the Drug Court program, and her charges were dismissed in March 2009. She was the first person to graduate from Iron County's then-new Drug Court.

Date of Representation: 2008 – 2009

Judge: Hon. John Walton

Prosecution Co-counsel:

Troy Little  
(formerly of the Iron County Attorney's Office)  
Fifth District Juvenile Court, Iron County, State of Utah  
40 North 100 East  
Cedar City, UT 84720  
(435) 867-3250

Adam Christian  
(formerly of the Iron County Attorney's Office)  
450 North 1500 West  
Orem, UT 84057  
(385) 218-2645

Defense:

Jack Burns  
415 North Main Street  
Cedar City UT 84721  
(435) 586-2725

8. *United States v. Reeder*, No. 2:07-cr-00079 (D. Utah).

In this federal criminal case, Ms. Reeder was charged with two counts: possession of a controlled substance with intent to distribute (21 U.S.C. § 841); and attempt or conspiracy to possess a controlled substance with intent to distribute (21 U.S.C. § 846). Ms. Reeder was alleged to have transported via vehicle a large quantity of methamphetamine. I was appointed as Ms. Reeder's defense counsel and assisted her

through initial hearings, investigation and discovery, waiver of indictment, and negotiations of an anticipated plea bargain. After I was hired as a prosecutor, new defense counsel replaced me, and he handled Ms. Reeder's plea bargain and subsequent proceedings.

Date of Representation: 2007

Judge: Hon. Dee Benson, Magistrate Robert T. Braithwaite

Prosecution:

Paul Graf (retired)

Paul Kohler  
(formerly of the United States Attorney's Office)  
United States District Court Magistrate, District of Utah  
206 West Tabernacle #2200  
St. George, UT 84770  
(435) 703-7305

Richard Daynes  
(formerly of the United States Attorney's Office)  
111 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
(801) 325-3361

Defense Successor Counsel:

Randall Allen  
51 East 400 North, Suite 1  
Cedar City, UT 84721  
(435) 590-7760

9. *State v. Iverson*, No. 041500159 (Fifth Judicial District Court, Beaver County, State of Utah).

I was defense counsel in this criminal case, which went to a jury trial. Ms. Iverson was charged with three misdemeanors: unlawful sale or supply of alcohol to minors, possession of a controlled substance within a correctional facility, and intoxication. The State alleged that Ms. Iverson had given alcohol to underage persons, had been intoxicated to a point of being a danger to herself or others, and had possessed illegal drugs while in jail. I handled the pretrial hearings. For the jury trial, I sat second chair to co-counsel. Ms. Iverson was found guilty by the jury on all counts. I handled the sentencing. I presented evidence that Ms. Iverson was pursuing substance abuse treatment. She was sentenced to serve jail time, but that sentence was stayed, and she was instead given probation and ordered to complete substance abuse treatment, complete

a home study course, and pay a fine.

Date of Representation: 2004 – 2005

Judge: Hon. J. Philip Eves

Prosecution:

Von Christensen  
Beaver County Attorney's Office  
P.O. Box 471  
Beaver, UT 84713  
(435) 438-6441

Defense Co-counsel:

Randall Allen  
51 East 400 North, Suite 1  
Cedar City, UT 84721  
(435) 590-7760

10. *State v. Rice*, No. 031500007 (Fifth Judicial District Court, Beaver County, State of Utah).

I was defense counsel for Ms. Rice, who was charged with second-degree felony money laundering and second-degree felony pattern of unlawful activity. I handled the preliminary hearing, at which I challenged the evidence presented by the state and argued that it did not show that Ms. Rice was involved in the alleged criminal activity, that she should not be bound over, and that her charges should be dismissed. The court did not bind her over and dismissed her charges.

Date of Representation: 2003

Judge: Hon. J. Philip Eves

Prosecution:

Leo Kanell  
Beaver County Attorney's Office  
P.O. Box 471  
Beaver, UT 84713  
(435) 438-6441

Defense Co-counsel:

Keith Barnes

(formerly of Jensen, Graff & Barnes)  
 Fifth District Court, Washington County, State of Utah  
 206 West Tabernacle Street  
 St. George, UT 84770  
 (435) 986-5700

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 General Counsel of Southern Utah University, I advised the President and other university leaders regarding the multitude of legal issues encountered in higher education. These included issues involving human resources, constitutional rights, real property, public procurement compliance, federal regulatory compliance (Title IX, Title VII, and others), liability and risk management, contracts, open meetings and records, privacy and confidentiality, health care, mental health care, and technology.

One of the most significant legal projects involved the successful acquisition of an aviation company. I was the point person on all legal aspects of this large and complex deal. The project involved complicated contractual challenges: interpreting and navigating the implications of existing contracts (contracts between my institutional client and the aviation company, contracts between the aviation company and other entities—such as leases of fixed and rotor-wing aircraft, employee contracts, and supplier contracts); negotiating new contracts, including the principal contract for the acquisition of the aviation company, which contained provisions regarding the overall transaction itself, numerous specific aircraft with differing particulars, employees, equipment, real estate, intellectual property, third-party obligations, releases of claims, and indemnity. The project also involved many tasks relating to the following: compliance with regulations, including aviation regulations and Veterans Affairs regulations; property law, including the purchase of a hanger and compliance with local government and airport requirements; and employment law, including transferring of employee relationships and obligations from the aviation company to my institutional client.

I have engaged in significant law-related public service as a member of statewide bodies including the Indigent Defense Committee, the Legislative Process Committee, and the Judicial Performance Evaluation Commission. I have served on local boards like that of the Canyon Creek Women's Crisis Center and the Iron County Children's Justice Center. I am also a member of the Litigation section of the Utah State Bar and serve as Co-Chair of the Bar's Modest Means Committee.

While serving as a judge I have received special, additional assignments. I serve as the Fifth Judicial District Associate Presiding Judge, assisting the presiding judge in making

policy, management, assignment, and logistical decisions for the district. I am also designated as a state Water Judge, one of only approximately a dozen statewide. As such, I am eligible to handle cases involving complex water issues; I preside over the Virgin River General Adjudication, No. 800507596 (Fifth Judicial District Court, Washington County, State of Utah). I also serve as the Drug Court Judge for the Fifth District in Iron County; one afternoon each week I hold Drug Court, in which persons who have pleaded in abeyance to drug offenses work toward achieving substance abuse treatment, employment, and life stability goals; if they successfully complete the Drug Court program, their charges are dismissed or reduced. Additionally, I serve on statewide judicial committees including the Facilities Committee and Self-Represented Parties Committee.

I have not engaged in lobbying activities and have never been 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.

To the best of my knowledge and recollection, I have taught the following courses:

Forensic Science (approximate title), Southern Utah University, 2015 (approximate date). I taught an introductory course on forensic science-related legal issues to graduate students in the masters of forensic science program. I am unable to locate the syllabus.

Family Law (approximate title), Southern Utah University, 2015 (approximate date). I taught an introductory course on family law-related issues to undergraduate students in the political science and criminal justice programs. I am unable to locate the syllabus.

Criminal Law, Southern Utah University, 2014 (approximate date). I taught an introductory course on criminal law to undergraduate students in the political science and criminal justice programs. I am unable to locate the syllabus.

Evidence (approximate title) and Ethics (approximate title), Utah Valley University (Utah Valley State College at the time) 1999 – 2001 (approximate dates). The course attendees were a small number of undergraduate students. I am unable to locate the syllabi.

Legal Skills and Professionalism (approximate title), Brigham Young University J. Reuben Clark Law School, 1997 – 1998. The course dealt generally with introductory information and practical advice about basic legal skills and professionalism. The course attendees were a small group of first-year law students. I am unable to locate the syllabus.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business

relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

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 will evaluate any real or potential conflict on a case-by-case basis and determine appropriate action, including recusal where necessary. I will take care to monitor my assigned cases for conflicts of interest arising from friendships, family relations, and collateral review of matters for which I served as judge.

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

I will address any actual or potential conflict of interest by applying the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any other relevant laws, canons, rules, practices, and guidelines.

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 chose to work as a lawyer in rural Utah in part because I wanted to address the legal needs of all kinds of clients and engage in meaningful, impactful public service. I did indigent defense work for several years and am passionately committed to upholding the right to counsel and due process protections in that arena. I was paid on contract for the indigent defense work, but the pay was fairly modest, and my passion for the work, rather than the pay I received, was my driving force. I estimate approximately 1,800 hours, or one year's average work amount, as the amount of "pro bono" time that ought to be attributed to this work.

I gave pro bono service to Utah's Indigent Defense Committee for several years so that I could lend my perspective and my experience to its efforts to fashion improvements in the way that Utah was delivering indigent defense services. Each committee meeting involved a seven-hour round trip drive to Salt Lake City in addition to the meeting, and I served on the taskforce for approximately five years. I estimate approximately 100 hours of "pro bono" time for this work.

Like many lawyers who practice in rural areas, I sharply discounted legal bills for individuals who had significant legal needs but limited ability to pay. I took particular interest in helping women and children in this "low bono" manner – allowing them to pay what they could, when they could, and writing off, or not billing for, the rest. This typically occurred in the context of family law actions. I estimate approximately 150 hours of "pro bono" time for this work.

As a judge, I co-chair the Utah State Bar's Modest Means Committee, which endeavors to assist potential clients in connecting with lawyers who are willing to provide "low bono" legal work where standard legal fees are sharply reduced. I am also a member of the Self-Represented Parties committee, which is associated with the Utah Courts, and which identifies ways to help and support self-represented parties.

**26. Selection Process:**

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

In August 2022, I was contacted by Senator Mike Lee's office with an invitation to interview with him and some of his staff members regarding the judicial vacancy in the U.S. District Court for the District of Utah. I attended the interview on August 26, 2022. I was also contacted by Senator Mitt Romney's office in August 2022 with an invitation to meet with his chief legal counsel to discuss the same position. That meeting occurred on August 31, 2022. In January 2023, I was again contacted by Senator Romney's office and invited to meet with him and some of his staff members, which I did on January 25, 2023. In March 2023, I was contacted by the White House Counsel's Office and invited to interview. That interview occurred on March 8, 2023. In late September 2023, I was contacted by the White House Counsel's Office, informing me that they wanted to take next steps in the vetting process for the position. Since September 29, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 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 Ann Marie McLiff Allen**  
**Nominee to be United States District Judge for the District of Utah**

**1. Are you a citizen of the United States?**

Response: Yes.

**2. Are you currently, or have you ever been, a citizen of another country?**

Response: No.

- a. If yes, state countries and dates of citizenship.
- b. If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?
  - i. If not, please explain why.

**3. Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No.

**4. Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No.

**5. 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.

**6. 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: Disagree. As a district court judge I will not impose any personal views I may have; I will impartially apply the Constitution, as interpreted by the precedent which is binding upon me, to the facts of the cases before me.

7. **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: No. As a district court judge my duty is to apply the precedent of the Supreme Court to the cases before me. This statement does not reflect that judicial philosophy.

8. **Do you consider a law student's public endorsement of or praise for an organization listed as a "Foreign Terrorist Organization," such as Hamas or the Popular Front for the Liberation of Palestine, to be disqualifying for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Yes.

9. **In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University's student bar association wrote "Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary." Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Yes.

10. **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: (1) direct appeal; (2) collateral proceeding, i.e. habeas petition. *See* 28 U.S.C. § 2255 ("sentence was imposed in violation of the Constitution or the 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.") Also, under 18 U.S.C. § 3582(c) prisoners of the age of 70 or older who have served 30 or more years, can under some limited circumstances have their sentence reduced; the court must find "extraordinary and compelling reasons" warranting a reduction and the Director of the Bureau of Prisons must determine that the prisoner is not a danger to the safety of any other person or the community. *Id.* Finally, "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission" petition may be made for a reduction. *Id.*

**11. 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: Students for Fair Admissions sued Harvard College over its admissions process which considered applicants' race, arguing this violated Title VI of the Civil Rights Act of 1964; suit was also brought against the University of North Carolina over the consideration of race in its admissions process, with the argument against this state school including an Equal Protection Fourteenth Amendment challenge. The Supreme Court ruled that both schools' consideration of race in admissions violated Equal Protection. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 213-25 (2023). The Court held that strict scrutiny applies to race-based admissions and that such admissions failed, under strict scrutiny, to comply with Equal Protection Clause standards, thus leading to the conclusion that Title VI of the Civil Rights Act was being violated. *Id.* The Court held that the race-based admissions were not based on a compelling interest nor were they narrowly tailored to the interest asserted as justifying them. Specifically, the Court held that while Harvard asserted commendable goals, the connection of the race-based admissions to those goals was not coherent enough to satisfy strict scrutiny. *Id.* at 214-15. Additionally, the race-based admissions failed to satisfy strict scrutiny because they did not avoid utilizing race as a negative stereotype, *see id.* at 218, and because they lacked a rational ending point, *see id.* at 225.

**12. 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: As general counsel for Southern Utah University, I participated in the hiring of several staff members.

**13. 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.

**14. Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

Response: No.

- 15. 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: Not to my knowledge.

- 16. Under current Supreme Court and Tenth 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).

- 17. Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.**

Response: In *303 Creative LLC v. Elenis*, the Supreme Court held that designing a website celebrating marriage is speech protected by the First Amendment of the Constitution; a state law compelling the website designer to create speech which ran contrary to the designer's own beliefs violated the designer's First Amendment rights. 600 U.S. 570, 573 (2023).

- 18. 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 Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943), remains good law and binding precedent. In *303 Creative LLC v. Elenis*, the Supreme Court relied on portions of this quoted language from the *Barnette* case; the Court held in *303 Creative LLC* that the government's mandating of certain speech through enforcement of a state anti-discrimination law against a web-site designer, violated the First Amendment. 143 S. Ct. 2298, 2311 (2023)

- 19. 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: "Content-based" regulation focuses on the message communicated. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). "Content-neutral" regulation focuses not on the message but on other items such as the time, place and manner of the speech. *See*

*City of Austin v. Reagan Nat. Advertising of Austin*, 142 S. Ct. 1464, 1473 (2022). Key questions could include the following: does the law treat specific subject matter differently from other subject matter? *Id.* at 1472; is the law purporting only to regulate items such as time, place and manner, while the actual purpose thereof is to impermissibly target the content? *Id.* at 1475-76.

**20. What is the standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: In the case of *Counterman v. Colorado*, the Supreme Court defined a “true threat” as a “serious expression conveying that a speaker means to commit an act of unlawful violence,” 143 S. Ct. 2106, 2114 (2023) (internal quotations and citations omitted); the Court thus defined the test for determining whether a statement is unprotected speech by the First Amendment, under the true threats doctrine. The test requires proof that the speaker had some subjective understanding of the threatening nature of his statements, though recklessness suffices. *Id.* at 2113-19.

**21. Under Supreme Court and Tenth 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: Questions of fact ask “who did what, when or where, how or why.” *U.S. Bank N.A. v. Vill. at Lakeridge, LLC.*, 583 U.S. 387, 394 (2018). Questions of law entail primarily legal work to answer, asking how the law should be applied or interpreted. *See id.*; Black’s Law Dictionary (11th ed. 2019). In *United States v. Abouseiman*, the Tenth Circuit Court of Appeals explained that questions of fact involve factual inquiry; question of law involve consideration of legal principles. 976 F.3d 1146, 1154-55 (10th Cir. 2020).

**22. Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?**

Response: In 18 U.S.C. § 3553, Congress sets forth the law, principles, and purposes of federal sentencing; the factors listed in the question above are not ranked in this statute. If confirmed as a district court judge, I will consider all of the § 3553 factors in making an individualized decision to formulate a sentence that is “sufficient, but not greater than necessary” to achieve the statutory sentencing purposes.” *See* 18 U.S.C. § 3553(a); *Gall v. United States*, 552 U.S. 38, 49-50 (2007). I will apply this law impartially, rather than inject my personal beliefs.

**23. Please identify a Supreme Court decision from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: As a federal district court nominee, I am prohibited from commenting on whether a U.S. Supreme Court decision was well-reasoned. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I would faithfully apply binding U.S. Supreme Court precedent.

**24. Please identify a Tenth Circuit judicial opinion from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: As a federal district court nominee, I am prohibited from commenting on whether a Tenth Circuit opinion was well-reasoned. See Code of Conduct for United States Judges, Canon 3A(6). If confirmed, I would faithfully apply binding Tenth Circuit precedent.

**25. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: 18 U.S.C. § 1507 prohibits conduct committed “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.”

**26. Is 18 U.S.C. § 1507 constitutional?**

Response: As a nominee to the federal district court, it would not be appropriate for me to express an opinion on the constitutionality of Section 1507 because a case regarding this could come before me. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed I would follow binding precedent.

I will note that in the case of *Cox v. State of Louisiana*, the Supreme Court upheld a Louisiana state statute that deals with matters arguably related to those matters dealt with in 18 U.S.C. § 1507; in that case the Supreme Court held that “picketing and parading—is subject to regulation even though intertwined with expression and association.” 379 U.S. 559, 563 (1965).

**27. 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. Although under Canon 3(A)(6) of the Code of Conduct for United States Judges, I am precluded, as a judicial nominee, from commenting on whether a particular U.S. Supreme Court decision was correctly decided, the constitutionality of racial segregation in schools is not likely to come before the



courts again; accordingly, I can state my opinion that *Brown v. Board of Education* was correctly decided.

**b. Was *Loving v. Virginia* correctly decided?**

Response: Yes. Although under Canon 3(A)(6) of the Code of Conduct for United States Judges, I am precluded, as a judicial nominee, from commenting on whether a particular U.S. Supreme Court decision was correctly decided, the unconstitutionality of laws prohibiting interracial marriage is not likely to come before the courts again; accordingly, I can state my opinion that *Loving v. Virginia* was correctly decided.

**c. Was *Griswold v. Connecticut* correctly decided?**

Response: As a judicial nominee, I am prohibited from commenting on whether I believe a U.S. Supreme Court case was “correctly decided.” See Code of Conduct for United States Judges, Canon 3A(6).

**d. Was *Roe v. Wade* correctly decided?**

Response: As a judicial nominee, I am prohibited from commenting on whether I believe a U.S. Supreme Court case was “correctly decided.” See Code of Conduct for United States Judges, Canon 3A(6). This case was overturned by *Dobbs*.

**e. Was *Planned Parenthood v. Casey* correctly decided?**

Response: As a judicial nominee, I am prohibited from commenting on whether I believe a U.S. Supreme Court case was “correctly decided.” See Code of Conduct for United States Judges, Canon 3A(6). This case was overturned by *Dobbs*.

**f. Was *Gonzales v. Carhart* correctly decided?**

Response: As a judicial nominee, I am prohibited from commenting on whether I believe a U.S. Supreme Court case was “correctly decided.” See Code of Conduct for United States Judges, Canon 3A(6).

**g. Was *District of Columbia v. Heller* correctly decided?**

Response: As a judicial nominee, I am prohibited from commenting on whether I believe a U.S. Supreme Court case was “correctly decided.” See Code of Conduct for United States Judges, Canon 3A(6). I can state that *District of Columbia v. Heller* is binding Supreme Court precedent, which I would follow if confirmed.

**h. Was *McDonald v. City of Chicago* correctly decided?**

Response: As a judicial nominee, I am prohibited from commenting on whether I believe a U.S. Supreme Court case was “correctly decided.” See Code of Conduct for United States Judges, Canon 3A(6). I can state that *McDonald v. City of Chicago* is binding Supreme Court precedent, which I would follow if confirmed.

**i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: As a judicial nominee, I am prohibited from commenting on whether I believe a U.S. Supreme Court case was “correctly decided.” See Code of Conduct for United States Judges, Canon 3A(6). I can state that *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding Supreme Court precedent, which I would follow if confirmed.

**j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: As a judicial nominee, I am prohibited from commenting on whether I believe a U.S. Supreme Court case was “correctly decided.” See Code of Conduct for United States Judges, Canon 3A(6). I can state that *New York State Rifle & Pistol Association v. Bruen* is binding Supreme Court precedent, which I would follow if confirmed.

**k. Was *Dobbs v. Jackson Women’s Health* correctly decided?**

Response: As a judicial nominee, I am prohibited from commenting on whether I believe a U.S. Supreme Court case was “correctly decided.” See Code of Conduct for United States Judges, Canon 3A(6). I can state that *Dobbs v. Jackson Women’s Health* is binding Supreme Court precedent, which I would follow if confirmed.

**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: As a judicial nominee, I am prohibited from commenting on whether I believe a U.S. Supreme Court case was “correctly decided.” See Code of Conduct for United States Judges, Canon 3A(6). I can state that *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* are binding Supreme Court precedent, which I would follow if confirmed.

**m. Was *303 Creative LLC v. Elenis* correctly decided?**

Response: As a judicial nominee, I am prohibited from commenting on whether I believe a U.S. Supreme Court case was “correctly decided.” See Code of Conduct for United States Judges, Canon 3A(6). I can state that *303 Creative LLC v. Elenis* is binding Supreme Court precedent, which I would follow if confirmed.

**28. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

Response: In the cases of *Heller* and *McDonald*, the Supreme Court recognized an individual’s right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U. S. 742 (2010). The Court held that the government must demonstrate that a regulation is consistent with the Nation’s historical tradition of firearm regulation in order to be constitutional. See *Heller*, 554 U.S. at 627; see also *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

**29. Demand Justice is a progressive organization dedicated to “restor[ing] ideological balance and legitimacy to our nation’s courts.”**

- a. Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?
- b. Are you currently in contact with anyone associated with Demand Justice? If so, who?
- c. Have you ever been in contact with anyone associated with Demand Justice? If so, who?

Response to all subparts: No.

**30. The Alliance for Justice is a “national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society.”**

- a. Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?
- b. Are you currently in contact with anyone associated with the Alliance for Justice? If so, who?
- c. Have you ever been in contact with anyone associated with Demand Justice? If so, who?

Response to all subparts: No.

**31. Arabella Advisors is a progressive organization founded “to provide strategic guidance for effective philanthropy” that has evolved into a “mission-driven, Certified B Corporation” to “increase their philanthropic impact.”**

- a. Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?
- b. Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.
- c. Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.
- d. Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response to all subparts: No.

**32. The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**

- a. Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?
- b. Are you currently in contact with anyone associated with the Open Society Foundations?
- c. Have you ever been in contact with anyone associated with the Open Society Foundations?

Response to all subparts: No.

**33. Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."**

- a. Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?
- b. Are you currently in contact with anyone associated with Fix the Court? If so, who?
- c. Have you ever been in contact with anyone associated with Fix the Court? If so, who?

Response to all subparts: No.

- 34. Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: In August 2022, I was contacted by Senator Mike Lee's office with an invitation to interview with him and some of his staff members regarding the judicial vacancy in the U.S. District Court for the District of Utah. I attended the interview on August 26, 2022. I was also contacted by Senator Mitt Romney's office in August 2022 with an invitation to meet with his chief legal counsel to discuss the same position. That meeting occurred on August 31, 2022. In January 2023, I was again contacted by Senator Romney's office and invited to meet with him and some of his staff members, which I did on January 25, 2023. In March 2023, I was contacted by the White House Counsel's Office and invited to interview. That interview occurred on March 8, 2023. In late September 2023, I was contacted by the White House Counsel's Office, informing me that they wanted to take next steps in the vetting process for the position.

Since September 29, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me.

- 35. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, 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 the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

- 37. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

- 38. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

- 39. During your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

- 40. 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?

- 41. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: Please see Response to Question 34.

- 42. Please explain, with particularity, the process whereby you answered these questions.**

Response: On January 31, 2024, I received questions from the committee through the Department of Justice Office of Legal Policy. I read the questions and prepared draft answers, after reviewing the facts and the law. I submitted the draft to the Office of Legal Policy, which provided limited feedback. I then finalized my answers.

Senate Judiciary Committee  
Nominations Hearing  
January 24, 2023  
Questions for the Record  
Senator Amy Klobuchar

**For Ann Marie McIlff Allen, nominee to be U.S. District Judge for the District of Utah**  
As a County Attorney you were responsible for handling cases that went to Iron County Drug Court. Additionally, as a state trial judge you have been assigned to preside over that same drug court. For years, I have pushed to increase funding for drug treatment courts that help non-violent offenders receive treatment, including leading the *Treatment Court, Rehabilitation, and Recovery Act* with Senator Roger Wicker.

- Can you speak to the effectiveness of drug courts and other treatment courts as an alternative to incarceration and as a means to help people recover from addiction?

Response: If policy makers decide to provide legal authorization and funding for the creation of drug courts – an issue which is wholly within their purview to weigh and decide upon – then drug courts, in my experience, can provide a useful resource for appropriate candidates who are seeking to conquer their addictions and become contributing members of their communities. The drug court I have served in generally accepts people not involved in trafficking offenses and who do not present a risk of violence. For those who are admitted and who engage the program wholeheartedly, positive results can be seen. It is not an “easy way out” of criminal responsibility, as it can take years to complete, and requires a person to get treatment, remain employed, avoid law violations, abide by a curfew, be subject to frequent random drug testing, and engage in community service. While not all who enter into drug court succeed in completing it, a significant portion do succeed, and the investment can pay dividends; helping people become law-abiding citizens can reduce costs within the judicial system of future crime and repeat incarceration.

Senator Hirono Questions for the Record for the January 24, 2024, Hearing in the Senate  
Judiciary Committee entitled "Nominations."

QUESTIONS FOR ANN MARIE MCIFF ALLEN

*Sexual Harassment*

As part of my responsibility as a member of this committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

**QUESTIONS:**

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

Response: No.

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

Response: No.



Senator Jon Ossoff  
 Questions for the Record for Judge Ann Marie McLiff Allen  
 January 24, 2024

- 1. Will you pledge to faithfully apply the law without bias and without regard for your personal policy or political preferences?**

Response: Yes.

- 2. How will you approach First Amendment cases?**

Response: I will apply binding precedent in cases involving First Amendment rights. Instructively, the Amendment begins with the words, “Congress shall make no law...”, suggesting that strict or other heightened forms of scrutiny are generally warranted when evaluating laws (or other governmental actions) which may infringe upon speech, religious, and other rights found in the First Amendment. In any case involving the First Amendment that comes before me, I will be impartial and will apply the law to the facts without bias or agenda.

- a. In your view, why are First Amendment protections of freedom of speech, publication, assembly, and exercise of religion vital in our society?**

Response: They are core rights, vital to liberty, rooted in our history as a nation, and essential to personal freedom, to mutual peaceful co-existence with others, and to maintaining a proper boundary around governmental power. *See, e.g., West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) (“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.”)

- 3. In your experience, why is it critical that indigent defendants have access to public defense under the Sixth Amendment right to counsel and precedent set in *Gideon v. Wainwright*?**

Response: In my experience as judge, prosecutor, and public defender, the right of indigent defendants to public defender representation is critical to the actualization of rights for all rather than just for those with means, and is essential for the orderly administration of justice. The complexity of the process requires expertise and professional assistance for indigent defendants; sometimes that means advising and assisting as they take responsibility for wrongdoing, with the public defender helping to bring balance to the resolution process including sentencing; sometimes that means providing trial counsel to uphold the presumption of innocence and enforce the burden of proof upon the state. These are healthy, affirming roles which benefit all of society by keeping the rights protected in Constitution vital and active in the system. *See Gideon v.*

*Wainwright*, 372 U.S. 335, 344 (1963) (“From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”)

**4. In your experience, what are the challenges faced by parties in civil or criminal proceedings for whom English is not their first language?**

Response: Without competent interpreters, parties in civil or criminal proceedings are unable to meaningfully participate, and are at risk of having legal steps taken without understanding and knowledge, and against their interest, and even sometimes contrary to the truth and to the interests of justice.

**a. What do you see as the role of language access in courts in protecting due process rights and ensuring access to justice?**

Response: Language access in the courts is an indispensable, fundamental starting point for procedural fairness and due process. This benefits not only those with language interpretation needs, but the system—protecting its integrity and basic quality of justice.

**Senator Mike Lee**  
**Questions for the Record**  
**Ann Marie McIlff Allen, Nominee for District Court Judge for the District of Utah**

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

Response: My judicial philosophy as a trial court judge is to impartially adjudicate the cases and controversies that are brought before me. I apply the law to the facts. I follow the binding precedent of the Supreme Court and the Tenth Circuit Court of Appeals. I treat all counsel and litigants with respect and dignity, and uphold the law.

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

Response: I would apply any binding precedent from the Supreme Court or Tenth Circuit Court of Appeals to a case before me concerning the interpretation of a federal statute. In the absence of binding precedent, I would read the language of the operative provisions of the statute itself. If their meaning is unambiguous, no further inquiry is necessary. *See Woods v. Standard Ins. Co.*, 771 F.3d 1257, 1265 (10th Cir. 2014) (when language is clear, court ordinarily ends its analysis). I would examine the context of the provision within the statute, applying canons of construction. Next, I would turn to persuasive authority, including case law from other jurisdictions and secondary legal sources. Legislative history can also be a source of information, though ascertaining the meaning of a statute from legislative history can be difficult, given the multi-faceted, varied, and often inconsistent data that is found within such history. *See 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: I would apply any binding precedent from the Supreme Court or the Tenth Circuit Court of Appeals, or in the absence of binding precedent, I would examine any persuasive authority, such as case law from other circuits. I would examine the normal and ordinary meaning of the text as it would have been understood at the time of ratification. *See District of Columbia v. Heller*, 554 U.S. 570, 576 (2008).

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

Response: The text and original meaning of a constitutional provision play a key role in interpreting the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 576 (2008); *Crawford v. Washington*, 541 U.S. 36, 42 (2004). If confirmed as a federal district court judge, I will look to the text and original meaning of constitutional provisions, and will follow binding precedent of the Supreme Court and the Tenth Circuit Court of Appeals.

**5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: I would look first to the plain language of the text of a statute to determine its meaning, and if, having done so, I determine that the meaning is unambiguous, then no further inquiry is necessary. *See Woods v. Standard Ins. Co.*, 771 F.3d 1257, 1265 (10th Cir. 2014) (when language is clear, court ordinarily ends its analysis). If the language remains ambiguous, I would examine the context of the provision, applying canons of construction. I would follow any binding caselaw bearing on the question. Next, I would turn to persuasive authority including caselaw from other jurisdictions.

**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. *See District of Columbia v. Heller*, 554 U.S. 570, 576 (2008).

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

Response: The constitutional requirements for standing arise under Article III of the Constitution; a plaintiff must present to the federal court a “case or controversy” over which it can exercise federal question or diversity jurisdiction. The plaintiff must have suffered an injury in fact traceable to the challenged conduct and subject to being redressed by the suit. *See Lujan v. Defenders 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 Constitution provides Congress with certain enumerated powers in Article I, Section 8; the Supreme Court held in *McCulloch v. Maryland* that the enumeration of certain powers “necessarily implies the grant of all usual and suitable means for the execution” of those enumerated powers. 17 U.S. 316, 324 (1819). This does not provide for “great substantive and independent power, which cannot be implied as incidental to...or used as a means of executing...” the enumerated powers. *Id.* at 411.

**9. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: To evaluate the constitutionality of a law enacted without reference to a specific constitutional enumerated power, I would first look to any binding Supreme Court or Tenth Circuit Court of Appeals precedent. Also, in *United States v. Comstock*, the Supreme Court set forth a test for determining whether, under the Necessary and Proper Clause of Article I, Section 8, Congress has authority under the Constitution to enact the law in question;

specifically, courts must ascertain “whether the statute constitutes a means that is rationally related to the implementation of a constitutionally enumerated power.” 560 U.S. 126, 134 (2010). See *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 570 (2012) (“The constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise”) (internal quotation and citation omitted).

**10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The Supreme Court has held that the Fifth and the Fourteenth Amendments’ Due Process Clauses protect some rights that are “not mentioned in the Constitution,” specifically those that are “deeply rooted in this Nation’s history and tradition” and that are “implicit in the concept of ordered liberty.” See *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (discussing the test for determining what rights are within the meaning of substantive due process but holding that the right to assisted suicide is not). The Supreme Court has held that those include, among others, the right to marry a person of a different race, see *Loving v. Virginia*, 388 U.S. 1 (1967); the right to obtain contraceptives, see *Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to engage in consensual sexual conduct, see *Lawrence v. Texas*, 539 U.S. 558 (2003); and the right of same-sex couples to marry, see *Obergefell v. Hodges*, 576 U.S. 644 (2015).

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

Response: The Supreme Court has interpreted the Fifth and the Fourteenth Amendments as protecting certain rights that are within the meaning of substantive due process because they are “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” See *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (discussing the test for determining what rights are within the meaning of substantive due process but holding that the right to assisted suicide is not). The Supreme Court has held that the rights protected under substantive due process include, among others: the right to marry a person of a different race, see *Loving v. Virginia*, 388 U.S. 1 (1967); the right to obtain contraceptives, see *Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to engage in consensual sexual conduct, see *Lawrence v. Texas*, 539 U.S. 558 (2003); and the right of same-sex couples to marry, see *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: If confirmed as a district court judge, I will follow the precedent of the United States Supreme Court and the Tenth Circuit Court of Appeals. The Supreme Court has overruled *Lochner v. New York*. See *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963) (discussing subsequent history of *Lochner*, stating that the *Lochner* doctrine that “authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely” has “long since been discarded.”) Since overruling *Lochner*, the Supreme Court has held that

certain other rights are within the meaning of substantive due process; the test which the Supreme Court has articulating for determining which rights are found within substantive due process is whether the right is “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” See *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (discussing the test for determining what rights are within the meaning of substantive due process but holding that the right to assisted suicide is not).

**13. What are the limits on Congress’s power under the Commerce Clause?**

Response: The Supreme Court has defined the limits on Congress’ power under the Commerce Clause by defining three categories of activity as to which the power may be constitutionally exercised: “the use of the channels of interstate commerce”; “the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities”; and “those 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: A “suspect class” has been defined by the Supreme Court as a group that has historically been “subjected to discrimination” and which exhibits “obvious, immutable, or distinguishing characteristics that define them as a discrete group,” and which are “a minority or politically powerless.” See *Lyng v. Castillo*, 477 U.S. 635, 638 (1986). Race, religion, national origin, and alienage have been found by the Supreme Court to constitute suspect classes under the Constitution. See *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971).

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

Response: Separation of powers and checks and balances play vital and indispensable roles in our constitutional structure. Separating power into three different branches helps to protect against any one arm of government -- or the factions that may control them -- becoming too powerful and thus being enabled to infringe on the liberty of the people. Checks and balances further curtail the power of each branch by making even those powers they separately hold subject to the necessary involvement and balancing counterpoint of the other branches. Checks and balances also increase the chances for mutual pursuit of compromise and the common interest, in that no one branch can accomplish its tasks without some interplay of the other branches. In summary, as James Madison explained, the “great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachment of others.” The Federalist No. 51 (James Madison).

**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 district court judge, I would apply the binding precedent of the Supreme Court and the Tenth Circuit Court of Appeals, and would uphold the Constitution. The Supreme Court has held 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).

**17. What role should empathy play in a judge’s consideration of a case?**

Response: Empathy, as a quality of judicial temperament relating to showing respect for and listening to litigants and counsel, is good. Empathy, in the sense of feeling sorry for litigants or counsel, or being reluctant to enforce the law, or injecting personal feelings or bias into a case, is anathema to the judicial role and cannot be indulged.

**18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Both are unacceptable.

**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: While this is an interesting phenomenon, I have not studied this issue closely such that I could explain it or comment on it. If confirmed, I will apply the binding precedent of the Supreme Court and the Tenth Circuit Court of Appeals. I will apply the law impartially to the facts of the cases before me.

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

Response: “Judicial review” is defined by Black’s Law Dictionary (11<sup>th</sup> ed. 2019) as the judicial “power to review the actions of other branches or levels of government.” “Judicial supremacy” is defined by Black’s Law Dictionary (11<sup>th</sup> ed. 2019) as a “doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review...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: Under Article VI, the Constitution (and federal laws made in pursuance thereof) is the supreme law of the land, and all officials within the legislative and executive branches as well as all judges -- on both the federal and state levels -- are required to swear an oath to support the Constitution. Since *Marbury v. Madison*, the Supreme Court has engaged in constitutional review of the acts of the coordinate branches. 5 U.S. 137 (1803). "It is emphatically the province and duty of the judicial department to say what the law is. The federal judiciary is supreme in the exposition of the law of the Constitution." *Cooper v. Aaron*, 358 U.S. 1, 4 (1958). Accordingly, elected officials are required to follow duly rendered judicial decisions. *Id.* This creates within the judiciary a responsibility to engage in this role with care and restraint; the bottom line of this discussion is that judges must be humble and avoid activism; they must resolve the cases and controversies brought before them by impartially applying the law to the facts. The power they wield is preserved only by fealty to the Constitution (the original will of the people) and is ultimately dependent on the respect that humility, restraint, and careful adherence to the Constitution engenders and perpetuates (because the Court is not vested with the executive power).

- 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: Judges do not have will in that they do not have the power to make policy (this is for the legislative branch). Judges do not have force in that they do not have the power to enforce (this is for the executive branch). They only have judgment -- the power to resolve cases and controversies that arise under the law. Judges play their constitutional role well when they do not seek to legislate from the bench, and when they realize they are not the executors of power; with this humble and restrained approach, they will effectively exercise judgment to resolve cases and controversies as the Constitution grants them power to do.

- 23. As a federal judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a federal 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 will perform the role of a district court judge with restraint, not seeking opportunities to impose any agenda. I will look to and faithfully apply binding Supreme Court and Tenth Circuit Court of Appeals 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. "Race, sex, national origin, creed, religion, and socio-economic status" are not relevant "in the determination of a sentence." *See* U.S.S.G. § 5H1.10 (2023).

- 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 the statement referenced in the question. If confirmed, my approach as a district court judge would be to be impartial and to apply binding precedent to the facts of the case before me.

- 26. Without citing Black's Law Dictionary, do you believe there is a difference between "equity" and "equality?" If so, what is it?**

Response: I have not developed my own specific definitions for these words. I am aware that equity can mean different things in different contexts. Without making any kind of policy or political statement, to me, equality means rights afforded across the board. The centrality of equality in our legal system is symbolized by the words engraved on the West Pediment of the Supreme Court: "Equal Justice Under Law." If confirmed, my approach as a district court judge would be to be impartial and to apply binding precedent to the facts of the case before me.

- 27. Does the 14<sup>th</sup> Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 25)?**

Response: The Equal Protection Clause states, "No State shall...deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. I am unaware of any U.S. Supreme Court or Tenth Circuit precedent that applies or interprets the term "equity" as that term is used in Question 25. If confirmed, I would follow the binding precedent of the Supreme Court and the Tenth Circuit Court of Appeals.

- 28. Without citing Black's Law Dictionary, how do you define "systemic racism?"**

Response: I have not developed my own specific definition for this term. If confirmed, I will apply binding precedent to all allegations of racial discrimination that would come before me.

**29. Without citing Black's Law Dictionary, how do you define "critical race theory?"**

Response: I have not developed my own specific definition for this theory. I am aware that this term means different things to different people. I am not aware of any Supreme Court or Tenth Circuit Court of Appeals decisions that define or apply this theory. If confirmed, my approach as a district court judge would be to be impartial and to apply binding precedent to the facts of the case before me.

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

Response: Please see my responses to Questions 28 and 29.

**SENATOR TED CRUZ**  
**U.S. Senate Committee on the Judiciary**

**Questions for the Record for Ann Marie McLiff Allen, nominated to be United States  
District Judge for the District of Utah**

**1. Is racial discrimination wrong?**

Response: Yes. It also violates federal statutes and the Constitution. *See* 42 U.S.C. § 2000e *et seq.* (Title VII); U.S. Const. amend. XIV, § 1 (Equal Protection).

**2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?**

Response: The Supreme Court has held that the Fifth and the Fourteenth Amendments' Due Process Clauses protect some rights that are "not mentioned in the Constitution," specifically those that are "deeply rooted in this Nation's history and tradition" and that are "implicit in the concept of ordered liberty." *See Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (discussing the test for determining what rights are within the meaning of substantive due process but holding that the right to assisted suicide is not). I do not have a personal belief as to rights that can or should be identified in the future, and if I did, as a judge and nominee for the federal district court, I am prohibited from expressing an opinion regarding matters that could come before me. Code of Conduct for United States Judges, Canon 3(A)(6).

**3. How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

Response: My judicial philosophy as a trial court judge is to impartially adjudicate the cases and controversies that are brought before me. I apply the law to the facts. I follow the binding precedent of the Supreme Court and the Tenth Circuit Court of Appeals. I treat all counsel and litigants with respect and dignity, and uphold the law. I have not researched the philosophies of justices on the Warren, Burger, Rehnquist, and Roberts Courts to determine which of the justices has a philosophy that is most analogous with mine. As a district court judge, I would follow the binding precedent of the Supreme Court and the Tenth Circuit Court of Appeals.

**4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an "originalist"?**

Response: The text and original meaning of a constitutional provision play a key role in interpreting the Constitution, and the Supreme Court has often used this interpretative approach to resolve certain constitutional matters. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 576 (2008); *Crawford v. Washington*, 541 U.S. 36,

42 (2004). Black's Law Dictionary (11th ed. 2019) defines "originalism" as a "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." As a trial court judge, I do not ascribe to any particular label or agenda other than applying binding precedent and impartially applying the law to the facts of the cases that come before me. The Supreme Court has held that as part of examining constitutional provisions, that courts should examine the normal and ordinary meaning of the text as it would have been understood at the time of ratification. *See Heller*, 554 U.S. at 576. I will follow binding precedent of the Supreme Court and the Tenth Circuit Court of Appeals.

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 a definition formulated in my own mind for the term "living constitutionalism." It is defined in Black's Law Dictionary as the idea that the Constitution "should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I do not characterize myself in terms of any particular label or agenda; I will apply binding precedent to cases brought before me, impartially and in accordance with the law and facts in that case. I will note that binding precedent in some areas of constitutional jurisprudence calls for an assessment of contemporary standards, for example in defining cruel and unusual punishment or obscenity. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 560-561 (2005) (courts are to evaluate evolving standards of decency to determine if punishments are cruel and unusual); *Ashcroft v. Am. C.L. Union*, 535 U.S. 564, 574 (2002) (courts are to evaluate contemporary community standards when assessing whether speech is obscenity).

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 presiding over a case involving a constitutional question which presented an issue of first impression with no applicable precedent from either the Supreme Court or the Tenth Circuit Court of Appeals, I would start by examining the plain language of the provision. I would apply interpretive principles used by Supreme Court and Tenth Circuit precedent which include consideration of the original public meaning. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008) (constitutional rights are to be given the scope they were understood to have when the people adopted them.) I would also apply canons of construction and consider persuasive authority including federal appellate courts' interpretations of similar issues.

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 directed that provisions are to be given the scope they were understood to have when the people adopted them. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008). As a trial court judge, I apply binding precedent to cases brought before me, impartially and in accordance with the law and facts in that case. I will note that binding precedent in some areas of constitutional jurisprudence calls for an assessment of contemporary standards, for example in defining cruel and unusual punishment or obscenity. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 560-561 (2005) (courts are to evaluate evolving standards of decency to determine if punishments are cruel and unusual); *Ashcroft v. Am. C.L. Union*, 535 U.S. 564, 574 (2002) (courts are to evaluate contemporary community standards when assessing whether speech is obscenity).

**8. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: As the United States Supreme Court has stated, the Constitution's "meaning is fixed according to the understandings of those who ratified it..." *New York State Rifle and Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). Its fixed meaning can be applied to "circumstances beyond those the Founders specifically anticipated." *Id.* To change the Constitution, it must be amended per Article V.

**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 nominee for a lower federal court, I am precluded from commenting 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 dutybound 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. It is binding precedent.

**a. Was it correctly decided?**

Response: As a nominee for a lower federal court, I am precluded from commenting 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 dutybound to apply all binding Supreme Court precedent.

**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. Although under Canon 3(A)(6) of the Code of Conduct for United States Judges, I am precluded, as a judicial nominee, from commenting on whether a particular U.S. Supreme Court decision was correctly decided, the constitutionality of racial segregation in schools is not likely to come before the courts again; accordingly, I can state my opinion that *Brown v. Board of Education* 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 nominee for a lower federal court, I am precluded from commenting 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 dutybound to apply all binding Supreme Court precedent.

**13. Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?**

Response: Yes. It is binding precedent. Note the Supreme Court's recent decision in *Nat'l Pork Producers Council v. Ross*, 143 S. Ct. 1142, 1152 (2023) (citing *Gibbons*).

**a. Was it correctly decided?**

Response: As a nominee for a lower federal court, I am precluded from commenting 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 dutybound 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: The Bail Reform Act of 1984 provides that there is a presumption in favor of pretrial detention if a defendant is charged with drug trafficking punishable by 10+ years imprisonment, certain firearm or other destructive device offenses, certain terrorism / violent offenses; certain slavery / human trafficking offenses; and certain offenses against minors. *See* 18 U.S.C. § 3142.

**a. What are the policy rationales underlying such a presumption?**

Response: In the case of *United States v. Salerno*, the Supreme Court observed that in passing the Bail Reform Act, Congress “perceived pretrial detention as a potential solution to a pressing societal problem” and “[t]here is no doubt that preventing danger to the community is a legitimate regulatory goal.” 481 U.S. 739, 747 (1987).

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. First, the Free Exercise Clause has been interpreted as limiting what government may impose upon private institutions: (A) government must act in a manner free of hostility or bias against religious beliefs, *see Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018); (B) law or other governmental action will be subjected to strict scrutiny if not neutral toward religion and generally applicable, *see Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021); and (C) religious institutions’ autonomy regarding internal management decisions central to their religious mission, including hiring of key role-players, is protected, *see Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020). Second, federal legislation such as the Religious Freedom Restoration Act impose identifiable limits which dovetail with Free Exercise strict scrutiny protections. *See, e.g., 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: Religious discrimination is prohibited by the Free Exercise Clause of the First Amendment. The Supreme Court has repeatedly found laws or other governmental actions unconstitutional where they restricted free exercise and lacked neutrality or were not generally applicable. *See, e.g., Carson v. Makin*, 142 S. Ct. 1987 (2021); *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022); *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (strict scrutiny applied to restriction that treated secular activity more favorably than religious activity); *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1731 (2018).

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 the case of *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Supreme

Court held that a preliminary injunction which enjoined the enforcement of an executive order, that has restricted capacity at worship services, was appropriate. The Court reasoned that the religious entities would likely succeed on the merits because “statements made in connection with the challenged rules can be viewed as targeting” the religious entities; because the restrictions were not neutral in that they treated religious entities more harshly than non-religious entities; and because, under strict scrutiny analysis, the restrictions were not narrowly tailored to combatting COVID spread. 141 S. Ct. 63, 66-67 (2020). Further, infringing on Religious Free Exercise rights constituted irreparable injury, and the state had failed to show that not enforcing the capacity restrictions would harm the public. *Id.* at 67-68.

- 18. Please explain the U.S. Supreme Court’s holding and rationale in *Tandon v. Newsom*.**

Response: In *Tandon v. Newsom*, the Supreme Court held that the religious at-home gatherings were entitled to protection, via preliminary injunction, against being shut down by California state COVID-19 restrictions. The Court reasoned that government regulations were not neutral nor generally applicable if they treated some comparable secular activity more favorably than religious activity, 141 S. Ct. 1294, 1296 (2021); that the fact that some comparable secular activities were being treated as poorly as religious activities, did not mean the restrictions were neutral, particularly because the restrictions focused on why people gathered, *id.*; that because the restrictions were not neutral nor generally applicable, their constitutionality would be evaluated under a strict scrutiny standard, and that plaintiffs were likely to succeed on the merits under such a standard -- thus they were entitled to injunctive relief pending appeal, *id.* at 1296-98.

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

Response: Yes, Americans have the right to their religious beliefs outside the walls of their houses of worship and homes. *See, e.g., 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 the case of *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 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, 138 S. Ct. 1719 (2018); the Commission did not comply with the Free Exercise Clause’s requirement of religious neutrality because it was hostile to the cakeshop owner’s religious objections to creating cakes for same-sex couples. *Id.* at 1729; and the Commission had engaged in disparate treatment of the shop owner in comparison to other shop owners who had objected to making cakes with messages which those owners believed were 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 an individual's religious beliefs are constitutionally protected as long as they are sincere, regardless of whether they are consistent with the teachings of the religious tradition with which they affiliate. *See Frazee v. Illinois Dep't of Employee Sec.*, 109 S. Ct. 1514 (1989); *see also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014) (sincerely held religious beliefs are protected).

- a. Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Yes. As long as religious beliefs are sincerely held, they are constitutionally protected. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014). The "Court's narrow function...is to determine whether the plaintiffs' asserted religious belief reflects an honest conviction." *Id.* at 725 (internal quotation marks and citations omitted).

- b. Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: Yes. As long as religious beliefs are sincerely held, they are constitutionally protected. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014). The "Court's narrow function...is to determine whether the plaintiffs' asserted religious belief reflects an honest conviction." *Id.* at 725 (internal quotation marks and citations omitted).

- 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, when considering cases in this area of constitutional law, my "narrow function...is to determine whether the plaintiffs' asserted religious belief reflects an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (internal quotation marks and citations omitted). It would not be my role to engage in a judicial analysis or to make findings regarding what any church's doctrines or teaching are or are not.

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 the case of *Our Lady of Guadalupe School v. Morrissey-Berru*, the

Supreme Court applied the “Ministerial Exception” to employees hired based on ability to develop and promote the Catholic faith and engage in religious teaching; the First Amendment protects religious entities’ internal governance decisions as to vital religious duties. 140 S. Ct. 2049, 2060 (2020).

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 the case of *Fulton v. City of Philadelphia*, the Supreme Court held that the Free Exercise rights of Catholic Social Services (CSS), which had contracted with Philadelphia for many years to place children in foster care, were infringed upon when Philadelphia stopped working with CSS because it would not place children with same-sex couples. 141 S. Ct. 1868, 1881-82 (2020). The City’s new policy led to it not placing children through CSS, even though the policy included mechanisms for exceptions; this lack of neutrality toward CSS triggered strict scrutiny, under which the policy was found to be unconstitutional because the policy was not only not narrowly tailored to the asserted interest of maximizing foster care placements—it actually undermined this interest. *Id.*

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 the case of *Carson v. Makin*, the Supreme Court held that Maine’s tuition assistance program violated the Free Exercise Clause because the program’s “nonsectarian” requirement excluded religious schools. 142 S. Ct. 1987, 1998 (2022) (state payment of tuition for certain students at private schools so long as the schools were not religious constituted discrimination against religion). Applying strict scrutiny, the Court held that Maine’s program did not survive because the interest of disestablishment did not justify religious exclusions from generally available public benefits. *Id.*

25. **Please explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: In the case of *Kennedy v. Bremerton School District*, the firing of a high school football coach after he knelt and prayed at midfield after games was held to have violated the coach’s Free Exercise and Free Speech rights, as the prayer was private speech, unattributed to his coaching, and not conducted in the presence of his student athletes. 142 S. Ct. 2407, 2424 (2022). The Court also opined that the prayers did not violate the Establishment Clause because there was no government coercion involved and should be considered in light of historical practice; this analysis was more lenient --

more accommodating of religion -- than the prior test it replaced, found in *Lemon v. Kurtzman*, 493 U.S. 602 (1971).

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 the case of *Mast v. Fillmore County*, government officials insisted Amish farmers utilize modern technologies or risk jail and fines, and even the loss of their farms. Concurring in the order vacating the Minnesota state appellate court's ruling, Justice Gorsuch stated that pursuant to the Religious Land Use and Institutionalized Persons Act, the government's actions would be reviewed under strict scrutiny -- the state would have to show a compelling interest and that the restrictions were narrowly tailored, 141 S. Ct. 1868, 2432 (2021); general governmental interests would not be considered compelling given the exemptions granted to numerous other groups, and infringement on sincerely held religious beliefs would be prohibited unless it was the "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 nominee for a lower federal court, I am precluded from commenting on the correct interpretation of Section 1507 in this regard because a case regarding this could come before me. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed I would follow binding precedent.

Without commenting on this specific fact scenario or related hypotheticals, I will note that in the case of *Cox v. State of Louisiana*, the Supreme Court upheld a Louisiana state statute that deals with matters arguably related to those matters dealt with in 18 U.S.C. § 1507; in that case the Supreme Court held that "picketing and parading—is subject to regulation even though intertwined with expression and association." 379 U.S. 559, 563 (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 in Article II provides authority to the President, with advice and consent of the Senate, to make political appointments. As a nominee to the federal district court, it would not be appropriate for me to comment on what the President and Senate should consider in exercising their constitutional authority. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

- 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 some circumstances, disparate impact claims may be cognizable under certain federal antidiscrimination laws. *See, e.g., Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 539 (2015) (but not addressing subconscious racial discrimination). However, the Court has held that disparate impact is not a valid theory upon which to pursue an Equal Protection claim. *See Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 272 (1979).

- 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 nominee for a lower federal court, I am precluded from commenting 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 direct 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: The Supreme Court has held that the Second Amendment protects an individual's right to bear arms, based in part upon the Court's holding that the original public meaning of the text of the Second Amendment recognizes an individual right to keep and bear arms. *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). The Supreme Court has also held that restrictions on Second Amendment rights are impermissible unless the government demonstrates that they are consistent with the Nation's historical tradition of firearms regulation. *Bruen* at 2126.

- 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 the cases of *Heller* and *McDonald*, the Supreme Court recognized an individual's right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742 (2010). The Court held that the government must demonstrate that a regulation is consistent with the Nation's historical tradition of firearm regulation in order to be constitutional. *See Heller*, 554 U.S. at 627; *see also New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

- 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); *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. The Second Amendment right to bear arms is "not a 'second-class right.'" *New York State Rifle and Pistol Ass'n, 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: No. The Second Amendment right to bear arms is “not a ‘second-class right.’” *New York State Rifle and Pistol Ass’n, 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: Article II of the Constitution dictates that the executive “shall take Care that the Laws be faithfully executed.” The Supreme Court has held that the executive branch has discretion regarding decisions relating to enforcement. *See Wayte v. United States*, 470 U.S. 598, 607 (1985). As a nominee for the federal district court, I am precluded from expressing an opinion or commenting regarding issues that could come before me. If I am confirmed, I will apply the law impartially to the facts before me, and will faithfully apply binding precedent from the Supreme Court and Tenth Circuit Court of Appeals.

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 prosecutorial discretion as the “power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court.” A substantive administrative rule change is not an act of discretion but a legally authorized and formally executed change in the law. Substantive administrative rule changes must be in accordance with the relevant authorizing act and must comport with the Administrative Procedures Act. *See* 5 U.S.C. § 551-559; *see also MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 225 (1994).

42. **Does the President have the authority to abolish the death penalty?**

Response: No. Under federal law, a defendant is eligible for the death penalty if the jury finds one or more statutory intent factors as set forth in 18 U.S.C. § 3591(a)(2), and one or more statutory aggravating factor as set forth in 18 U.S.C. § 3592(c). *See Jones v. United States*, 527 U.S. 373, 376–377 (1999). In the case of *Gregg v. Georgia*, the Supreme Court held that the death penalty is not unconstitutional. 428 U.S. 153, 169 (1976).

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 Association of Realtors challenged the nationwide

eviction moratorium for residential rental properties imposed by the CDC. At the district court level, the moratorium was vacated but that decision was stayed as HHS appealed. The Supreme Court lifted the stay, which meant that the vacating of the moratorium became the law of the case at that point; the Supreme Court stated that it expected “Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance,” *id.* at 2489, and stated further, “It is up to Congress, not the CDC, to decide whether the public interest merits further action here,” *id.* at 2490.

- 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: If a prosecutor had no evidence or information regarding a person’s involvement in a crime, then no, it would not be appropriate; I say this as a general comment without any reference to any specific, actual scenario. As a judge and a nominee for the federal bench, I would not comment on any particular prosecutor’s announcements unless the prosecutor’s case came before me and this issue became relevant, at which time I would apply the law to the facts in an impartial manner.

**Senator John Kennedy  
Questions for the Record**

**Ann Marie McLiff Allen**

- 1. Are there any circumstances under which it is justifiable to sentence a criminal defendant to death? Please explain.**

Response: A defendant is eligible for the death penalty if the jury finds one or more statutory intent factors as set forth in 18 U.S.C. § 3591(a)(2), and one or more statutory aggravating factors as set forth in 18 U.S.C. § 3592(c). *See Jones v. United States*, 527 U.S. 373, 376–377 (1999). In the case of *Gregg v. Georgia*, the Supreme Court held that the death penalty is not unconstitutional. 428 U.S. 153, 169 (1976).

- a. Should a judge’s opinions on the morality of the death penalty factor into the judge’s decision to sentence a criminal defendant to death in accordance with the laws prescribed by Congress and the Eighth Amendment?**

Response: No.

- 2. Is the U.S. Supreme Court a legitimate institution?**

Response: Yes.

- 3. Is the current composition of the U.S. Supreme Court legitimate?**

Response: Yes.

- 4. Please describe your judicial philosophy. Be as specific as possible.**

Response: My judicial philosophy as a trial court judge is to impartially adjudicate the cases and controversies that are brought before me. I apply the law to the facts. I follow the binding precedent of the Supreme Court and the Tenth Circuit Court of Appeals. I treat all counsel and litigants with respect and dignity, and uphold the law.

- 5. Is originalism a legitimate method of constitutional interpretation?**

Response: Yes. The Supreme Court employs originalism, such as in the case of *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008). *See also Currier v. Virginia*, 138 S. Ct. 2144, 2153 (2018) (“This Court’s contemporary double jeopardy cases confirm what the text and history suggest.”)

- 6. If called on to resolve a constitutional question of first impression with no applicable precedents from either the U.S. Supreme Court or the U.S. Courts of Appeals, to what sources of law would you look for guidance?**



Response: If I were presiding over a case involving a constitutional question which presented an issue of first impression with no applicable precedent from either the Supreme Court or the Court of Appeals, I would start by examining the plain language of the provision. I would apply interpretive principles used by Supreme Court and Tenth Circuit precedent which include consideration of the original public meaning. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 634-35 (constitutional rights are to be given the scope they were understood to have when the people adopted them.) I would then look to persuasive authority regarding related issues, and I would look to canons of construction where appropriate.

**7. Is textualism a legitimate method of statutory interpretation?**

Response: Yes. *See, e.g., Carciere v. Salazar*, 555 U.S. 379 (2009); *Woods v. Standard Ins. Co.*, 771 F.3d 1257, 1265 (10th Cir. 2014) (when language is clear, court ordinarily ends its analysis).

**8. When is it appropriate for a judge to look beyond textual sources when determining the meaning of a statute or provision?**

Response: When the plain language of a particular provision is ambiguous, a district court may apply tools of statutory construction, such as considering the provision's statutory context and related provisions surrounding the specific provision in question, to aid in ascertaining the meaning. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). I would follow binding precedent interpreting the statute or analogous statutes. But going beyond textual sources is only appropriate if the text of the statute does not reveal its meaning. *See Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985) ("Statutory construction must begin with the language employed by Congress... [O]rdinary meaning of that language accurately expresses the legislative purpose.")

**9. Does the meaning (rather than the applications) of the U.S. Constitution change over time? If yes, please explain the circumstances under which the U.S. Constitution's meaning changes over time and the relevant constitutional provisions.**

Response: As the United States Supreme Court has stated, the Constitution's "meaning is fixed according to the understandings of those who ratified it..." *New York State Rifle and Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). Its fixed meaning can be applied to "circumstances beyond those the Founders specifically anticipated." *Id.* To change the Constitution, it must be amended per Article V.

**10. Please summarize Part II(A) of the U.S. Supreme Court's decision in *Brown v. Davenport*, 596 U.S. 118 (2022).**

Response: Part II (A) of the U.S. Supreme Court's decision in *Brown v. Davenport*, contains a history of habeas corpus. 596 U.S. 118, 127-29 (2022). Initially in England,

habeas was not a means to challenge the correctness of a conviction, but merely to examine whether the court in which the conviction occurred had jurisdiction. The Supreme Court expanded the scope of habeas review to include examination for constitutional error, *see Brown v. Allen*, 344 U.S. 443 (1953), which lead to a greater number of habeas petition filings.

**11. Please summarize Part IV of the U.S. Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).**

Response: Part IV of *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* sets forth the Supreme Court’s holding that strict scrutiny applies to race-based admissions and that such admissions failed, under strict scrutiny, to comply with Equal Protection Clause standards (thus leading to the conclusion elsewhere in the opinion that Harvard was violating Title VI of the Civil Rights Act). 600 U.S. 181, 213-25 (2023). The Court held that the race-based admissions were not justified by a compelling interest nor were they narrowly tailored to the interest asserted as justifying them. Specifically, the Court held that while Harvard asserted commendable goals, the connection of the race-based admissions to those goals was not coherent enough to satisfy strict scrutiny. *Id.* at 214-15. Additionally, the race-based admissions failed to satisfy strict scrutiny because they did not avoid utilizing race as a negative stereotype, *see id.* at 218, and because they lacked a rational ending point, *see id.* at 225.

**12. Please summarize Part III of the U.S. Supreme Court’s decision in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).**

Response: Part III of the U.S. Supreme Court’s decision in *303 Creative LLC v. Elenis* contains the holding that designing a website celebrating marriage is speech protected by the First Amendment of the Constitution; a state law compelling the website designer to create speech which ran contrary to the designer’s own beliefs violated the designer’s First Amendment rights. 600 U.S. 570, 573 (2023).

**13. Please summarize Part II of the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* (2022).**

Response: Part II of the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Org.* contains the Court’s articulation of the test for determining when an asserted right is protected by the Fourteenth Amendment’s Due Process Clause. The opinion provides that such Due Process protection applies when the right at issue is “guided by the history and tradition that map the essential components of our Nation’s concept of ordered liberty,” and is part of a broader entrenched right supported by other precedents. 597 U.S. 215, 234-50. Part II also sets forth the Court’s application of that test to the right to obtain an abortion, and contains the Court’s conclusion that this right does not meet this test and thus is not protected by the Fourteenth Amendment’s Due Process Clause. *Id.* at 250-57.

**14. Please summarize Part III of the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022).**

Response: Part III of the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* contains the Court’s discussion of the test for when precedent may be overturned, and the Court’s application of that test to the *Dobbs* decision in its overturning of *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992). 597 U.S. 215, 263-90. The test is comprised of five factors: the nature of the precedent’s error, the quality of its reasoning, the “workability” of the rules created by the precedent, the precedent’s disruptive effect on other areas of the law, and reliance interests in the precedent. *Id.* The Court concluded that these factors did not weigh in favor of retaining *Roe* or *Casey*. *Id.* at 290.

**15. Please describe the legal rule employed in *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), and explain why the U.S. Supreme Court sided with the Petitioner.**

Response: The legal rule employed in *Rivas-Villegas v. Cortesluna* provides that a governmental official who is sued under 42 U.S.C. § 1983, for damages caused by alleged excessive use of force in violation of the Fourth Amendment, is entitled to qualified immunity if the official’s conduct did not violate “clearly established statutory or constitutional rights of which a reasonable person would have known”; and that this standard is not met when the facts do not present an “obvious case” and “if existing precedent does not place the constitutional question beyond debate.” 595 U.S. 1, 5-8. The Court held that in the instant case, precedent was distinguishable and therefore did not provide the officer notice that the specific use of force was unlawful. Thus, the officer was entitled to qualified immunity. *Id.* at 8.

**16. When is it appropriate for a district judge to issue a nationwide injunction? Please also explain the legal basis for issuing nationwide injunctions and the relevant factors a district judge should consider before issuing one.**

Response: Federal Rule of Civil Procedure 65 empowers a district court judge to issue an injunction when the standard set forth therein is met; however, this rule does not address nationwide injunctions nor provide authority, or a test, for the issuance of a nationwide injunction. In *Trump v. Hawaii*, Justice Thomas in a concurring opinion stated, “If district courts have any authority to issue universal injunctions, that authority must come from a statute or the Constitution. No statute expressly grants district courts the power to issue universal injunctions. So the only possible bases for these injunctions are a generic statute that authorizes equitable relief or the courts’ inherent constitutional authority. Neither of those sources would permit a form of injunctive relief that is ‘[in]consistent with our history and traditions.’” 138 S. Ct. 2392, 2425 (2018) (internal citation omitted).

- 17. Is there ever a circumstance in which a district judge may seek to circumvent a published precedent of the U.S. Court of Appeals under which it sits or the U.S. Supreme Court?**

Response: No.

- 18. If confirmed, please describe what role U.S. Supreme Court dicta would play in your decisions.**

Response: Dicta are not binding precedent, so dicta would not play a role in my decisions as such. I would follow binding precedent. *See Humphrey's Executor v. United States*, 295 U.S. 602, 627 (1935) (dicta do not constitute binding precedent, but may be considered if "sufficiently persuasive").

- 19. To the best of your recollection, please list up to 10 cases in which you served as lead counsel in a bench trial in federal district court or a case tried before a jury in federal district court.**

Response: As a state district court judge I have presided over dozens of trials, including bench and jury trials, in civil and criminal cases (including murder, child abuse, and other kinds of cases). As a lawyer I have tried dozens of cases as sole counsel on my side of the courtroom, including bench and jury trials, in civil and criminal cases, in state district court. Although I have appeared as counsel in federal district court, I have not tried any cases in federal district court.

- 20. When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race and/or sex of the applicants play in your consideration?**

Response: None.

- 21. Please list all social-media accounts you have had during the past 10 years with Twitter/X, Facebook, Reddit, Instagram, Threads, TikTok, and LinkedIn and the approximate time periods during which you had the account. If the account has been deleted, please explain why and the approximate date of deletion.**

Response: Facebook (one account, not public – only accessible to friends, appx. 2017 – Present); Instagram (one account, not public – only accessible to friends, appx. 2017 – Present); LinkedIn (one account, appx. 2017 – Present); and Twitter/X (one account, I have never posted or reacted to any post, appx. 2013 – Present).

- 22. Why should Senator Kennedy support your nomination?**

Response: I have served as a trial court judge, prosecutor, public defender (in both state and federal court), and private attorney for more than twenty years. I have presided over and handled as counsel (in almost all cases as the sole lawyer on my side of the

courtroom) many bench and jury trials. My experience is broad and practical. I have experience with federal law, both as it applies in our state courts through parallel rules of procedure and evidence, and as constitutional issues have been incorporated as applicable to the state; additionally, I served as a university general counsel where many federal law issues had to be mastered and directly navigated. It is important, in my view, that judges who understand and respect the states -- while also having exposure and experience with federal legal issues -- have the opportunity to move on to the federal bench, so that the federal judiciary has within its ranks jurists who have that state background which is so essential to properly understanding and respecting federalism. My judicial philosophy is practical and restrained. I am committed to applying the law impartially to the facts of the cases before me, without agenda or activism.

**CHAIR**  
Hon. Ann Claire Williams (Ret.)  
acwilliams@jonesday.com  
(312) 269-1575

**VICE CHAIR**  
David L. Brown  
dlbrown@hmlawfirm.com  
(515) 244-2141

**FIRST CIRCUIT**  
Kay H. Hodge  
khodge@nrmllc.com  
(517) 542-6789

**SECOND CIRCUIT**  
Dana M. Iwelle  
diwelle@pulf.com  
(860) 424-4382

**THIRD CIRCUIT**  
G. Glenon Trowbridge  
gtrowbridge@camllaw.com  
(978) 994-1700

**FOURTH CIRCUIT**  
Pamela J. Roberts  
pajroberts@boulmanandbrooke.com  
(803) 725-7423

**FIFTH CIRCUIT**  
Michael D. Hunt  
michael.hunt@philips.com  
(275) 346-0285

**SIXTH CIRCUIT**  
Khaliah V. Spencer  
kspencer@housignan.com  
(313) 465-7854

**SEVENTH CIRCUIT**  
Nigel F. Tolman  
ntolman@proskauer.com  
(312) 962-3548

**EIGHTH CIRCUIT**  
Sonia Miller-Van Dier  
soniamv@spawenlaw.com  
(612) 756-7125

**NINTH CIRCUIT**  
John C. Dwyer  
dwyerjc@cooley.com  
(508) 843-5228

**TENTH CIRCUIT**  
Eric S. Cather  
ecather@emerystaur.com  
(510) 808-2000

**ELEVENTH CIRCUIT**  
Jennifer M. Weddie  
jweddie@glaw.com  
(303) 572-6500

**D.C. CIRCUIT**  
Michael J. Huang  
mhuang@penlaw.com  
(734) 678-1531

**FEDERAL CIRCUIT**  
Joseph Michael Drayton  
jdrayton@proskauer.com  
(212) 969-3479

**SPECIAL ADVISORS**  
Peter Bennett  
pbennett@thebennettlawfirm.com  
(207) 831-9999

Vincent Chang  
vincent.chang@davispolk.com  
(212) 450-4242

Susan Saltzstein  
ssaltzstein@skadden.com  
(212) 755-4132

**STAFF COUNSEL**  
Denise A. Cardman  
denise.cardman@americanbar.org



Please reply to:  
Hon. Ann Claire Williams (Ret.)  
Jones Day  
110 North Wacker Drive, Suite 4800  
Chicago, Illinois 60606  
acwilliams@jonesday.com

January 23, 2024

**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 Ann Marie McLiff Allen to the United States  
District Court for the District of Utah*

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 Ann Marie McLiff Allen, who has been nominated by the President to the United States District Court for the District of Utah. 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 Allen is **"Well Qualified"** to serve on the United States District Court for the District of Utah.

Very truly yours,

*Ann Claire Williams*  
Hon. Ann Claire Williams (Ret.)  
Chair, Standing Committee  
on the Federal Judiciary

cc: Edward N. Siskel, 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 Ann Marie McLiff Allen (*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).

Susan Mason Bazis  
Susan Mason Cook-Bazis  
Susan Mason Cook  
Susan Lillian Mason

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

United States District Judge for the District of Nebraska

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

United States District Court for the District of Nebraska  
111 South 18th Plaza, Suite 2271  
Omaha, Nebraska 68102

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

1968; Omaha, 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.

1990 – 1993, Creighton University School of Law; J.D., 1993

1988 – 1990, University of Nebraska at Omaha; B.S. (*magna cum laude*), 1990

1986 – 1987, St. Edward's University; no degree received

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

2017 – present

United States District Court for the District of Nebraska  
111 South 18th Plaza  
Omaha, Nebraska 68102  
United States Magistrate Judge

2007 – 2016  
State of Nebraska  
Douglas County Court  
1445 K Street, Room 1213  
Lincoln, Nebraska 68509  
Judge (2007 – 2016)  
Presiding Judge (2010 – 2013)

2001 – 2007  
Bazis Law Offices, P.C., L.L.O.  
209 South 19th Street, Suite 500  
Omaha, Nebraska 68102  
Sole Owner and Attorney

1999 – 2001  
Paragas Law Offices  
9202 West Dodge Road, #307  
Omaha, Nebraska 68114  
Associate Attorney

1996 – 1999  
Kelly, Lehan and Hall, P.C.  
7134 Pacific Street  
Omaha, Nebraska 68106  
Associate Attorney

1994 – 1996  
Douglas County Public Defender  
1717 Harney Street  
Omaha, Nebraska 68183  
Assistant Public Defender

1993 – 1994  
Paragas Law Offices  
9202 West Dodge Road, #307  
Omaha, Nebraska 68114  
Associate Attorney (part time)

1993 – 1994  
West Telemarketing  
9910 Maple Street



Omaha, Nebraska 68134  
Inbound Telemarketer (part time)

1992 – 1993  
Mutual of Omaha  
Mutual of Omaha Plaza  
Omaha, Nebraska 68175  
Law Clerk

1988 – 1992  
Wats Telemarketing (defunct)  
Omaha, Nebraska  
Part-Time Inbound Telemarketer

Other affiliations (uncompensated):

2022 – present  
Federal Magistrate Judges Association  
517 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
8th Circuit Director

2008 – present  
Robert M. Spire, American Inns of Court  
1701 Farnam Street  
Omaha, Nebraska 68183  
Counselor of the Inn (2017 – present)  
President (2013 – 2014)  
President-Elect (2012 – 2013)  
CLE Chair (2011 – 2013)  
Pupilage Leader (2008 – 2017)

2007 – 2016  
Nebraska County Judges Association  
1000 10th Avenue  
Sidney, Nebraska 69162  
President (2012 – 2013)  
Vice President (2011 – 2012)  
Secretary (2010 – 2011)  
Executive Committee (2009 – 2014)

2011 – 2014  
National Safety Council – Nebraska Chapter  
3111 Oak View Drive  
Omaha, Nebraska 68144  
Ex-Officio Member, Board of Directors

2003 – 2005  
Ollie Webb Center, Inc.  
1941 South 42nd Street, #122  
Omaha, Nebraska 68105  
Member, Board of Directors

1992 – 1993  
Client Counseling and Negotiations Board  
Creighton University School of Law  
2133 Cass Street  
Omaha, Nebraska 68178  
Member, Executive Board

Summer 1992  
Douglas County Public Defender  
1701 Farnam Street  
Omaha, Nebraska 68183  
Intern

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.

University of Nebraska at Omaha School of Criminology and Criminal Justice, Alumni Award for Excellence in Public Service (2023)

Nebraska State Bar Foundation, Public Service Award (2016)

Nebraska State Bar Foundation, Lifetime Fellow (2016)

National College of Probate Judges, Treat Award for Excellence (2013)

Nebraska Supreme Court, Distinguished Judge, Service to the Community Award (2011)

University of Nebraska at Omaha School of Criminology and Criminal Justice, Rising Star Alumni Achievement Award (2010)

Creighton University

Highest Grade Awarded: Defense of Criminal Cases (1992)  
 Highest Grade Awarded: Jurisprudence (1991)  
 Winner of Negotiations Tournament, Law Student Division (1991)

University of Nebraska at Omaha  
*Magna Cum Laude* (1990)  
 Dean's List (1988 – 1990)  
 All-American Scholar (1989 – 1990)  
 Golden Key National Honor Society (1989 – 1990)  
 Alpha Phi Sigma Honor Society (Honorary) (1989 – 1990)  
 Pi Gamma Mu Honor Society (Honorary) (1989 – 1990)

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

American Bar Association (2007 – 2016)

County Court of Douglas County, Nebraska  
 Judges Probate Committee (2012 – 2017)  
 Chairperson (2014 – 2017)  
 Judges Civil Committee (2007 – 2010)

County Judges Association (2007 – 2016)  
 President (2012 – 2013)  
 Vice President (2011 – 2012)  
 Secretary (2010 – 2011)  
 Executive Committee (2009 – 2014)  
 Education Committee (2013 – 2017)  
 Probate, Civil Procedure, Court Rules & By-Laws Committee (2014 – 2017)  
 Chairperson (2016)  
 Best Practices for Judges, Lawyers & the Courts Subcommittee (approximately 2014 – 2017)  
 Chairperson (2016)  
 Case Management Committee for County Courts (approximately 2009 – 2013)

Douglas County Courts, Nebraska  
 Court Security Committee (approximately 2015 – 2017)  
 Court Referral Committee (2016 – 2017)  
 Ad Hoc Committee on Court Appointments (2015 – 2016)

Douglas County, Nebraska  
 Criminal Justice System Management Council (2010 – 2013)  
 Vice Chair (2012)  
 24/7 Sobriety Program Subcommittee 2012 – 2017)  
 Reentry Initiatives Council (2013 – 2017)

Federal Magistrate Judges Association (2017 – present)  
 Eighth Circuit Director (2022 – present)  
 Eighth Circuit representative for the Sunshine Committee (2022 – present)  
 Bulletin Committee, Member (2023 – present)  
 Security Committee, Member (2020 – present)

National College of Probate Judges (2012 – 2017)

Nebraska Criminal Defense Attorneys Association (1996 – 2006)

Nebraska State Bar Association  
 House of Delegates (2005 – 2009)  
 Criminal Practice and Procedure Committee (2002 – 2003)

Nebraska State Bar Foundation  
 Bench Media Committee (2016 – present)  
 Lifetime Fellow (2016)  
 Mock Trial Chair (2020 – present)

Nebraska Supreme Court  
 State and Federal Judicial Council (2018 – present)  
 Consortium of Tribal, State, and Federal Court (2019 – present)  
 Nebraska Supreme Court Commission on Guardianships and Conservatorships  
 (2012 – 2016)  
 Co-Chair (2012 – 2016)  
 Advisory Council on Public Guardian (2015 – 2016)  
 Chairperson (2015 – 2016)  
 Joint Review Committee on the Status of Guardianships and Conservatorships in  
 Nebraska Court System (2010)  
 Judicial Nominating Commission-Supreme Court-Second, Alternate Member  
 (approximately 1998 – 1999)

Robert M. Spire Inns of Court (2008 – present)  
 Counselor of the Inn (2017 – present)  
 President (2013 – 2014)  
 President-Elect (2012 – 2013)  
 CLE Chair (2011 – 2013)  
 Pupilage Leader (2008 – 2017)

United States District Court for the District of Nebraska  
 District of Nebraska Judicial Council (2017 – present)  
 District of Nebraska Federal Practice Committee (2017 – present)  
 District of Nebraska Court Security Committee (2018 – present)  
 Chairperson (2018 – present)

10. **Bar and Court Admission:**

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

Nebraska, 1993

There have been no lapses in membership.

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

Supreme Court of the United States, 2005  
United States Court of Appeals for the Eighth Circuit, 2005  
United States District Court for the District of Nebraska, 1993

Once I became a state court judge in 2007, I no longer paid the biennial assessment to the United States District Court for the District of Nebraska because I would no longer be practicing law. My status was then listed as inactive. The United States District Court for the District of Nebraska did away with the biennial assessment in 2020 and my status is now showing as active.

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.

To the best of my knowledge and recollection, I have not belonged to any other organizations other than those listed in questions 9 and 10.

- 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.

Contributor to article by Todd J. Hutton *et al.*, *Changes in Guardianship and Conservatorship Laws and Rules Effective January 1, 2012*, Nebraskans Care, THE NEBRASKA LAWYER (January/February 2012). 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.

Based upon my recollection and a thorough review of my files and searches of publicly available databases, I have identified the following responsive materials, but it is possible that there are a few that I have been unable to identify.

Supreme Court Commission on Guardianships and Conservatorships – 2013 Report. Report Supplied.

Joint Review Committee on the Status of Adult Guardianships and Conservatorships in the Nebraska Court System Report of Final Recommendations, October 1, 2010. Report 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.

Based upon my recollection and a thorough review of my files and searches of publicly available databases, I have identified the following responsive materials, but it is possible that there are a few that I have been unable to identify.

On February 3, 2016, I provided testimony regarding LB 934 to the Judiciary Committee of the Nebraska Legislature regarding changes to the Public Guardian laws. Transcript supplied.

On February 3, 2016, I provided testimony regarding LB 1008 to the Judiciary Committee of the Nebraska Legislature regarding legislation that would define what a guardian ad litem can do in a probate proceeding. Transcript supplied.

On March 18, 2015, I provided testimony regarding LB 422 to the Judiciary Committee of the Nebraska Legislature regarding legislation that would allow the courts to pay a guardian ad litem appointed for a minor in a probate guardianship proceeding. Transcript supplied.

On January 21, 2015, I provided testimony regarding LB 43 to the Judiciary Committee of the Nebraska Legislature regarding the creation of a law for standby guardians in Nebraska. Transcript supplied.

On January 29, 2014, I provided testimony regarding LB 920 to the Judiciary Committee of the Nebraska Legislature regarding the creation of a Public Guardian for Nebraska. Transcript supplied.

On February 27, 2013, I provided testimony regarding LB 615 to the Judiciary Committee of the Nebraska Legislature regarding proposed changes to the Guardianship and Conservatorship laws. Transcript supplied.

On January 20, 2011, I provided testimony regarding LB 157 to the Judiciary Committee of the Nebraska Legislature regarding proposed changes to the Guardianship and Conservatorship laws. Transcript supplied.

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

Based upon my recollection and a thorough review of my files and searches of publicly available databases, 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.

December 12, 2023: Judge, Championship round of the State Championship of the Lyle Strom High School Mock Trial competition, Nebraska State Bar Foundation, Lincoln, Nebraska. I provided feedback to the students on their performances after the competition. I have no notes, transcript, or recording. The address for the Nebraska Bar Foundation is 635 South 14th Street, Suite 120, Lincoln, Nebraska 68508.

October 19, 2023: Panelist, Panelist, Nebraska State Bar Association, Nebraska Federal Practice Committee and Federal Law Section, Omaha, Nebraska. The magistrate judges talked about the benefits of consenting to a magistrate judge,

updates on federal procedures, best practices, and settlement conferences. We then took questions from the audience. I have no notes, transcript, or recording. The address of the Nebraska State Bar Association is 635 South 14th Street, Suite 200, Lincoln, Nebraska 68508.

2017 – present: Speaker, Naturalization Ceremonies, United States District Court for the District of Nebraska. As part of my duties, I preside over naturalization ceremonies for new citizens and have conducted ceremonies on the following dates: March 17, 2023; January 13, 2023; November 18, 2022; September 9, 2022; June 11, 2021; October 16, 2020; September 25, 2020; October 11, 2019; September 16, 2019; September 11, 2019; August 9, 2019; March 22, 2019; December 7, 2018; September 28, 2018; August 10, 2018; June 16, 2018; September 29, 2017; and August 11, 2017. My standard notes are supplied.

October 18, 2023: Remarks, Legacy of Liberty Breakfast, Nebraska State Bar Foundation, Lincoln, Nebraska. Remarks supplied.

September 20, 2023: Guest Speaker, government class at Central High School. I spoke to the class with two probation officers. We talked about our career paths and answered questions from the students. I have no notes, transcript, or recording. The address of Central High School is 124 North 20th Street, Omaha, Nebraska 68102.

August 24-26, 2023: Facilitator and Speaker, Mediation Training for Lawyers, Roman L. Hruska Courthouse, Omaha, Nebraska. PowerPoints supplied.

May 4, 2023: Facilitator and Speaker, Magistrate Judge Forum, Quarry Oaks Golf Club, Ashland, Nebraska. PowerPoints supplied.

April 13, 2023: Moot Court Judge for semi-final round of Thomas Stinson Allen Moot Court Competition, University of Nebraska College of Law. Eighth Circuit Court of Appeals Courtroom, Roman L. Hruska Courthouse, Omaha, Nebraska. I served as one of three judges for the semi-final round of the moot court competition and provided feedback to the law students on their performances after each round. I have no notes, transcript, or recording. The address for the University of Nebraska College of Law is 1875 North 42nd Street, Lincoln, Nebraska 68503.

March 9, 2023: Acceptance Remarks, Alumni Award for Excellence in Public Service from the University of Nebraska at Omaha School of Criminology and Criminal Justice, Omaha, Nebraska. Notes supplied.

February 24, 2023: Speaker, Southwest Iowa Lawyer League Seminar, Council Bluffs, Iowa. PowerPoint and outline supplied.

October 14, 2022: Panelist, Nebraska State Bar Association, Nebraska Federal



Practice Committee and Federal Law Section, Omaha, Nebraska. The Magistrate Judges talked about case progression, preferences, and settlement conferences. We also answered questions from the audience. I have no notes, transcript, or recording. The address of the Nebraska State Bar Association is 635 South 14th Street, Suite 200, Lincoln, Nebraska 68508.

October 12, 2022: Remarks, Legacy of Liberty Breakfast, Nebraska State Bar Foundation. Remarks supplied.

September 16, 2022: Panelist, Bench Bar Briefing, Omaha Bar Association, Omaha, Nebraska. I have no notes, transcript, or recording. The address of the Omaha Bar Association is 2133 California Street, Omaha, Nebraska 68178.

July 28, 2022: Speaker, Teachers Law School, University of Nebraska at Omaha-Omaha Political Science Department and Nebraska and Iowa Chapters of ABOTA, Omaha, Nebraska. Notes supplied.

July 22–23, 2022: Facilitator and Speaker, Federal Practice Advanced Mediation Training, Nebraska Federal Practice Committee and Werner Institute for Negotiation & Conflict Resolution at Creighton University School of Law, Omaha, Nebraska. Notes supplied.

February 25, 2022: Speaker, Southwest Iowa Lawyer League Seminar, Council Bluffs, Iowa. Notes supplied.

January 13, 2022: Judge, Championship round of the State Championship of the Lyle Strom High School Mock Trial competition, Nebraska State Bar Foundation, Omaha, Nebraska (virtual). I provided feedback to the students on their performances after the competition. I have no notes, transcript, or recording. The address for the Nebraska Bar Foundation is 635 South 14th Street, Suite 120, Lincoln, Nebraska 68508.

October 15, 2021: Speaker, Nebraska State Bar Association, Federal Section, Omaha, Nebraska. The PowerPoint I used was created by another judge who was supposed to be the speaker but was unable to do so at the last minute. PowerPoint, as edited by me, supplied.

June 15, 2021: Speaker, Teachers Law School, University of Nebraska at Omaha-Omaha Political Science Department and Nebraska Chapter of ABOTA, Omaha, Nebraska. Notes supplied.

April 30, 2021: Speaker, Southwest Iowa Lawyer League Seminar, Council Bluffs, Iowa. PowerPoint and notes supplied.

March 4, 2021: Judge, Championship round of the State Championship of the Lyle Strom High School Mock Trial competition, Nebraska State Bar Foundation,

Omaha, Nebraska (virtual). I provided feedback to the students on their performances after the competition. I have no notes, transcript, or recording. The address for the Nebraska Bar Foundation is 635 South 14th Street, Suite 120, Lincoln, Nebraska 68508.

May 17, 2019: Facilitator and Speaker, Civil and Criminal Best Practices Forum, Federal Practice Committee, Quarry Oaks Golf Club, Ashland, Nebraska. PowerPoints supplied.

March 1, 2019: Speaker, Southwest Iowa Lawyer League Seminar, Council Bluffs, Iowa. The PowerPoint I used was created by another judge and modified by me. PowerPoint and my notes supplied.

October 19, 2018: Speaker, Nebraska State Bar Association, Federal Law Section, Omaha, Nebraska. Notes supplied.

May 4, 2018: Speaker, Omaha Bar Association Memorial Day Program, Omaha, Nebraska, Omaha Bar Association. Notes supplied.

April 6, 2018: Facilitator and Speaker, Best Practices Civil and Criminal, Federal Practice Committee, Quarry Oaks Golf Club, Ashland, Nebraska. PowerPoint supplied.

March 2018 (specific date unknown): Speaker, Metropolitan Community College Courts and Judicial Process Class, Omaha, Nebraska. I spoke to the class about my progression from being a lawyer to a judge and what I did in both roles. I have no notes, transcript, or recording. The address for Metropolitan Community College is 829 North 204th Street, Elkhorn, Nebraska 68022.

November 9, 2017: Remarks, Welcoming New Attorneys, Omaha Bar Association, Omaha, Nebraska. Notes supplied.

2017 (specific date unknown): Panelist, An Afternoon with Federal Magistrates: A Candid Conversation on Active Case Management and Case Progression, Federal Bar Association-Nebraska Chapter, Omaha, Nebraska. All of the Nebraska magistrate judges appeared on the panel and spoke about case progression. We also took questions from the audience. I have no notes, transcript, or recording. The current president of the Federal Bar Association-Nebraska Chapter is Catherine Cano, 9148 Pauline Street, Omaha, Nebraska 68124.

June 6, 2017: Speaker, Magistrate Judges and Federal Court, University of Nebraska at Omaha class on International Narcotics Trafficking and Money Laundering, Omaha, Nebraska. PowerPoint supplied.

February 24, 2017: Remarks, Investiture as United States Magistrate Judge for

the District of Nebraska, Omaha, Nebraska. Notes supplied.

December 22, 2015: Panelist, View from the Bench, Omaha Bar Association, Omaha, Nebraska. I talked about best practices, changes in our procedures, and took questions from the audience. I have no notes, transcript, or recording. The address for the Omaha Bar Association is 2133 California Street, Omaha, Nebraska 68178.

June 23, 2015: Speaker, Guardianship and Conservatorship Updates and Update on Guardianship and Conservatorship Commission, Elder Abuse, Financial Exploitation and Elder Issues, Nebraska Department of Health and Human Services, State Unit on Aging, and the Nebraska State Bar Association-Elder Law Section, Lincoln, Nebraska. PowerPoint supplied.

April 10, 2015: Panelist, Nebraska State Bar Association Leadership Academy. The panel consisted of judges from different courts, and we discussed the process of how we each became a judge. I have no notes, transcript, or recording. The Nebraska State Bar Association's address is 635 South 14th Street, Suite 200, Lincoln, Nebraska 68508.

November 5, 2014: Speaker, Guardianships and Conservatorships, Protecting Our Future: Understanding Child Welfare in Nebraska, Omaha, Nebraska. PowerPoint supplied.

October 2, 2013: Speaker, Guardianships and Conservatorships, Nebraska State Bar Association, Omaha, Nebraska. We discussed problems and concerns that had arisen due to the changes in the guardianship and conservatorship laws. I have no notes, transcript, or recording. The address for the Nebraska State Bar is 635 South 14th Street, Suite 200, Lincoln, Nebraska 68508.

February 25, 2013: Speaker, Elder Abuse, Financial Exploitation and Elder Issues, Supreme Court Commission on Guardianships and Conservatorships, Lincoln, Nebraska. PowerPoint supplied.

2012 (approximately October): Speaker, Nebraska Uniform Guardianship Act, Nebraska State Bar Association Seminar, Omaha, Nebraska. PowerPoint supplied.

2012 (approximately October): Speaker, Guardianships and Conservatorships, Nebraska State Bar Association, Young Lawyers Education Meeting, Omaha, Nebraska. PowerPoint and introductory notes supplied.

2011 (approximately August): Speaker, Role of the Judge, Elder Rights Training, Nebraska Department of Health and Human Services, State Unit on Aging, and the Nebraska State Bar Association-Elder Law Section, Lincoln, Nebraska. The information discussed was guardianships and conservatorships, the findings of the

Supreme Court's task force on guardianships and conservatorships, and the new legislation regarding guardianships and conservatorships. I have no notes, transcript, or recording. The address for the Nebraska State Bar Association-Elder Law Section is 635 South 14th Street, Suite 200, Lincoln, Nebraska 68508.

2010 (approximately June): Speaker, Sentencing, Omaha Bar Association Seminar, Omaha, Nebraska. PowerPoint supplied.

April 9, 2010: Speaker, Sentencing, Nebraska State Bar Association Seminar, Omaha, Nebraska. PowerPoint supplied.

May 18, 2007: Remarks, Oath of Office, Douglas County Court Judge. 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.

Based upon my recollection and a thorough review of my files and searches of publicly available databases, 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.

James Wilcox, KETV, *Naturalization Ceremony Held in Conjunction with World Refugee Day*, Omaha (June 16, 2018). Copy supplied.

Bill Kelly, *Guardianship reform advances after judges, victims share concerns*, Nebraska Public Media (February 13, 2014). Recording available at <https://nebraskapublicmedia.org/en/news/news-articles/guardianship-reform-advances-after-judges-victims-share-concerns>.

NET video interview regarding guardian/conservator issues, *Safe, Secure Seniors, Legal Services to Protect Older Nebraskans* (June 16, 2013). Video supplied.

Todd Cooper, *In hectic pace of County Court, 4 Cases Mistakenly Transferred to Juvenile Court*, OMAHA WORLD HERALD (June 4, 2013). Copy supplied.

Steve Jordon, *Interlocks' Use Growing Installations of the Ignition Devices are Part of a Growth Industry How They Work*, OMAHA WORLD HERALD (June 2, 2013). Copy supplied.

Todd Cooper, *Task Force to Help Shore up Safeguards for Nebraska Wards-An Investigation follows W\_H Report on Guardian Accused of Looting from her Vulnerable Charges*, OMAHA WORLD HERALD (April 18, 2010). Copy supplied.

Jason Kuiper, *Two from Metro Area are Appointed to Judgeships*, OMAHA WORLD HERALD (March 11, 2007). Copy supplied.

States News Service, *Gov. Heineman Appoints Susan Bazis of Omaha to Douglas County Court* (March 9, 2007). Copy supplied.

Chris Burbach, *Men Waive Hearing in Triple Slaying*, OMAHA WORLD HERALD (January 10, 2007). Copy supplied.

Lynn Safranek, *Homicide Suspect Denied Bail: The Capital Charges Against the Omahan Stem from May '05 Killings of Three Men*, OMAHA WORLD HERALD (December 8, 2006). Copy supplied.

Lynn Safranek, *Death Penalty Sought in Triple Slaying*, OMAHA WORLD HERALD (December 6, 2006). Copy supplied.

Lynn Safranek, *2 Omahans Arrested in 2005 Triple Slaying: Omaha Police Worked with Agencies in Other States on the Case, Which has been Linked to a Major Drug*, OMAHA WORLD HERALD (December 6, 2006). Copy supplied (reprinted in multiple outlets).

Cara Pesek, *Horicon Teens Only Suspects*, Lincoln Journal Star (December 6, 2006). Copy supplied (reprinted in multiple outlets).

John Ferak, *Livers Savors Freedom: His Confession in a Double Homicide is Ruled Unreliable*, OMAHA WORLD HERALD (December 6, 2006). Copy supplied.

Martha Stoddard, *Court Rejects Bias Claim, Upholds Man's Life Term*, OMAHA WORLD HERALD (December 2, 2006). Copy supplied.

Todd Cooper, *Prosecutors Dismiss Murder Charge: His DNA on a Shoe at the Crime Scene Wasn't Enough to Convict*, OMAHA WORLD HERALD (November 16, 2006). Copy supplied (reprinted in multiple outlets).

Jennifer Greff, *Prison Possible for Violin Teacher after Verdict in Sex Assault Case*, OMAHA WORLD HERALD (September 26, 2006). Copy supplied.

Todd Cooper, *Murder Conspiracy Case May be Costly for Taxpayers*, OMAHA WORLD HERALD (December 10, 2005). Copy supplied.

Judith Nygren, *Conditions for Father to See Son Take Shape: A Therapist Recommends Two or Three Visits a Week at a Court Hearing, and a Judge Issues Several*, OMAHA WORLD HERALD (October 5, 2005). Copy supplied.

Karyn Spencer, *Ruling Gives Dad Chance at Custody: The State Made "Minimal Efforts" to Contact the Man, Whose Pit Bull Disfigured the Boy's Half Brother*,

OMAHA WORLD HERALD (June 11, 2005). Copy supplied (reprinted in multiple outlets).

Judith Nygren, *Man Sought Should Have Been in Jail*, OMAHA WORLD HERALD (May 21, 2005). Copy supplied.

Lyn Safranek, *Prisoner Put Out No Contract, Family Says*, OMAHA WORLD HERALD (May 19, 2005). Copy supplied.

Todd Cooper, *State Returns Kids to Slain Girl's Mother*, OMAHA WORLD HERALD (February 9, 2005). Copy supplied.

Todd Cooper, *Mother of Slain Child also was a Victim Battered Woman Syndrome Blamed; Situation was Complex*, OMAHA WORLD HERALD (February 5, 2005). Copy supplied.

Lynn Safranek, *Judge Sentences Teen, 17, Says She's Not Bad Person*, OMAHA WORLD HERALD (December 16, 2004). Copy supplied.

Todd Cooper, *Girl, 3, Paid with Her Life for 'Kid Stuff'*, OMAHA WORLD HERALD (December 10, 2004). Copy supplied.

Karyn Spencer and Jeremy Olson, *Foster System Leaves Lives in Limbo: The Investigation Finding Fathers Court Drags Growing Older in Nebraska Foster Care*, OMAHA WORLD HERALD (October 10, 2004). Copy supplied.

Todd Cooper, *Troubled Marriage Led to Bigger Trouble*, OMAHA WORLD HERALD (October 7, 2004). Copy supplied.

Todd Cooper, *Douglas County Justice Rooted in Rucker: The Man Who Fatally Shot an Omaha Officer One Year Ago is the Precedent No One Wants to Repeat.*, OMAHA WORLD HERALD (September 12, 2004). Copy supplied.

Kristin Zagurski, *Judge Undecided in Millard Beating Case Does Videotaping the Assault Show Premeditation or Immaturity?*, OMAHA WORLD HERALD (April 9, 2004). Copy supplied.

Todd Cooper, *Sentence of Death is Answer to Prayer*, OMAHA WORLD HERALD (December 10, 2003). Copy supplied.

*Gales Sentenced to Death Again*, AP Alert-Business (December 9, 2003). Copy supplied.

Todd Cooper, *For Gales, It's Again Death Row Second Sentence is Same as First Two Children Slain*, OMAHA WORLD HERALD (Dec. 9, 2003). Copy supplied.

Todd Cooper, *Slain Tot was Beaten Often, Prosecutors Say*, OMAHA WORLD HERALD (November 4, 2003). Copy supplied.

Chris Burbach, *'Ultimate Sin' Puts Killer Closer to Execution Jurors Find Aggravating Circumstances in Arthur Lee Gales' Strangling of Two Children*, OMAHA WORLD HERALD (Oct. 23, 2003). Copy supplied.

Karyn Spencer, *Police Auditor Panel Meets Citizen Complaint is 1st for Committee Closed - Door Session*, OMAHA WORLD HERALD (July 26, 2002). Copy supplied.

Karyn Spencer, *Suspect in Standoff Says Police Beat Him*, OMAHA WORLD HERALD (February 6, 2001). Copy supplied.

Karyn Spencer, *Man Charged After Standoff*, OMAHA WORLD HERALD (February 5, 2001). 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 April 2007 through December 2016, I was a County Court Judge in Douglas County Nebraska. I was appointed to this position by Governor David Heineman. After my appointment I stood for a retention vote in the first general election after my appointment (2010) and then again in 2016. The county court is a trial court of general jurisdiction. I handled criminal, civil, probate and protection order matters.

Since January 1, 2017, I have served as a United States Magistrate Judge for the District of Nebraska. I was appointed by the United States District Judges for the District of Nebraska after my name was forwarded to them, along with five other individuals, by a merit selection panel. The United States District Court for the District of Nebraska is an Article III court of limited jurisdiction, and the jurisdiction of United States magistrate judges is governed by 28 USC § 636. In our district the magistrate judges are in the rotation to be assigned civil cases as the primary judge. Prior to the start of discovery, the parties will have to affirmatively consent to the magistrate judge for them to continue handling the matter through a trial. If the parties do not consent to the magistrate judge then a district judge will be assigned but the magistrate judge also remains on the case. For the cases that a district judge is assigned to from the beginning, a magistrate judge is also assigned to the case. In criminal cases a district judge and a magistrate judge are assigned in every case. The district judges in our district refer the majority of matters in civil and criminal cases to the magistrate judges to handle. On civil matters, I handle all issues related to the case except for injunctions, motions to dismiss, motions for summary judgement, motions in limine, and the trial. On criminal matters we handle all issues related to a case except motions in limine and the trial.

- a. Approximately how many cases have you presided over that have gone to verdict

or judgment?

550. Approximately 545 were in state court and approximately 5 were in federal court.

i. Of these cases, approximately what percent were:

jury trials:	5%
bench trials:	95%

ii. Of these cases, approximately what percent were:

civil proceedings:	50%
criminal proceedings:	50%

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

See attached list of citations.

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

1. *Powell v. Doane University*, 8:20CV427 (D. Neb.), 2023 WL 4849150 (D. Neb. July 28, 2023).

In this case the plaintiff asserted claims for employment discrimination based on gender and retaliation in violation of Title VII and Title IX. The plaintiff was hired by the defendant to coach its women's basketball team. Approximately three months later, the plaintiff was terminated. The plaintiff maintains she was fired due to complaints she made about inadequate resources for female athletes compared to male athletes. The plaintiff contends her firing was also the result of her requesting assistance in handling problems with her assistant coach. The defendant denies the plaintiff's allegations and contends the plaintiff was terminated for performance-related issues. I handled numerous motions including motions to compel discovery and the request for sanctions, which I denied in this case. The district judge granted summary judgement to the defendants and the matter is currently on appeal.

Counsel for Plaintiff:

Jamie M. Hurst

Raymond R. Aranza



Valentine, O'Toole Law Firm  
 11240 Davenport Street  
 Omaha, NE 68154  
 (402) 330-6300

Danya Keller  
 Jill M. Zwagerman  
 Newkirk, Zwagerman Law Firm  
 515 East Locust Street  
 Suite 300  
 Des Moines, IA 50309  
 (515) 883-2000

Thomas J. Bullock  
 Bailey, Glasser Law Firm  
 309 East 5th Street  
 Suite 202b  
 Des Moines, IA 50309  
 (515) 416-9051

Counsel for Defendant:

Lily Amare  
 Susan K. Sapp  
 Cline, Williams Law Firm  
 233 South 13th Street  
 1900 US Bank Building  
 Lincoln, NE 68508-2095  
 (402) 474-6900

2. *United States v. Trouba*, Case No. 8:20CR316, 2021 WL 3639681 (D. Neb. July 26, 2021), *adopted*, 2021 WL 3631273 (D. Neb. Aug. 17, 2021), *aff'd*, 2023 WL 8539667 (8th Cir. Dec. 11, 2023).

Two boxes were placed outside the Douglas County Courthouse. There was a concern that the boxes could contain a bomb, so the bomb squad was brought in. While the bomb squad was going through their protocols regarding the boxes, law enforcement started an investigation to determine who placed the boxes outside of the courthouse. Through the investigation it was determined Mr. Trouba placed the boxes outside of the courthouse. Law enforcement made contact with the defendant, and he was in possession of a large amount of narcotics and money. The defendant was charged federally with conspiracy to distribute marijuana, tetrahydrocannabinol ("THC"), and 3,4-methylenedioxymethamphetamine and possession with intent to distribute marijuana, tetrahydrocannabinol ("THC"), and 3,4-methylenedioxymethamphetamine. The defendant filed a motion to suppress all statements and physical evidence as a result of the defendant's encounter with law enforcement. I held an evidentiary hearing and after reviewing the evidence,

I issued findings and a recommendation that the motion to suppress be denied. United States District Judge Buescher adopted my recommendation. Among other findings, I determined that probable cause existed to arrest the defendant where officers visually identified him from security video footage as a disruptive defendant in traffic court earlier that day, obtained his name from his attorney, and determined that Trouba had the same vehicle model registered to him as the vehicle observed to be involved with the boxes left outside the court. The defendant pled guilty to count I of the indictment and was sentenced to ten years in prison, plus forfeiture of his pickup truck, his home, and \$400,000. The defendant appealed the decision denying his motion to suppress to the Eighth Circuit, which affirmed.

Counsel for the United States:

Christopher Ferretti  
Kimberly Bunjer  
United States Attorney's Office  
1620 Dodge Street  
Suite 1400  
Omaha, NE 68102  
(402) 661-3700

Counsel for the Defendant:

Steven Lefler  
Matthew Burns  
Law Offices of Lefler Kuehl Burns  
1213 Jones Street  
Omaha, NE 68102  
(402) 342-4433

3. *United States v. Simpson*, Case No. 8:18CR333, 2020 WL 7130589 (D. Neb. Aug. 27, 2020), *adopted*, 2020 WL 5835134 (D. Neb. Oct. 1, 2020), *aff'd*, 44 F.4th 1093 (8th Cir. 2022), *cert. denied*, 143 S. Ct. 813 (2023).

The defendant, Mr. Simpson, was charged with kidnapping resulting in death and conspiracy to commit kidnapping in connection with the death of a woman on the Santee Sioux Indian Reservation. He filed a motion to suppress the statements he made to law enforcement related to the investigation. I held an evidentiary hearing and, after reviewing the evidence, I issued findings and a recommendation that the motion to suppress be denied. United States District Judge Buescher adopted my recommendation. The defendant went to trial before Judge Buescher and was convicted of kidnapping resulting in death and conspiracy to commit kidnapping. The defendant was sentenced to life in prison on both counts to run concurrently, a 5-year term of supervised release on each count and a \$200 special assessment. The defendant appealed his conviction and among the issues on appeal was the denial of his motion to suppress. The Eighth Circuit affirmed the denial of the motion to suppress. The defendant then filed a

petition for writ of certiorari to the United States Supreme Court, which was denied.

Counsel for the United States:

Sean P. Lynch  
Jody B. Mullis  
United States Attorney's Office  
1620 Dodge Street  
Suite 1400  
Omaha, NE 68102  
(402) 661-3700

Counsel for the Defendant:

Matthew M. Munderloh  
Johnson, Mock Law Firm  
9900 Nicholas Street, Suite 225  
Omaha, NE 68114  
(402) 346-8856

4. *Siemers v. BNSF Railway Company*, Case No. 8:17CV360 (D. Neb.), 2019 WL 1517094 (D. Neb. April 8, 2019), *objection overruled*, ECF No. 167 (D. Neb. May 7, 2019). Order supplied.

The plaintiff was an employee of the defendant and was injured at work. The plaintiff alleged that the defendant was required to give the plaintiff a reasonably safe place to work, reasonably safe tools and equipment for work, reasonably safe conditions for work, reasonably safe methods and procedures for work, reasonably safe supervision for work, and a duty to exercise ordinary care in connection with all aspects of the plaintiff's working environment. The plaintiff alleged that the defendant breached these duties of care owed to the plaintiff. The defendant denied they breached any duty of care. I handled a number of discovery disputes, including defendant's motion to compel, and the plaintiff filed an objection with the district court judge. The district judge found that my order was neither clearly erroneous nor contrary to law. The court went on to concur with my factual findings, analysis, and conclusions of law in all respects. This matter ultimately went to trial before a jury, which found in favor of the defendant.

Counsel for Plaintiff:

James L. Cox, Jr.  
Coo & Associates  
3801 East Florida Avenue  
Suite 905  
Denver, CO 80210  
(303) 756-3243

Jeffrey E. Chod  
Chod Law Firm  
P.O. Box 17727  
Denver, CO 80217  
(314) 541-5862

Counsel for Defendant:

Cash K. Parker  
Keith M. Goman  
M. Kelly Ledoux  
Hall, Evans Law Firm  
1001 17th Street  
Suite 300  
Denver, CO 80202  
(303) 628-3300

5. *Pals v. Weekly et al.*, 8:17CV27 (D. Neb.), 2018 WL 2272789 (D. Neb. May 17, 2018), 2018 WL 10229721 (D. Neb. Dec. 7, 2018), 2019 WL 7482263 (D. Neb. June 28, 2019).

This case arose out of an automobile accident which occurred in a construction zone for which IHC was the general contractor. IHC and its subcontractor, defendant D.P. Sawyer, Inc. ("DPS"), were purportedly responsible for monitoring the traffic control devices and signage used to route and signal traffic for the project. Plaintiffs contended that IHC and DPS were liable for the accident because they failed to exercise reasonable care in implementing, monitoring, and evaluating the traffic control plan. I handled numerous motions and discovery disputes in this case. I eventually had to impose sanctions against IHC for discovery violations. The plaintiffs and Mr. Weekly and Bohern Logistics reached a settlement. Mr. Weekly was employed by Bohern Logistics and was driving one of their semi-trailers when he ran into the back of the Pals' vehicle. The district judge granted summary judgment in favor of the remaining defendants, IHC and DPS, and the case was dismissed as to these two defendants.

Counsel for the Plaintiffs:

Thomas A. Grennan  
Gross, Welch Law Firm  
2120 South 72nd Street  
Suite 1500, Omaha Tower  
Omaha, NE 68124  
(402) 392-1500

Eric A. Ruzicka  
George G. Eck  
Michael D. Stinson

Nathan J. Ebnet  
 Vernle C. Durocher, Jr  
 Dorsey, Whitney Law Firm  
 50 South Sixth Street  
 Suite 1500  
 Minneapolis, MN 55402  
 (612) 340-2600

Counsel for Weekly, Jr. and Bohren Logistics, Inc.:

Margaret R. Jackson  
 Brouillette, Dugan Law Firm  
 810 South Dewey Street  
 North Platte, NE 69103  
 (308) 532-1600

Terrance O. Waite  
 Tyler J. Volkmer  
 Waite, Mcwha Law Firm  
 P.O. Box 38  
 116 North Dewey Street  
 North Platte, NE 69103  
 (308) 532-2202

Counsel for Interstate Highway Construction, Inc.:

Daniel B. Shuck  
 Shuck Law Firm  
 501 Pierce Street  
 Suite 205, US Bank Building  
 Sioux City, IA 51101  
 (712) 258-0121

Counsel for D.P. Sawyer, Inc.:

Bonnie M. Boryca  
 Thomas J. Culhane  
 Erickson, Sederstrom Law Firm  
 10330 Regency Parkway Drive  
 Suite 100  
 Omaha, NE 68114  
 (402) 397-2200

Patrick R. Guinan  
 Governmental Law  
 8040 Eiger Drive  
 Suite B  
 Lincoln, NE 68516  
 (402) 742-9239

6. *Tarrence et al. v. City of Lincoln et al.*, No. 4:16CV3056 (D. Neb.)

The plaintiffs, who alleged an illegal detention, search, and seizure by Lincoln police officers, brought claims under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution; under 42 U.S.C. §§ 1983 and 1988; the Nebraska Political Subdivision Tort Claims Act, Neb. Rev. Stat. §13-901 *et seq.*; and under Nebraska common law for intentional and/or negligent infliction of emotional distress, conversion, loss of companionship, negligence, negligent supervision, gross negligence assault, false imprisonment, false arrest and civil conspiracy. During the progression of the case the parties requested that I conduct a settlement conference. I conducted a settlement conference, which resulted in the resolution of the action and dismissal of the case.

Counsel for Plaintiffs:

Robert B. Creager  
Anderson, Creager Law Firm  
1630 K Street  
Lincoln, NE 68508  
(402) 477-8800

Counsel for City of Lincoln:

Christopher J. Connolly  
Jocelyn Golden  
City Attorney's Office  
555 South 10th Street  
Suite 300  
Lincoln, NE 68508  
(402) 441-7281

Counsel for Lincoln Police Department:

Tonya Peters  
Lincoln City Attorney's Office  
555 South 10th Street #300  
Lincoln, NE 68508  
(402) 441-7200

7. *Cooper et al. v. Redding*, Case No. 8:15CV441, 2017 WL 4699635 (D. Neb. Feb. 1, 2017)

The plaintiffs, who were citizens of Missouri, were rear-ended by defendant, who was operating a tractor-trailer owned by the second defendant, who was a Minnesota Corporation. The plaintiffs sued for their injuries and medical expenses. One of the plaintiffs claimed medical expenses of \$57,500 and lost income. The other plaintiff claimed medical expenses of \$14,500 and lost income. Each plaintiff asked for \$500,000 in the complaint. The plaintiffs

claimed that the driver of the tractor-trailer was negligent and careless in his operation of the tractor-trailer. One of the plaintiffs was a very good piano player and had a very unique way in which he played the piano. The injuries he sustained in the accident prevented him from playing the piano as he did prior to the accident. The parties consented to magistrate judge jurisdiction. I was assigned this case shortly after becoming a magistrate judge, and I held the pretrial conference and ruled on the motions in limine filed by the parties. I presided over a jury trial that lasted for three days and on February 1, 2017, a jury returned a verdict in favor of the plaintiffs in the amount of \$350,000 for one plaintiff, the piano player, and \$50,000 for the second plaintiff. The jury found that one of the plaintiffs, the driver, was 20 percent responsible for the accident, so their award was reduced by 20 percent.

Counsel for Plaintiffs:

C. Robert Buckley  
William Carr  
White, Graham Law Firm  
19049 East Valley View Parkway, Suite C  
Independence, MO 64055  
(816) 373-9080

Terrence J. Salerno  
Salerno Law Firm  
809 North 96th Street, Suite 100  
Omaha, NE 68114  
(402) 502-9002

Counsel for Defendant:

Joseph D. Thornton  
Smith, Peterson Law Firm  
P.O. Box 249  
Council Bluffs, IA 51502  
(712) 328-1833

8. *United States of America, for the use of Donald B. Murphy Contractors, Inc. v. Travelers Casualty and Surety Company of America et al.*, Case No. 8:15CV48, 2017 WL 3172754 (D. Neb. July 25, 2017)

Donald B. Murphy (DBM) was a second-tier subcontractor on a replacement project at Offut Air Force Base. DBM subcontracted to Treviicos South, Inc. (TIS), who in turn subcontracted to KiewitPhelps (KP). DBM alleged that they had performed a substantial amount of work on the project for which they remained unpaid. DBM sued Travelers, the surety for the project's Miller Act payment bond, to recover payment for DBM's work. DBM also sued KP, the co-obligor on the bond. The plaintiff sought \$2,057,818, plus interest. I took over this case from the magistrate judge that I replaced. I ruled on two motions to

compel the production of documents in this case. The matter was set for trial, but new facts came to light during the pre-trial conference that I held. During the pretrial conference the parties asked me to conduct a settlement conference. The parties that had issues left to be resolved were TIS and KP. I conducted a settlement conference with these parties, which resulted in the resolution of the action and dismissal of the case.

Counsel for Treviicos South, Inc.:

Scott D. Cessar  
600 Grant Street, 44th Floor  
Pittsburgh, PA 15219  
(412) 566-6000

Timothy Engler  
Rembolt, Ludtke Law Firm  
3 Landmark Centre  
1128 Lincoln Mall, Suite 300  
Lincoln, NE 68508  
(402) 475-5100

Counsel for KiewitPhelps:

Bartholomew McLeay  
Jeremy Fitzpatrick  
The Omaha Building  
1650 Farnam Street  
Omaha, NE 68102  
(402) 346-6000

9. *Thompson v. Johnson et al.*, Case No. CI15-18756, Douglas County Court, *aff'd*, 299 Neb. 819 (2018). Order supplied.

The plaintiff worked for the Millard Public Schools and her job was to organize construction projects within the district. One of the defendants, Mr. Johnson, was an independent contractor who did work for the Millard Public Schools. At some point plaintiff started having issues with the defendants. She also started having job performance issues. After a meeting with the school district, they sent plaintiff a letter outlining what was discussed at the meeting and what the school district's expectations were. Eventually, plaintiff was terminated from her employment. Plaintiff alleged she was terminated from her employment due to the defendants. The plaintiff sued the defendants for tortious interference with a business relationship, false light/invasion of privacy: disclosure of private facts, and intentional infliction of emotional distress. The plaintiff filed a motion for summary judgment, which I denied. The defendants filed a motion for summary judgment, which I granted. I granted summary judgment to the defendants because the evidence presented to the court showed that the plaintiff was terminated based on her own conduct and actions and not because of anything the



defendants did. The plaintiff appealed my granting of defendants' summary judgment motion to the Douglas County District Court. The district judge affirmed my decision. The plaintiff then appealed to the Nebraska Supreme Court which ruled that the district court did not err in affirming my granting of summary judgment in favor of the defendants.

Counsel for Plaintiff:

Ms. Thompson was *pro se*

Counsel for the Defendants:

Damien Wright  
Welch Law Firm, PC  
1299 Farnam Street #1220  
Omaha, NE 68102  
(402) 341-1200

10. *In the Matter of the Guardianship/Conservatorship of Potter*, Case No. Doc. 47 No. 308, Probate Division, Douglas County Court. Order supplied.

This was a surcharge action against Mr. Potter's successor guardians and successor conservators. Mr. Potter was about seven years old when his mother died in a car accident, and his aunt and uncle took him in and became his guardians. This placement did not work out, so Mr. Potter moved in with another aunt and uncle, who then became his successor guardians. Initially, a bank was Mr. Potter's conservator because there was a large amount of money to oversee from a life insurance policy from Mr. Potter's mother. Eventually, the successor guardians petitioned to have the bank removed as conservator to save fees and have themselves appointed as the successor conservators. This was approved by Judge Atkins, who previously handled this matter. When Mr. Potter was in college, it was discovered that the successor guardians and successor conservators had spent almost all of Mr. Potter's money and a surcharge action was filed on his behalf by an attorney that he hired. Judge Atkins had retired, so as the presiding judge of the Douglas County Court, I handled the matter. After a bench trial, I found that the successor guardians and successor conservators should be surcharged \$117,694.

Counsel for Mr. Potter:

Karen S. Nelson  
Carlson & Burnett, LLP  
17525 Arbor Street  
Omaha, NE 68130  
(402) 216-0615

Counsel for the successor guardians and successor conservators:

David J. Lanphier  
Broom Clarkson Lanphier & Yamamoto

4535 Leavenworth Street #1  
Omaha, NE 68106  
(402) 346-8323

Counsel for intervenor, Ms. Kennedy:

Joseph C. Byam  
Byam & Hoarty  
8990 West Dodge Road #317  
Omaha, NE 68114  
(402) 397-0303

- 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. *West Point Auto & Truck Center, Inc. v. Klitz*, Case No. 8:20CV194 (D. Neb. May 6, 2022). Order supplied.

Counsel for Plaintiff:

David L. Edwards  
Hagen, Wilka Law Firm  
600 South Main Avenue, Suite 102  
Sioux Falls, SD 57104  
(605) 334-0005

Jeff W. Wright  
Jessica A. Board  
Heidman, Redmond Law Firm  
1128 Historic 4th Street  
P.O. Box 3086  
Sioux City, IA 51102  
(712) 255-8838

Counsel for Defendants:

Alexis S. Mullaney  
Fiedler Law Firm  
17330 Wright Street, Suite 102  
Omaha, NE 68130  
(402) 316-3060

Danielle Sund  
Nebraska Department of Health and Human Services-Lincoln  
301 Centennial Mall South  
3rd Floor  
Lincoln, NE 68509

(402) 310-9359

MaKenna J. Dopheide  
Gerber, Ciano Law Firm  
599 Delaware Avenue  
Suite 100  
Buffalo, NY 14202  
(646) 650-5155

Robert A. Mooney  
Mooney, Lenaghan Law Firm  
450 Regency Parkway Drive, Suite 320  
Omaha, NE 68114  
(402) 218-1168

2. *Villarreal v. Bigsby*, Case No. 8:20CV355, 2022 WL 2835775 (D. Neb. June 17, 2022), *aff'd*, 2022 WL 17819849 (8th Cir. Dec. 20, 2022)

Counsel for Plaintiff:  
Mr. Villarreal was *pro se*

Counsel for Defendants:  
Jeffery R. Kirkpatrick  
Governmental Law  
8040 Eiger Drive, Suite B  
Lincoln, NE 68516  
(402) 742-9245

3. *Bell Flyers, Inc. v. Husker Aircraft Repair Inc.*, Case No. CI11-20754, Douglas County Court. Order supplied.

Counsel for Plaintiff:  
John M. Heida  
Heida Law Firm  
P.O. Box 208  
Bellevue, NE 68005  
(402) 345-0535

Counsel for Defendant:  
George Babcock  
Law Office of Evelyn N. Babcock  
3240 North 159th Avenue  
Omaha, Nebraska 68116  
(402) 216-4419

4. *Prince Global Sports, LLC v. Clarke et al.*, Case No. CI13-19451, Douglas

County Court. Order supplied.

Counsel for Plaintiff:

John Lingelbach and John Matson  
Koley Jessen P.C., L.L.O.  
1125 South 103rd Street #800  
Omaha, NE 68124  
(402) 343-3764

Counsel for Defendants:

Giacomo Bossa  
8700 West Flagler Street, Suite 120  
Miami, FL 33174  
(305) 559-1600

Angela Madathil  
285 South 68th Place, Suite 322  
Lincoln, NE 68510  
(402) 964-1489

5. *In the Matter of the Guardianship of Ballew et al.*, Case No. PR 10-1385,  
Probate Division, Douglas County Court. Order supplied.

Counsel for the Natural Mother:

Peter Garofalo  
1823 Harney Street, Suite 100  
Omaha, NE 68102  
I am unable to locate a phone number

Counsel for the Guardian:

Thomas F. Hoarty Jr.  
Byam & Hoarty  
10330 Regency Parkway Drive, #100  
Omaha, NE 68114  
(402) 397-0303

6. *Manning's Truck Brokerage, Inc. v. Dino's Trucking, Inc.*, Case No. CI09-  
30538, Douglas County Court. Order supplied.

Counsel for Plaintiff:

Matthew Heffron  
Brown & Brown LLC  
2027 Dodge Street #501  
P.O. Box 40  
Omaha, NE 68101  
(402) 346-5010

Counsel for Defendant:

Renee Eveland  
Cline Williams Wright Johnson & Oldfather, LLP  
233 South 13th Street  
1900 US Bank Building  
Lincoln, NE 68508  
(402) 474-6900

7. *Thomas v. Consolidated Concrete*, Case No. CI10-28060, Douglas County Court. Order supplied.

Counsel for Plaintiff:

Mr. Thomas was *pro se*

Counsel for Defendant:

Allison Balus  
Baird Holm LLP  
1700 Farnam Street #1500  
Omaha, NE 68102  
(402) 344-0500

8. *In the Matter of the Guardianship of Castonguay*, Case No. PR 10-24, Probate Division, Douglas County Court. Order supplied.

Counsel for the Petitioners:

James T. Blazek  
Blazek & Gregg, PC, LLO  
1405 North 205th Street, #120  
Omaha, NE 68022  
(402) 496-3432

Counsel for the Natural Mother:

Cassidy Chapman  
821 South 36th Street  
Omaha, NE 68105  
(402) 885-4810

9. *Wagner v. City of Omaha Police and Fire Retirement System*, Case No. CI08-25077 and No. CI08-25846, Douglas County Court. Order supplied.

Counsel for Plaintiff:

David Christensen  
Marks Clare & Richards, LLC  
11605 Miracle Hills Drive #300  
P.O. Box 542005

Omaha, NE 68154  
(402) 492-9800

Counsel for Defendant:

Jo Cavel  
Deputy City Attorney  
804 Omaha/Douglas Civic Center  
1819 Farnam Street  
Omaha, NE 68183  
(402) 444-5115

10. *Williams v. West Point Partners, LLC*, Case No. CI08-24704, Douglas County Court. Order supplied.

Counsel for Plaintiff:

Joseph Daly  
Senior Certified Law Clerk Matthew Milligan  
11422 Miracle Hills Drive, #400  
Omaha, NE 68154  
(402) 951-7235

Counsel for Defendant:

Amy Van Horne  
Kutak Rock LLP  
The Omaha Building  
1650 Farnam Street  
Omaha, NE 68102  
(402) 346-6000

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

*Bartunek v. United States*, Case No. 8:17CR28, 2017 WL 9480189 (D. Neb. Aug. 9, 2017), *adopted*, 2017 WL 4564724 (D. Neb. Oct. 11, 2017), *aff'd*, 969 F.3d 860 (8th Cir.), *cert. denied*, 141 S. Ct. 1439 (2021), *denying post-conviction relief*, 2022 WL 20727795 (D. Neb.), *denying certificate of appealability*, 2023 WL 6475447 (8th Cir.), *cert. denied*, 2023 WL 6378299 (U.S. Oct. 2, 2023)

*Simpson v. United States*, Case No. 8:18CR333, 2020 WL 7130589 (D. Neb. Aug. 27, 2020), *adopted*, 2020 WL 5835134 (D. Neb. Oct. 1, 2020), *aff'd*, 44 F.4th 1093 (8th Cir. 2022), *reh'g en banc denied*, 2022 WL 4295416 (8th Cir. Sept. 19, 2022), *cert. denied*, 143 S. Ct. 813 (2023)

*Woitaszewski v. United States*, Case No. 8:20CR308, 2022 WL 447229 (D. Neb. Jan. 6, 2022), *adopted*, 2022 WL 447211 (D. Neb. Feb. 14, 2022), *aff'd*, 2023 WL 3244606 (8th Cir. May 4, 2023), *cert. denied*, 2023 WL 8007588 (U.S. Nov. 20, 2023)

*Johnson v. United States*, Case No. 8:19CR87, 2019 WL 4920712 (D. Neb. Aug. 5, 2019), *adopted*, 2019 WL 4565259 (D. Neb. Sept. 20, 2019), *aff'd*, 70 F.4th 1115 (8th Cir. 2023), *reh'g en banc denied*, 2023 WL 4825684 (8th Cir. July 27, 2023), *cert. denied*, 2023 WL 8532050 (U.S. Dec. 11, 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.

To the best of my knowledge and based upon a review of my records and publicly available databases, I have identified the following responsive cases, but it is possible that there are a few that I have been unable to identify.

*United States v. Onate*, No.8:23CR3, 2023 WL 8378935 (D. Neb. Sept. 7, 2023), *adopted in part and rejected in part*, 2023 WL 8015887 (D. Neb. Nov. 20, 2023). The defendant filed a motion to suppress evidence obtained as a result of his stop and detention at the Trailways bus station in Omaha, Nebraska. After a hearing I recommended to the district judge that he grant in part and deny in part the defendant's motion to suppress. I found that the defendant's initial contact with law enforcement was consensual, and that he voluntarily consented to have his suitcase searched and have a dog sniff his backpack and suitcase. I found that the defendant being placed in handcuffs was reasonable and there was reasonable suspicion to detain the defendant. I found that any statements the defendant made while in handcuffs should be suppressed. I also found, under the facts of this case, that the defendant was not under arrest, but only being detained, while the officers held onto the defendant's backpack and suitcase while they obtained a warrant for these items. I found there was probable cause for the issuance of the search warrant. The defendant objected and the district court sustained in part and overruled in part the defendant's objections. The district court found that my conclusions were correct as to the defendant not being detained at the beginning of the encounter, the defendant initially gave valid consent to the dog sniff, and the statements the defendant made while awaiting the results of the dog sniff should be suppressed. The district court however found that once the defendant was placed in handcuffs the defendant was not just being detained but under arrest and the officers did not have probable cause to arrest the defendant at this point. Therefore, any evidence obtained following his arrest must be suppressed. The case was then dismissed on the government's motion.

*United States v. Peck*, No. 8:20CR227, 2023 WL 2352846 (D. Neb. Jan. 3, 2023), *rejected*, 2023 WL 2351697 (D. Neb. Mar. 3, 2023). The defendant filed a motion to dismiss a criminal charge against him for being a felon in possession of a firearm. The defendant argued that the firearm charge was unconstitutional as applied to him because he was using the firearm to protect his home, his prior

felony conviction was for a nonviolent offense, and he is no more dangerous than the typical, law-abiding citizen. The defendant was also charged with possession with intent to distribute a controlled substance and using or possessing a firearm in furtherance of drug trafficking. I found the facts surrounding the defendant's possession of the firearm are inevitably bound up and intertwined with evidence concerning the drug count. I found that the defendant's as-applied challenge could not be decided without resolving factual issues related to the charged offenses, which must be left to the finder of fact. Therefore, I recommended to the district judge that the motion be deferred until after the trial. The district judge found he could make a pretrial determination and denied the defendant's motion, citing the defendant's dangerousness based on the nature of his drug trafficking convictions and other violent convictions.

*Alliance Group, Inc. v. Zurich American Insurance Company*, Case No. 8:21CV188 (D. Neb. Sept. 28, 2021), *objection sustained*, 2021 WL 5325883 (D. Neb. Nov. 16, 2021), *reconsideration denied*, 2022 WL 1406670 (D. Neb. Jan. 7, 2022). Defendant filed a motion to compel arbitration. One of the parties challenged the delegation of the question of arbitrability to an arbitrator. The Nebraska Supreme Court has previously found that delegation clauses in agreements concerning or relating to insurance policies are invalid under Nebraska law. I found that Nebraska, rather than New York, law applied, that the threshold question of arbitrability remains with the court, and that the arbitration provisions in the agreement were invalid under Nebraska law. I recommended that the district judge deny the motion. The defendants filed an objection. The district judge sustained the objection, finding that New York law applied, and granted defendant's motion to compel arbitration.

*United States v. Campbell*, No. 8:19CR324, 2021 WL 3684579 (D. Neb. May 13, 2021), *adopted in part and rejected in part*, 2021 WL 3012872 (D. Neb. July 16, 2021), *appeal dismissed*, 2021 WL 6689164 (8th Cir. Sept. 15, 2021). The defendant filed a motion to suppress evidence obtained from a traffic stop and subsequent detention, arrest, and search of his motor vehicle. After a hearing, I recommended to the district judge that he grant the defendant's motion in part and deny it in part. I found there was reasonable suspicion to detain the defendant, there was probable cause for the warrantless search of the vehicle, that any statements defendant made while in the police cruiser violated *Miranda*, and the statements defendant made at the police station were made after he voluntarily waived *Miranda* and his statements were not coerced. The defendant filed an objection. The district judge adopted my findings in part, sustained the defendant's objection in part and granted the motion to suppress in part. The district judge found that the statements the defendant made at the police station were made after the defendant knowingly and intelligently waived his *Miranda* rights. However, the district court found the defendant did not voluntarily waive his *Miranda* rights because the officer's pre-*Miranda* statements about the possibility of defendant's girlfriend being arrested were threatening and coercive, and therefore any subsequent statements and physical evidence must be



suppressed. The defendant ultimately pled guilty to conspiracy to distribute 50 grams or more of actual methamphetamine. He was sentenced to 180 months in prison, 10 years of supervised release and \$100 special assessment.

*United States v. Moreno*, No. 8:18CR258, 2019 WL 1795594 (D. Neb. Mar. 19, 2019), *objections sustained*, 2019 WL 1792302 (D. Neb. Apr. 24, 2019), *aff'd*, 988 F.3d 1027 (8th Cir. Feb. 24, 2021). The defendant filed a motion to suppress evidence obtained as a result of her stop, arrest and search at the Trailways bus station in Omaha, Nebraska. After a hearing I recommended to the district judge that he grant the defendant's motion to suppress finding that there was not probable cause when they placed defendant under arrest and any evidence or statements after this were fruits of the unlawful arrest and not admissible. The government filed an objection. The district judge granted the government's objections finding that the initial frisk of the defendant did not violate her Fourth Amendment rights and officers had probable cause to arrest the defendant. The Eighth Circuit Court of Appeals affirmed the district court.

*Harris v. Union Pacific Railroad Company*, Case No. 8:16CV381, 2018 WL 3801718 (D. Neb. Aug. 9, 2018), *objections sustained*, 2019 WL 418418 (D. Neb. Feb. 1, 2019). Defendant filed a motion for protective order to preclude plaintiffs from conducting discovery on defendant's color vision field test. The defendant argued that this discovery is irrelevant because the amended complaint does not mention this testing and none of the named plaintiffs suffer from vision issues. The defendant also sought to exclude an expert report because it indicates that the color vision test is an improper method to test an employee's visual capacity. The defendant argued that because the color vision test is not relevant to the claims in this lawsuit, then this expert report has no bearing on this case and should be stricken. I granted the motions, finding that the color vision test was not relevant to the case. The plaintiffs filed an objection to my order and district judge granted their objection while also ruling on a number of other motions that were pending in front of him. The district judge found that the defendant was not entitled to a protective order. The district judge found that the plaintiffs were entitled to conduct discovery on the color vision test and after discovery the defendant could file another motion, if it chose to do so. The district judge also found plaintiff's expert rebuttal report to be relevant and found it should not be excluded.

*Klein v. TD Ameritrade Holding Corporation*, No. 8:14CV396, 2018 WL 3997126 (D. Neb. July 12, 2018), *adopted in part and rejected in part*, 327 F.R.D. 283 (D. Neb. Sept. 14, 2018), *rev'd*, 995 F.3d 616 (8th Cir. 2021). On the plaintiff's motion for class certification, I found that the predominance requirement had not been satisfied and the superiority requirement had not been satisfied. I found that class certification was not appropriate. I recommended to the district judge that class certification be denied. The plaintiff objected to my order. The district judge did not adopt my recommendation and found that the plaintiff had demonstrated each of the prerequisites for certification and certified the class. On appeal, the Eighth Circuit Court of Appeals reversed the district

court's order certifying a class and remanded for further proceedings. The district court granted plaintiff's renewed motion to certify a class. The defendant has appealed this ruling to the Eighth Circuit Court of Appeals where it remains pending.

*United States v. Bailey*, No. 8:17CR61, 2017 WL 3701612 (D. Neb. July 17, 2017), *objections sustained*, 2017 WL 3700881 (D. Neb. Aug. 24, 2017). The defendant filed a motion to suppress all evidence that was obtained during a traffic stop of the vehicle she was driving. After a hearing I recommended the district judge grant the motion because I found the officer did not have probable cause to believe the defendant committed a traffic violation. Therefore, everything that came after the traffic stop was fruit of the poisonous tree and needed to be suppressed. I further found that the officer did not have reasonable suspicion to detain the defendant while waiting for a drug dog to arrive to conduct a dog sniff on her vehicle. The government filed an objection. The district judge granted the government's objection. The district judge found there was probable cause to stop defendant's vehicle and that there was reasonable suspicion to extend the traffic stop for a drug dog to arrive and conduct a dog sniff of defendant's vehicle.

*United States v. Bartunek*, No. 8:17CR28, 2017 WL 9480189 (D. Neb. Aug. 9, 2017), *adopted in part*, 2017 WL 4564724 (D. Neb. Oct. 11, 2017), *aff'd*, 969 F.3d 860 (8th Cir.), *cert. denied*, 141 S. Ct. 1439 (2021). The defendant filed multiple motions. He filed a motion to suppress, a motion to compel, a motion for reconsideration and motion to compel, and a motion for a *Franks* hearing. I entered a findings and recommendation order recommending that the district court judge deny all of the defendant's motions. The defendant filed an objection. The district court judge adopted my recommendations on all matters, except as to my denial of defendant's motion to amend his previously-filed motion to suppress.

*United States v. Bartunek*, Case No. 8:17CR28 (D. Neb. Feb. 28, 2017). The defendant was charged with distribution of child pornography and possession of child pornography. Upon consideration of the required statutory factors – including that defendant had no criminal convictions and had lived in Nebraska his entire life with the last 20 years living in Omaha, and that he owned the home he was living in and was employed – I ordered the defendant released pre-trial with significant conditions. He was required to wear an ankle monitor and was restricted to his home at all times except for medical treatment, religious services, meetings with his public defender and court appearances pre-approved by his supervising officer. The defendant could not have contact with anyone under the age of 18. The defendant could not loiter near schools, parks, video arcades, amusement parks or other places used by persons under the age of 18. The defendant could not be employed or participate in any volunteer activities that involved anyone under the age of 18. The defendant could not use any device that could connect to the internet. The defendant could only have access to a computer for word processing. The defendant was required to submit to

unannounced examinations of computer hardware, and software which may include retrieval and copying of all data from defendant's computer. This included the seizure of such electronic equipment, if necessary, for purposes of monitoring compliance with the conditions of release. The defendant could not obtain or possess materials, in paper or other form, which include visual depictions of any person under the age of 18, or image appearing to be such a person, clothed or unclothed, engaging in or simulating any sexually explicit conduct as defined by law. The defendant, his place of residence and his vehicle were subject to being searched by any law enforcement officer or pretrial services. The defendant could not possess or use any alcohol. The defendant could not use or possess a narcotic drug unless proscribed by a licensed medical practitioner. The defendant was also subject to alcohol and drug testing. The government appealed my release order, and the district judge ordered the defendant detained. The defendant was convicted at trial, and sentenced to 204 months on Count I and 120 months on Count II to be served concurrently. The defendant also received a 15-year term of supervised release, \$1,000 in restitution and \$200 special assessment. Orders supplied.

*Edwards v. Barnes et al.*, Case No. SC13-967, County Court of Douglas County, (Dec. 4, 2013), CI14-71, District Court of Douglas County (Apr. 8, 2014). This was an appeal from a small claims trial that I presided over. The plaintiff sued for payment for work performed on the defendants' house that occurred during a hailstorm in Omaha, and defendants claimed that they had paid him in full. After a trial, I found that the defendants did owe additional money for the work the plaintiff had performed. The defendants gave the plaintiff a certified check in the amount of \$1,415 in court after my ruling. I found the defendants still owed the plaintiff \$1,939. On appeal, the district court judge found there was not sufficient evidence to find the defendants owed plaintiff the additional money. The district judge modified my judgment and found that the plaintiff had been fully paid by the defendants. Orders supplied.

*McVeigh v. Hauptman O'Brien Wolf & Lathrop, P.C.*, Case No. CI13-19567, County Court of Douglas County (Apr. 3, 2014), Case No. CI14-3625, District Court of Douglas County, Case No. CI13-19567 County Court of Douglas County (Feb. 24, 2016), Case No. CI 16-4023, District Court of Douglas County (Nov. 3, 2016). The defendant personal injury law firm represented an individual in a personal injury case. During the case, the defendant's client fell behind on his rent and agreed to pay his landlord out of any personal injury proceeds he received. When the personal injury case did not settle in a reasonable length of time, the landlord commenced eviction proceedings against the defendant's client. The defendant did not represent its client in the eviction proceeding. The parties reached an agreement in the eviction proceedings. The settlement agreement provided that the defendant's client would pay his landlord out of his personal injury settlement within six months of the date of the settlement agreement. The personal injury case was settled more than six months after the settlement agreement and, per its client's request, the defendant did not pay its client's

landlord. The landlord sued the law firm for not paying him for the back rent its client owed per the settlement agreement. The defendant filed a motion to dismiss. At the motion hearing the parties submitted exhibits that went outside the complaint and pleadings, so I converted the motion to dismiss to a motion for summary judgment. After converting the motion to dismiss into a motion for summary judgment, I granted the motion and denied the plaintiff's motion to amend. The district court found I erred in converting the motion to dismiss to a motion for summary judgment and remanded the case for me to grant the motion to dismiss and deny the motion to amend the complaint. The plaintiff appealed to the Nebraska Court of Appeals, which found that neither it, nor the district court had jurisdiction because my order was not a final appealable order. Once the case was returned to county court, the defendant filed a motion for summary judgment on its counterclaim. I granted the motion. The plaintiff appealed this order. A different district judge found that I abused my discretion in determining, that as a matter of law, the plaintiff had pursued a frivolous action. The district judge remanded for action in accordance with his order. A hearing was held, after I left the state court bench, on the mandate and to release the bond. Another judge ordered the bond released and for the defendant to file a new pretrial order. No pretrial order was ever filed, and the case remains pending. My orders, the district court judges' orders, and appellate order are supplied.

*State of Nebraska v. Johnson*, Case No. CR12-29886, County Court of Douglas County (Feb. 8, 2013), Case No. CR13-738, District Court of Douglas County (Sept. 19, 2013). This was an appeal from a criminal trial on the charge of caretaker neglect and disorderly conduct. After a bench trial, I found the defendant guilty of both counts and placed her on probation. The defendant appealed her convictions. The district judge reversed both convictions, finding without explanation that there was error appearing on the record made in the County Court and that the judgment and conviction of the defendant should be reversed. Orders supplied.

*Davenport v. Law d/b/a L.A. Auto Sales, Inc.*, SC12-289, County Court of Douglas County (April 9, 2012), Case No. CI12-4423, Douglas County District Court (Aug. 24, 2012). This was an appeal from a small claims trial that I presided over. This case involved the purchase of a vehicle. I found that the plaintiff was not the correct party because her name was not on the vehicle or loan. I also referenced the fact that the plaintiff had brought this same action in 2008. The plaintiff originally filed the case in January 2008, and, after a trial and appeal, the case was dismissed. The plaintiff filed the instant case again in March 2012, and I dismissed it on *res judicata* grounds. The district court found that I erred in dismissing the case because the 2008 appellate decision was not on the merits. The district court's order did not address my finding that the plaintiff was not the proper party. The district court judge reversed the matter for a new trial. Orders supplied.

*Pitt v. Kanne Korp, L.P.*, Case No. CI09-22452, County Court of Douglas County

(Apr. 16, 2010), Case No. Doc 1107 No. 482, District Court of Douglas County (Jan. 19, 2011), Orders supplied. The district court affirmed in part and reversed in part my order on defendant's motion for summary judgment. The plaintiff sued for the return of a security deposit. The defendant filed a counterclaim seeking unpaid rent, locksmith charge, and pest control charge. I granted in part and denied in part the defendant's motion for summary judgment on its counterclaim. I granted summary judgment as to past rent and the locksmith charge but denied summary judgment as to the pest control bill. The district court found I was correct in assessing the locksmith service fee, the denial of the pest control bill and the denial of attorney fees but reversed on the issue of amount of rent due minus the balance of the security deposit. Orders supplied.

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

As a state court judge I issued more than 130,000 decisions. All of my opinions were unpublished, but are available on the State of Nebraska case management system, which is called JUSTICE. They can be accessed by the public at the courthouse or at Nebraska.gov.

As a federal magistrate judge I have issued approximately 9,514 orders, findings and recommendations, opinions, and memorandum orders. The majority of these are routine matters that are not available on Westlaw and/or Lexis. All of my decisions are stored in the electronic case management system maintained by the United States District Court for the District of Nebraska.

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

I have not issued any significant opinions on 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 federal court requires that all judges create a recusal list. If a case involving a company or person on my recusal list is filed, the court's electronic filing/docketing system will not choose me to be assigned to the case. I also review all cases that are filed to determine if I have a conflict. I have recused myself from approximately 10 cases. This has been because I have either represented a party, I knew or was related to one of the parties, or attempted contact was made to me regarding the case.

I was asked to recuse in the following cases:

*Deremer et al. v. Owens*, CI15-4762, County Court of Douglas County. Mr. Owens was a pro se party in a protection order case. Mr. Owens made oral motions for me to recuse myself every time I made a decision he did not like. I would let him voice his issues on the record but ultimately he never provided a basis for me to recuse myself. Therefore, I did not recuse myself.

*Clark v. Heyenga*, Doc. 1102 No. 549, District Court of Douglas County. An individual I knew attempted to tell me about a party in this case. I immediately terminated the conversation. I notified the parties' attorneys about the attempted contact so they could talk to their clients outside of my presence to see if they wanted me to recuse myself. The parties talked with their attorneys and one side requested that I recuse myself, which I did. I was also assigned the guardianship case regarding the petitioners and their grandchildren (PR 09-1689). They asked me to recuse myself from this case as well, which I did.

I recused sua sponte in the following cases:

*United States v. Dolph and Norwood*, 8:22cr72 (D. Neb.). I signed search warrants in this case. After the defendants were indicted, it was learned that they, or other individuals on their instructions, came to Omaha to find the agent who signed the affidavit in the search warrant and the judge who signed the search warrant and confront them. Once I was made aware of this I recused myself from the case.

*AuSable Capital Partners, LLC v. Sati Exports India Private Limited et al.*, 8:21cv129 (D. Neb.). This case involves a company that my stepbrother used to own, and that his father, my stepfather, owned prior to his death. Due to this, I recused myself from the case.

*United States v. Lockett*, 8:21cr192 (D. Neb.). Due to my representation of Mr. Lockett on a state court criminal case I had to recuse myself.

*Frazier v. Smith et al.*, 8:20cv520 (D. Neb.). I previously represented Mr. Frazier on a number of matters. At a status hearing, which was held by telephone conference, I realized that the plaintiff was a former client of mine. I then recused myself from the case.

*Livers v. Schenck et al.*, 8:08CV107 (D. Neb.). I was re-assigned this federal court case due to the retirement of Judge Thalken. Due to my representation of Mr. Livers in his state criminal case, I had to recuse myself.

*Sampson v. Schenck et al.*, 8:07cv155 (D. Neb.). Mr. Sampson was a co-defendant in the state case I represented Mr. Livers in. Due to this I recused myself from his case.

Unknown name and case number. The former Executive Director at my grandmother's assisted living facility called me one evening and attempted to talk to me regarding his son who got arrested for driving under the influence. I told him I could not talk about any pending cases and could not help him in any way, and I terminated the conversation. The next morning, I went to the prosecutor to inform him of what happened and asked him if we could figure out who the son was. We were able to figure out who he was, and I was to be his arraignment judge, so I recused myself and another judge handled the matter. I cannot remember the defendant's name or case number of the individual.

*State v. Kline*, case number unknown. I was the trial judge assigned to the case. When the case was called for trial, the defendant and his witnesses approached and one of the witnesses was a friend of mine from high school. I disclosed the conflict to the parties on the record and recused myself. Another judge handled the matter.

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

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

I have not held any other public offices other than my judicial office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have not held a position in a political campaign. I co-hosted a fundraiser for Governor David Heineman for his re-election campaign in 2006.

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

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

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

I have not served as a clerk to a judge.

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

Bazis Law Offices, P.C., L.L.O.  
209 South 19th Street, Suite 500  
Omaha, Nebraska 68102

I was a solo practitioner from September 2001 until April 2007 when I was appointed to be a Douglas County Court Judge.

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

1993 – 1994  
Paragas Law Offices  
9202 West Dodge Road, #307  
Omaha, Nebraska 68114  
Associate Attorney (part time)

1994 – 1996  
Douglas County Public Defender  
1717 Harney Street  
Omaha, Nebraska 68183  
Assistant Public Defender

1996 – 1999  
Kelly, Lehan and Hall, P.C.



7134 Pacific Street  
Omaha, Nebraska 68106  
Associate Attorney

1999 – 2001  
Paragas Law Offices  
9202 West Dodge Road, #307  
Omaha, Nebraska 68114  
Associate Attorney

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

As an attorney, I did not serve as a mediator or arbitrator. As a magistrate judge I do conduct settlement conferences.

b. Describe:

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

When I was an Assistant Douglas County Public Defender from 1994 to 1996 I handled only misdemeanor cases. Every case I was assigned was set for trial.

When I worked for Kelly, Lehan and Hall, P.C. from 1996 to 1999 I handled: domestic; personal injury; workers compensation; product liability; asbestos; bankruptcy; corporate; probate; protection order; misdemeanor; felonies; juvenile court matters; and general civil litigation, which included both plaintiff and defense work.

At Paragas Law Offices, from 1999 to 2001, I continued to handle: domestic; protection orders; personal injury; probate; corporate; bankruptcy; misdemeanor; felonies; juvenile court matters; and general civil litigation, which included both plaintiff and defense work. When I first worked for Paragas Law Offices as a part-time associate in 1993 to 1994, I handled criminal hearings, conducted research, and wrote memos.

At Bazis Law Offices, from 2001 until 2007, I handled: misdemeanor; felonies, in both state and federal courts; juvenile court matters; protection order; personal injury; corporate; probate; domestic; and general civil litigation, which included both plaintiff and defense work.

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

When I had my own practice, Bazis Law Offices, PC, LLO, from 2001 to 2007, I represented individuals and businesses in criminal, civil, domestic, and juvenile matters. As to civil matters I handled both plaintiff- and defense-side matters.

When I worked in private practice at Kelley, Lehan & Hall and Paragas Law, from 1996 to 2001, I represented individuals and businesses in criminal, civil, domestic, and juvenile matters. As to civil matters I handled both plaintiff and defense matters.

When I worked in the public defender's office, from 1994 to 1996, I represented individuals who had matters set for misdemeanor trials.

- 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 throughout my career has been in litigation. I regularly appeared in court throughout my career.

As a Douglas County Public Defender, from 1994 to 1996, my practice was 100 percent criminal. I was in court every day handling 10 to 20 trials per day. I handled approximately 1,000 cases per year.

At Kelly, Lehan & Hall, P.C., from 1996 to 1999, my practice was originally 90 percent civil and 10 percent criminal. Eventually, it became 75 percent civil and 25 percent criminal. At the time I left this firm, I was in court almost every day.

At Paragas Law Offices, P.C., from 1999 to 2001, I was in court almost every day.

At Bazis Law Offices, P.C. from 2001 to 2007, I was in court almost every day handling between 5 and 15 hearings per day.

- i. Indicate the percentage of your practice in:

1. Federal courts:	15%
2. State courts of record:	80%
3. Other courts:	0%
4. Administrative agencies:	5%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	50%
2. criminal proceedings:	50%

- d. State the number of cases in courts of record, including cases before

administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried approximately 675 cases to verdict in front of an administrative hearing officer. I was sole counsel in each.

I tried approximately 150 cases to verdict in courts of record. I was sole counsel in almost all matters. I was co-counsel on one case while I was at Kelly, Lehan & Hall.

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.

*Gales v. Nebraska*, 546 U.S. 947 (2005) (petition for writ of certiorari). Copy supplied.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

1. *State of Nebraska v. Livers*, District Court of Cass County, Case No. CR 06-56.

In 2006, Mr. Livers was charged in Cass County District Court, along with his cousin, with two counts of first-degree murder. Mr. Livers had given a false confession implicating himself and his cousin in the crime. We hired an expert to look at our client's confession. Our expert and the state's expert, under whom our expert trained, came to the same conclusion—that our client gave a false confession. The experts consulted the Cass County Attorney on their findings. There were also statements from another

individual charged stating repeatedly that our client and his cousin had nothing to do with this crime. Their comments, the determinations of the experts, along with irregularities with the DNA evidence ultimately led the government to dismiss the case against my client and his cousin. The two individuals who actually committed the murders were convicted, and the crime lab supervisor involved in the case was convicted of planting evidence. I was co-counsel on this case and was brought in after my co-counsel was appointed due to my experience with DNA evidence. We each individually reviewed all of the evidence and investigated the case. We filed a motion for bill of particulars, a motion for discovery, a motion to suppress statements, a motion to produce, a motion for DNA testing, and a motion for sanctions for violating the discovery order. We both participated in depositions and we both were present and participated in any substantive court hearings.

Judge: District Court of Cass County, Nebraska: Randall Rehmeier

Co-Counsel:

Julie Bear  
Reinsch Slattery Bear & Minahan P.C., L.L.O.  
545 Main Street  
P.O. Box 489  
Plattsmouth, NE 68048  
(402) 296-6996

Counsel for the Plaintiff:

The Honorable Nathan Cox (formerly at the Cass County Attorney's Office)  
1210 Golden Gate Drive  
Papillion, NE 68046  
(402) 539-5950

2. *State v. Roy T. (In re Interest of Dylan Z.)*, 13 Neb. App. 586 (2005). Appeal from the juvenile court of Douglas County.

I represented the biological father in this case. My client's parental rights were terminated by Douglas County Juvenile Court Judge. This case started because when the minor child was born he tested positive for amphetamines. The minor was removed from his mother's care and placed into foster care. The Department of Health and Human services worked toward reunification with the mother but that was unsuccessful. On September 4, 2003, the juvenile court terminated the minor's mother's parental rights. On August 22, 2002, the biological mother had completed an affidavit of paternity indicating my client was the minor's father. The case worker assigned to the case did not make contact with my client. My client was unaware that he was the father of this child until the state's petition to terminate his parental rights was filed and he received a letter about it from the caseworker. My client immediately called the case worker and asked for visitation. The request was denied. A trial was conducted in this matter and the juvenile judge found there was enough evidence to terminate my client's parental rights. My client appealed the case to the Nebraska Court of Appeals. I wrote the brief and

participated in oral arguments before the Court of Appeals. The Court of Appeals found that my client's parental rights should not have been terminated. The court found that his lack of contact with the minor was directly attributable to my client's lack of knowledge that he was the minor's father. This case gave guidance to caseworkers as to what they need to do in making contact with natural fathers who may not know they have a child. The case was remanded, and my client was granted visitation with the minor. The court worked on re-unification with the minor and my client.

Judges:

Nebraska Court of Appeals: Rett Inbody, John Irwin and Richard Sievers

Separate Juvenile Court, Douglas County, Nebraska: Elizabeth Crnkovich

Counsel for Plaintiff:

Kim Hawekotte (formerly at the Douglas County Attorney's Office)  
Deputy County Administrator, Juvenile Services  
1819 Farnam Street  
Omaha, NE 68183  
(402) 444-6431

3. *State of Nebraska v. Jones*, Douglas County District Court, Doc. 166 No. 598 (CR10-9058814).

In 2005, Mr. Jones was charged in Douglas County District Court with five counts of assault in the first degree, three counts of assault in the second degree and eight counts of use of a weapon in the commission of a felony for a total of 16 counts. Mr. Jones was accused of firing a gun into a coffee shop that was being used at night as a dance hall. There were questions as to whether the description of the perpetrator could have been Mr. Jones. In addition, there was an issue about a witness's identification of the defendant. I filled a motion to suppress the identification of my client by one of the victims in the case. An evidentiary hearing was held on this motion. The district judge granted my motion and the identification of my client by the victim was suppressed and not allowed to be used at trial. I also participated in numerous depositions prior to the trial. After a jury trial the defendant was found not guilty on all counts.

Judge: Douglas County District Court, Nebraska: John Hartigan

Counsel for Plaintiff:

Sandra Denton  
Douglas County Attorney's Office  
101 Hall of Justice  
1701 Farnam Street  
Omaha, NE 68183  
(402) 444-7040

4. *State of Nebraska v. Lockett*, Doc. 165 No. 598 (CR10-9057816).

In 2005, Mr. Lockett was charged in Douglas County District Court with first-degree murder and use of a weapon in the commission of a felony. A robbery occurred during a drug deal and an individual was shot and killed. I conducted the investigation of my client's case and reviewed all of the discovery. I filed a plea in abatement, a motion to suppress, and motions in limine. I filed a motion to sever the defendant's case from the co-defendant, which was granted. I took numerous depositions. Ultimately, I convinced the prosecutors to dismiss this case. The co-defendant went to trial first and was convicted. Mr. Lockett's case was dismissed after the co-defendant was convicted.

Judge: Douglas County District Court, Nebraska: Patricia Lamberty

Counsel for Plaintiff:

Shawn Hagerty  
Douglas County Attorney's Office  
101 Hall of Justice  
1701 Farnam Street  
Omaha, NE 68183  
(402) 444-7040

5. *United States v. Brown*, 8:05CR161 (D. Neb.).

In 2005, Mr. Brown was charged in federal court with receiving a firearm while under indictment for a felony. I filed a motion to suppress, arguing that my client's vehicle was subjected to an illegal search because the search occurred without a warrant and without valid consent. Magistrate Judge Gossett recommended that the motion to suppress be granted because the government had not proven, by a preponderance of the evidence, that the defendant voluntarily consented to a search of his vehicle. Judge Smith Camp adopted Judge Gossett's recommendation. The case was dismissed.

Judges:

United States Magistrate Judge: F.A. Gossett  
United States District Judge: Laurie Smith Camp

Counsel for Plaintiff:

Christian Martinez  
Assistant United States Attorney  
1620 Dodge Street, Suite 1400  
Omaha, NE 68102  
(402) 661-3700

6. *State of Nebraska v. Howard*, Douglas County District Court, Doc. 160 No. 806, (CR10-9053045).

In 2003, Mr. Howard was charged in Douglas County District Court with murder in the second degree and use of a firearm in the commission of a felony. He was accused of shooting someone who was walking down the street. My client was in the area when the shooting occurred but had no connection to the victim. There was another individual that was in the area at the time the shooting occurred and had a motive to hurt the victim. I conducted the investigation of my client's case and reviewed all of the discovery. I conducted numerous depositions in this case and participated in a motion to suppress a photograph, which the district judge sustained. I also filed motion in limine and a subpoena duces tecum. After a jury trial, my client was found not guilty.

Judge: Douglas County District Court, Nebraska Gary Randall

Counsel for Plaintiff:

The Honorable Tressa Alioth (formerly at the Douglas County Attorney's office)  
1701 Farnam Street  
Omaha, NE 68183  
(402) 444-7012

7. *State of Nebraska v. Gales*, Douglas County District Court, Case No. Doc. 153 No. 391 (CR10-9045654), *aff'd*, 265 Neb. 598 (2003) (direct appeal), *State v. Gales*, 269 Neb. 443 (2005) (appeal after new penalty phase hearing.), *cert. denied*, 546 U.S. 947 (2005).

Mr. Gales was charged in Douglas County District Court in 2001 with two counts of first-degree murder and one count of attempted second-degree murder. Mr. Gales had a trial, was convicted, and was sentenced to death. During his first appeal, his attorney filed a motion to withdraw, which the district court granted. In 2003, I was appointed by Judge Moran to represent the defendant while his conviction was on appeal. During the pendency of his original appeal to the Nebraska Supreme Court, but before it was briefed and argued, the United States Supreme Court decided *Ring v. Arizona*, 536 U.S. 584 (2002), holding that the Sixth Amendment requires a jury, rather than a trial judge, to determine the presence of aggravating factors as required for the imposition of the death penalty. Subsequent to oral argument and submission of the appeal to the Nebraska Supreme Court, the Nebraska Legislature enacted amendments to Nebraska's capital sentencing statutes in response to the *Ring* decision. Mr. Gales' case presented the first opportunity for the Nebraska Supreme Court to assess the impact of *Ring* on Nebraska's capital sentencing statutes and to determine the applicability of the recent amendments by the legislature to those statutes. The Nebraska Supreme Court found that, because a judge determined the aggravating factors during sentencing and not a jury, his death sentence violated *Ring*. Therefore, the Nebraska Supreme Court vacated Mr. Gales' death sentences and sent the case back to the district court for a new penalty phase hearing and have a jury decide whether there were any aggravating factors. This was the first trial of its kind in Nebraska after the *Ring* decision. I tried the aggravating factors case to the jury, which found there were aggravating factors. I then argued mitigating factors to a three-judge panel. The three-judge panel re-sentenced Mr. Gales to death. I appealed his case to the Nebraska Supreme Court, which upheld his conviction. Mr.

Gales' petition for a writ of certiorari was then denied by the United States Supreme Court.

Judges:

United States Supreme Court: John Roberts Jr., John Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, David Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer.

Nebraska Supreme Court: John Wright, William Connolly, John Gerrard, Kenneth Stephan, Michael McCormack, Lindsey Miller-Lerman and John Hendry.

Douglas County District Court, Nebraska: Gerald Moran

Counsel for Plaintiff:

Donald Kleine  
Douglas County Attorney  
Douglas County Attorney's Office  
101 Hall of Justice  
1701 Farnam Street  
Omaha, NE 68183  
(402) 444-7040

8. *State of Nebraska v. Patterson*, Douglas County District Court, Case No. Doc. 151 No. 205 (CI10-9043480).

In 2000, Mr. Patterson was charged in the Douglas County District Court with assault in the second degree, robbery and two counts of use of a weapon in the commission of a felony. I investigated the case, reviewed discovery and conducted numerous depositions. I filed a plea in abatement and motions in limine. After a jury trial, Mr. Patterson was found not guilty on all counts.

Judge: Douglas County District Court, Nebraska: J. Patrick Mullen

Counsel for Plaintiff:

Sandra Denton  
Douglas County Attorney's office  
101 Hall of Justice  
1701 Farnam Street  
Omaha, NE 68183  
(402) 444-7040

9. *Christmas W. v. Serena H.*, 2000 Neb. App. Lexis 121 (2000).

I represented the natural mother of the children. The State of Nebraska filed a petition in the Douglas County Juvenile Court that my client's home was observed to be in a filthy



and unwholesome condition. My client's children were placed in the custody of the Department of Health and Human Services. Two weeks later the children were returned to the family home. Ultimately, my client admitted to the allegations in juvenile court. In October 1997, a supplemental petition was filed by the state with new allegations and further alleging that the termination of my client's parental rights was in the best interests of the children. A trial was held, and during the trial I argued that the state should not be allowed to introduce the children's statements that were made to a psychologist through the psychologist's testimony. The judge overruled my objection and allowed the testimony. At the conclusion of the trial the court dismissed the new allegations and refused to terminate my client's parental rights. The state appealed. The natural mother cross-appealed asserting that the court erred in admitting the psychologist's testimony regarding the children's statements to her. The Court of Appeals affirmed the juvenile court's order refusing to terminate my client's parental rights and affirming the juvenile court's determination that there was insufficient evidence of the new allegations against my client. The Court of Appeals also granted my cross-appeal and found the juvenile court committed plain error in admitting the psychologist's testimony.

Judges:

Nebraska Court of Appeals: John Irwin, Edward Hannon and Theodore Carlson

Separate Juvenile Court, Douglas County, Nebraska: Elizabeth Crnkovich

Counsel for Plaintiff:

The Honorable Vernon Daniels (formerly at the Douglas County Attorney's Office)  
Hall of Justice, #600  
1701 Farnam Street, Courtroom #5  
Omaha, NE 68183  
(402) 444-3305

10. *State v. Edmondson*, Douglas County District Court Case No. Doc.144 No. 251 (CR10-9036568), *aff'd*, 257 Neb. 468, 598 N.W.2d 450 (1999).

In 1999, Ms. Edmondson was charged in Douglas County District Court with one count of unlawful possession with intent to deliver a controlled substance. Ms. Edmondson challenged the warrant to search her home, claiming the original affidavit was insufficient to establish probable cause. The officers in this case submitted another affidavit to the judge after the warrant was issued but before the warrant was executed. The judge reviewed the new affidavit but did not issue a new warrant or amend the previously issued warrant. The district court judge denied the motion to suppress. Ms. Edmondson pled guilty to unlawful possession with intent to deliver a controlled substance but reserved the right to appeal her motion to suppress. After her conviction Ms. Edmondson timely appealed the denial of her motion to suppress to the Nebraska Supreme Court. The Nebraska Supreme Court held that the affidavit submitted to establish probable cause for the issuance of a search warrant did not establish probable cause, and that a search warrant cannot be supplemented after the warrant has been

issued. It further held that the judge, when presented with additional information establishing probable cause, should have rescinded the original warrant and issued a new warrant, or amended the original warrant by interlineation to indicate that the new affidavit was considered, and findings were made thereon. The court nonetheless upheld the defendant's conviction because the officers acted in objectively reasonable good faith reliance on the warrant, but noted such reliance would not be possible going forward.

Judges:

Nebraska Supreme Court: John Hendry, John Wright, William Connolly, John Gerrard, Kenneth Stephan, Michael McCormack and Lindsey Miller-Lerman

District Court of Douglas County, Nebraska: Robert Burkhard

Counsel for Plaintiff:

Ray Daniel  
Douglas County Attorney's Office  
101 Hall of Justice  
1701 Farnam Street  
Omaha, NE 68183  
(402) 444-7040

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

I have handled thousands of criminal cases that resolved themselves in a plea or dismissal and civil and domestic cases that resolved themselves short of trial. I have also handled hundreds of motions to suppress alleging violations of an individual's constitutional rights. While at Kelley, Lehan & Hall, I handled the claim forms for asbestos litigation in Nebraska.

As a magistrate judge I have worked with the other magistrate judges to revise court procedures for civil case management practices. This has resulted in consistency between the magistrate judges and improved the experiences of attorneys with the court because they no longer need to know different procedures based on which magistrate judge is assigned to the case. I also worked with our IT department and our local jails to devise procedures for remote hearings during the pandemic.

As a state court judge and a magistrate judge I have served on a number of committees which focus on improving the legal system. I am a member of the Consortium of Tribal, State and Federal Courts whose purpose is to better the working relationship between the

tribal, state, and federal courts and improve the public's trust and confidence in the various court systems with the ultimate goal of improving access to justice for all court users in Nebraska.

I am also a member of the State and Federal Judicial Council. The goal of this Council is to encourage Nebraska courts to work together to improve the efficiency in the judicial system. Through this Council, I helped facilitate the sharing of resources between state and federal probation departments. This resulted in state reporting centers being able to be used by our federal probation officers and our defendants who are on some form of supervised release. This has made reporting to probation easier for those living in rural areas and more programs are now available to federal defendants in rural areas.

As a state court judge I was the presiding judge for the Douglas County Court for four years. I was responsible for overseeing the delivery of county court services within Douglas County, which is the largest court in the state. I supervised the judicial administrator and worked with her to manage the work of approximately 82 staff members. I also provided direction regarding local district policy to ensure the state statutes, Nebraska Supreme Court rules, and the policies of the Administrative Office of the Courts were properly carried out. Additionally, I coordinated the work of all the county court judges within Douglas County and oversaw the implementation of technology into the courtrooms. I also brought mediation in the Douglas County to help with small claims cases, at no charge to the litigants. Further, I worked with the Douglas County Department of Corrections to strengthen its pre-trial release program and assisted in bringing the 24/7 sobriety program to Douglas County.

As a county court judge, I was heavily involved in guardianship and conservatorship issues across Nebraska. I worked closely with the Nebraska State Bar Association to improve the way courts operate in these matters in order to provide better protection for our most vulnerable citizens. In 2010, I was appointed by the Chief Justice of the Nebraska Supreme Court to a task force to examine the guardianship and conservatorship system in Nebraska. The recommendations from the task force led me to work with the legislature, Nebraska State Bar Association, guardians and conservators, clerk magistrates, adult protective services, service providers, and others to create statutory changes and re-write and create new Nebraska Supreme Court Rules and forms for guardianships and conservatorships. I co-chaired the Nebraska Supreme Court Commission on Guardianships and Conservatorships from its inception in 2012, until I resigned as a state court judge on December 31, 2016. The Commission consistently worked to have statutes and court rules passed or changed to better protect vulnerable adults. One issue the Commission continued to voice was the need for additional guardians and conservators. In 2014, the Nebraska Legislature passed legislation that created the Office of the Public Guardian. Nebraska was the last state to enact this type of legislation. On January 1, 2015, I was appointed by the Administrative Offices of the Courts to serve on the Advisory Council on the Public Guardianship. I was elected chair of the council by its members. The Advisory Council assisted in getting the Office of the Public Guardian up and running and helped create its policies and procedures.

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.

My investments are in mutual funds in order to avoid any conflicts of interest. The only entities likely to present conflicts of interest are JJJ Corporation, owned by my stepbrother and stepsister, and Sunderland Brothers Company, formerly

owned by my stepbrother. I would recuse myself from any cases that would be filed regarding these companies.

- 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 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 relevant laws, canons, rules, practices, and guidelines. In addition, our court has us create a recusal list and this list is cross-checked with any new cases that are filed. If I happen to get assigned one of the cases on my recusal list, I will enter an order recusing myself and ask the Chief Judge to reassign the case. I would also continue to check all new cases to which I am assigned to see whether there are any potential conflicts of interests. Depending on the type of conflict, I would either enter an order recusing myself from the case and ask the Chief Judge to reassign the case or I would notify the parties of the potential conflict and let them determine if they want to request that I recuse myself.

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.

When I was a lawyer, I took cases through the Legal Aid referral service. I also accepted criminal and juvenile court appointments for fees substantially less than I would charge a client. I also helped my court appointed clients with matters I was not court appointed to handle. I did not receive any type of compensation for the additional work. I was guardian and conservator for an individual who did not have anyone else to serve in this capacity. I did not charge for my services.

As a judicial officer, I have worked on numerous committees to improve the legal system. I am a member of the Consortium of Tribal, State and Federal Courts whose purpose is to better the working relationship between the tribal, state, and federal courts and improve the public's trust and confidence in the various court systems with the ultimate goal of improving access to justice for all court users in Nebraska. I am also a member of the State and Federal Judicial Council. The goal of this Council is to encourage Nebraska courts to work together to improve the efficiency in the judicial system. During my time on the state bench, I was appointed to the Supreme Court Commission on Guardianship and Conservatorships. The Commission consistently worked to have statutes and court rules passed or changed to better protect vulnerable adults.

26. **Selection Process:**

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

In October 2022, U.S. Senator Deb Fischer's office announced an application process for applicants to fill a judicial vacancy in the District of Nebraska. I submitted my application materials on December 9, 2022, and was interviewed by Senator Fischer on January 9, 2023. On February 3, 2023, I was notified that I would be one of the names that was being forwarded to the White House for consideration. On February 23, 2023, I interviewed with attorneys from the White House Counsel's Office. On September 28, 2023, I was informed by officials at the White House Counsel's Office that my application would proceed. Since September 30, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 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 Susan Mason Bazis**  
**Nominee to be United States District Judge for the District of Nebraska**

1. **Are you a citizen of the United States?**

Response: Yes.

2. **Are you currently, or have you ever been, a citizen of another country?**  
 a. **If yes, state countries and dates of citizenship.**  
 b. **If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**  
 i. **If not, please explain why.**

Response: No.

3. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No, it is not appropriate for a judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument.

4. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No, it is not appropriate for a judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time.

5. **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, it is not appropriate to consider foreign law in constitutional interpretation.

6. **Please explain whether you agree or disagree with the following statement: “The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach.”**

Response: I disagree with this statement. A judge’s values, opinions, or beliefs should never play into a judge’s decision or interpretation of the Constitution or a statute. A judge is obligated to apply the law fairly and impartially to the facts of the case. This

includes binding precedent of the United States Supreme Court and Eighth Circuit. I have faithfully applied binding precedent in the matters that have come before me as a sitting judge for the last 16 years and would continue to do so if confirmed as a District Judge.

7. **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: No. It is improper for a judge to take this approach. It is improper for a lower court judge to issue an opinion knowing it is contrary to binding precedent. For the last 16 years, and the last 6 years as a magistrate judge, I have faithfully applied United States Supreme Court precedent and Eighth Circuit precedent and would continue to do so if confirmed as a District Judge.

8. **Do you consider a law student's public endorsement of or praise for an organization listed as a "Foreign Terrorist Organization," such as Hamas or the Popular Front for the Liberation of Palestine, to be disqualifying for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Yes.

9. **In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University's student bar association wrote "Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary." Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Yes.

10. **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 a sentence of a federal court may seek relief from the sentence as follows: by filing a direct appeal after his sentence, either to the District Judge, if they were sentenced on a misdemeanor by a magistrate judge under Federal Rules of Criminal Procedure 58(g)(2) or to the Eighth Circuit Court of Appeals if a District Judge sentenced the defendant on a misdemeanor, Federal Rules of Criminal



Procedure 58(g)(1), or on a felony under 28 U.S.C. §1291; by filing a motion attacking the sentence or that they had ineffective assistance of counsel under 28 U.S.C. §2255; by filing a petition for a writ of habeas corpus under 28 U.S.C. §2241; by filing a motion for compassionate release 28 U.S.C. §3582(c); by filing a motion to modify a sentence based on a sentencing range that was subsequently lowered by the Sentencing Commission pursuant to 28 U.S.C. §944(o), 28 U.S.C. §3582(2)

- 11. 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: Petitioner, Students for Fair Admissions, sued separately Harvard College and the University of North Carolina regarding their race-based admissions programs arguing that they violate Title VI of the Civil rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. The trial courts found both programs were permissible under the Equal Protection Clause and the United States Supreme Court precedent. In the Harvard case the First Circuit affirmed, and the United States Supreme Court granted certiorari. In the University of North Carolina case the United States Supreme Court granted certiorari before judgment of the appellate court. The United States Supreme Court decided these cases jointly and found that both colleges admission programs were unconstitutional and violated the Equal Protection Clause of the Fourteenth Amendment.

- 12. 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 magistrate judge I made hiring decisions for my law clerk, my judicial assistant and my courtroom deputy. As the presiding judge of the County Court of the Fourth Judicial District in Nebraska I participated with a group to hire the chief bailiff for the court. Also, in my capacity as a judge I participated with a group who conducted interviews with candidates for the Director of the Office of Public Guardian. As an attorney I made hiring decisions for employees in my office.

- 13. 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.

14. **Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

Response: No.

15. **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.**

16. **Under current Supreme Court and Eighth Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?**

Response: Yes. *See Students for Fair Admission, Inc. v. President and Fellow of Harvard College and University of North Carolina*, 600 U.S. 181 (2023); *Mark One Electric Company, Inc. v. City of Kansas City, Missouri*, 44 F.4th 1061 (8th Cir. 2022); *Kohlbeck v. City of Omaha, Neb.*, 447 F.3d 552 (8th Cir. 2006); *Sherbrook Turf, Inc. v. Minnesota Dept. of Transp.*, 345 F.3d 964 (8th Cir. 2003).

17. **Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.**

Response: The sole member-owner of a limited liability company that provided website and graphic design services sought to enter into the wedding website business. The petition brought a pre-enforcement action against members of the Colorado Civil Rights Commission and the Colorado Attorney General, seeking to enjoin the defendants from forcing the plaintiffs, through enforcement of the Colorado Anti-Discrimination Act, to convey on wedding websites messages inconsistent with the member-owner's religious belief. The United States Supreme Court found that the wedding websites member-owner sought to create for her customers qualified as pure speech under the First Amendment and that it would violate the First Amendment for defendants to compel the member-owner to create speech she did not believe.

18. **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. *See Barnette* has not been overruled. In addition, the United States Supreme Court in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), relied on portions of the quoted language from *Barnette* as set forth in your question above.

19. **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: As recognized by the Supreme Court, deciding whether a regulation is content based or content neutral is “not always a simple task.” *Turner Broad Sys. v. FCC*, 512 U.S. 622 (1994). The primary question in evaluating content neutrality, “is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). Some key considerations include whether the law, by its terms, distinguishes favored speech from disfavored speech based on the ideas or views expressed; whether the law confers benefits or burdens without reference to the views expressed; and if the purpose of the law is to regulate speech because of its message. *See Turner*, 512 U.S. at 645.

20. **What is the standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: “True threats” of violence are not protected speech. *Virginia v. Black*, 538 U.S. 343 (2003). In *Counterman v. Colorado*, 600 U.S. 66 (2023), the Supreme Court held that the First Amendment requires proof that the defendant had some subjective understanding of the threatening nature of his statements. The Supreme Court found that a reckless standard “strikes the right balance, offering enough breathing space for protected speech, without sacrificing too many of the benefits of enforcing laws against true threats.” *Id.* (quoting *Elonis v. United States*, 575 U.S. 732 (2015)).

21. **Under Supreme Court and Eighth 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 recognized in *Thompson v. Keophane*, 516 U.S. 99 (1995) that “the proper characterization of a question as one of fact or law is sometimes slippery.” However, the Supreme Court has stated that cases involving purely legal issues “typically involve contests not about what occurred, or why an action was taken or

omitted, but disputes about the substance and clarify of pre-existing law.” *Ortiz v. Jordan*, 562 U.S. 180 (2011). A purely legal issue can be resolved with reference only to the undisputed facts. *Id.* See also *Washington v. Denney*, 900 F.3d 549 (2018). Questions of fact, however, involve a determination of whether the evidence could support a finding that certain conduct occurred. See *Glaze v. Byrd*, 721 F.3d 528 (8th Cir. 2013).

**22. Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?**

Response: In a sentencing a judge is required to consider all of the factors in 18 U.S.C. § 3553(a) prior to sentencing someone. Congress has not assigned any one factor greater weight than any other. My personal beliefs have no role in any sentencing decision. If I were confirmed I would apply the factors in 18 U.S.C. § 3553(a), the United States Sentencing Guidelines, and any United States Supreme Court and Eighth Circuit precedent regarding the sentencing factors before imposing a sentence. I would also consider the presentence report and the argument of the government and the defendant.

**23. Please identify a Supreme Court decision from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting on whether a Supreme Court decision was “well-reasoned.” See Code of Conduct for United States Judges, Canon 3(A)(6). I have faithfully applied Supreme Court precedent as a Magistrate Judge and a State Court Judge and would continue to do so if I am confirmed as a District Judge.

**24. Please identify a Eighth Circuit judicial opinion from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting on whether a Eighth Circuit decision was “well-reasoned.” See Code of Conduct for United States Judges, Canon 3(A)(6). I have faithfully applied Eighth Circuit precedent as a Magistrate Judge and a State Court Judge and would continue to do so if I am confirmed as a District Judge.

**25. 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, 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.”

**26. Is 18 U.S.C. § 1507 constitutional?**

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting on the constitutionality of a statute. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I would apply any Supreme Court and Eighth Circuit precedent, as I have done for the last 16 years, if I were asked to determine the constitutionality of this statute. I would note that the United States Supreme Court upheld a state statute modeled after 18 U.S.C. § 1507. *See Cox v. Louisiana*, 379 U.S. 559 (1965).

**27. Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**

**a. Was *Brown v. Board of Education* correctly decided?**

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, due to it being highly unlikely that the issue of *de jure* racial segregation in public schools will be relitigated, consistent with the Code of Conduct for United States Judges, I believe I am permitted to provide my personal opinion that *Brown* was correctly decided.

**b. Was *Loving v. Virginia* correctly decided?**

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, due to it being highly unlikely that the issue of inter-racial marriage will be relitigated, consistent with the Code of Conduct for United States Judges, I believe I am permitted to provide my personal opinion that *Loving* was correctly decided.

**c. Was *Griswold v. Connecticut* correctly decided?**

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision of *Griswold v. Connecticut* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

**d. Was *Roe v. Wade* correctly decided?**

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The United States Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). The decision in *Dobbs* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

**e. Was *Planned Parenthood v. Casey* correctly decided?**

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The United States Supreme Court overturned *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). The decision in *Dobbs* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

**f. Was *Gonzales v. Carhart* correctly decided?**

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Gonzales v. Carhart* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

**g. Was *District of Columbia v. Heller* correctly decided?**

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *District of Columbia v. Heller* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

**h. Was *McDonald v. City of Chicago* correctly decided?**

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *McDonald v. City of Chicago* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

**i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. See Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

**j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. See Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *New York State Rifle & Pistol Association v. Bruen* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

**k. Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. See Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Dobbs v. Jackson Women's Health* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

**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: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. See Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Students for Fair Admissions, Inc. v. University of North Carolina and Students for Fair Admission Inc. v. President & Fellows of Harvard College* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

**m. Was *303 Creative LLC v. Elenis* correctly decided?**

Response: As a Magistrate Judge and a judicial nominee, it is generally improper for me to comment on whether I believe a United States Supreme Court decision was decided correctly. See Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *303 Creative LLC v. Elenis* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

**28. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

Response: In evaluating whether a regulation or statutory provision infringes on Second Amendment rights, I would apply the United State Supreme Court's holding in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), which requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding. "Determining whether a historical regulation is proper analogue for a distinctly modern firearm regulation requires a determination of whether the two regulations are relevantly similar." *Id.* "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* "The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* I would faithfully follow *Bruen* and all other binding United States Supreme Court and Eighth Circuit precedent.

**29. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."**

- a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Are you currently in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

**30. The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."**

- a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Are you currently in contact with anyone associated with the Alliance for Justice? If so, who?**

Response: No.



- c. **Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

31. **Arabella Advisors is a progressive organization founded “to provide strategic guidance for effective philanthropy” that has evolved into a “mission-driven, Certified B Corporation” to “increase their philanthropic impact.”**

- a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**

Response: Not Applicable.

- c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

- d. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

32. **The Open Society Foundations is a progressive organization that “work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens.”**

- a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

- c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

33. **Fix the Court is a “non-partisan, 501(C)(3) organization that advocates for non-ideological ‘fixes’ that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people.”**

- a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Are you currently in contact with anyone associated with Fix the Court? If so, who?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Fix the Court? If so, who?**

Response: No.

34. **Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: In October 2022, U.S. Senator Deb Fischer's office announced an application process for applicants to fill a judicial vacancy in the District of Nebraska. I submitted my application materials on December 9, 2022, and was interviewed by Senator Fischer on January 9, 2023. On February 3, 2023, I was notified that I would be one of the names that was being forwarded to the White House for consideration. On February 23, 2023, I interviewed with attorneys from the White House Counsel's Office. On September 28, 2023, I was informed by officials at the White House Counsel's Office that my application would proceed. Since September 30, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me. On January 10, 2024 my name was forwarded to the Senate by President Biden.

35. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

36. **During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

37. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

38. **During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

39. **During your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

40. **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.

41. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: On February 23, 2023, I interviewed with attorneys from the White House Counsel's Office. On September 28, 2023, I was informed by

officials at the White House Counsel's Office that my application would proceed. Since September 30, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice.

**42. Please explain, with particularity, the process whereby you answered these questions.**

Response: I received these questions from the Department of Justice, Office of Legal Policy (OLP) on January 31, 2024. Upon receipt of these questions, I drafted responses to the questions and forwarded them to OLP. I then made limited edits, finalized my responses, and forwarded them to OLP.

Senate Judiciary Committee  
Nominations Hearing  
January 24, 2023  
Questions for the Record  
Senator Amy Klobuchar

For Susan M. Bazis, nominee to be U.S. District Judge for the District of Nebraska

Since 2017, you have served as a federal magistrate judge and were appointed by the sitting Article III judges of the District of Nebraska, who were appointed by presidents of both parties. Before that, you served as a Douglas County Judge for nearly a decade. During this time, you have presided over 550 cases that have gone to verdict or judgment.

- **How do you typically approach a new case, or an area of the law that you may be unfamiliar with?**

Response: When a new case is filed, I review the complaint to determine the issues involved. Then, when the answer is filed, I review it to see what defenses are being raised. If I am faced with an area of law that I am not as familiar with, I will research that area of the law. I first look at any relevant statutes. I then look to determine if there is any United States Supreme Court or Eighth Circuit precedent regarding the issues presented. If there is not any binding precedent, I would look to determine if there is any persuasive, non-binding authority from other circuit or district courts.

- **Do your personal views about the parties before you ever play a role in your approach to a case or to the application of the law to the facts?**

Response: No.

Senator Hirono Questions for the Record for the January 24, 2024, Hearing in the Senate Judiciary Committee entitled "Nominations."

**QUESTIONS FOR SUSAN M. BAZIS**

**Sexual Harassment**

As part of my responsibility as a member of this committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

QUESTIONS:

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

Response: No.

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

Response: No.

Senator Jon Ossoff  
Questions for the Record for Judge Susan M. Bazis  
January 24, 2024

1. **Will you pledge to faithfully apply the law without bias and without regard for your personal policy or political preferences?**

Response: Yes.

2. **How will you approach First Amendment cases?**

Response: I would first consider relevant Supreme Court and Eighth Circuit precedent to determine whether the constitutional provision's text has been interpreted. If it has not, I would look at the plain meaning of the text of the constitutional provision. If the text of the constitutional provision is unambiguous, I would apply its plain meaning and my inquiry would end there. If the text of the constitutional provision is ambiguous, I would look to the rules of statutory construction authorized by the Supreme Court and Eighth Circuit. I would also consult any persuasive, non-binding authority from other circuit and district courts.

- a. **In your view, why are First Amendment protections of freedom of speech, publication, assembly, and exercise of religion vital in our society?**

Response: As a Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal views I might hold. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I would apply any Supreme Court and Eighth Circuit precedent, as I have done for the last 16 years, to any First Amendment issues that come before me.

3. **In your experience, why is it critical that indigent defendants have access to public defense under the Sixth Amendment right to counsel and precedent set in *Gideon v. Wainwright*?**

Response: For a defendant to have a fair trial and be treated equal under the law, an indigent defendant needs to have competent, zealous representation, just as someone who can afford a lawyer. This promotes a fair system of justice. The Sixth Amendment right to counsel is necessary to ensure fundamental human rights of life and liberty. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

4. **In your experience, what are the challenges faced by parties in civil or criminal proceedings for whom English is not their first language?**

Response: In my experience, the biggest issue faced by parties whom English is not their first language is their understanding of the proceedings. In criminal matters, there must be an interpreter, but the court is still obligated to make sure the defendant understands what they are charged with, what the penalties are, if they are released what conditions

they must follow and what will happen next in their case. In civil matters, the issue is the same, whether the individual understands what is happening in the case and what they must do if they will be representing themselves. While the courts are not required to provide interpreters in civil matters the court still has an obligation to make sure the individual understands what is occurring and what is expected of them next.

**a. What do you see as the role of language access in courts in protecting due process rights and ensuring access to justice?**

Response: Without individuals having access to interpreters, their legal rights may not be protected due to misunderstandings of court proceedings or other matters. It may also prevent them from having access to justice.



Senator Mike Lee

**Questions for the Record**

**Susan M. Bazis, Nominee for District Court Judge for the District of Nebraska**

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

Response: As a Magistrate Judge for the last seven years, and a state court judge for almost ten years prior to being a magistrate judge, I have decided all cases that come before me based on the facts of the case and the applicable law. I have always tried to be fair and impartial. I am always prepared and review the statutes that are applicable, the constitution, and all Supreme Court and Eighth Circuit precedent on the issues. I then apply the law to the facts of the case in front of me and try to rule on the matter diligently and expeditiously. If confirmed as a District Judge, I will continue to abide by this philosophy and continue to be fully prepared for every hearing, make sure that all that come before me feel that they are heard, and fairly and impartially decide each matter as I have done for the last 16 years.

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

Response: I would first look at any Eighth Circuit precedent or Supreme Court precedent that has interpreted the statute. If there is no binding precedent I would start with looking at the plain meaning of the text of the statute. If there is no ambiguity within the text of the statute then my inquiry would end there. If there is ambiguity, I would look to the rules of statutory construction authorized by the Supreme Court and Eighth Circuit. I would also consult any persuasive, non-binding authority from other circuit and district courts. I also may consult legislative history but only if such analysis is permitted under applicable Supreme Court and Eighth Circuit precedent.

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

Response: I would first consider relevant Supreme Court and Eighth Circuit precedent to determine whether the constitutional provision's text has been interpreted. If it has not, I would look at the plain meaning of the text of the constitutional provision. If the text of the constitutional provision is unambiguous, I would apply its plain meaning and my inquiry would end there. If the text of the constitutional provision is ambiguous, I would look to the rules of construction authorized by the Supreme Court and Eighth Circuit. I would also consult any persuasive, non-binding authority from other circuit and district courts.

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

Response: The United States Supreme Court has applied the original meaning of the text and historical understanding when analyzing constitutional provisions. *See New*

*York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022); *District of Columbia v. Heller*, 544 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004). If confirmed, I would faithfully apply United States Supreme Court and Eighth 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: Please 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 “plain meaning” of a statute or constitutional provision is fixed at the time of enactment, and it does not change or evolve over time. *See New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022); *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020) (“This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.”).

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

Response: The requirements for Article III standing are that: (1) the plaintiff has suffered an injury in fact; (2) that the injury be fairly traceable to the actions of the defendant; and (3) it must be likely that the injury will be redressed by the lawsuit. *Biden v. Nebraska*, 143 S. Ct. 2355 (2023).

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 of the Constitution enumerates the powers of Congress. The Supreme Court in *McCullough v. Maryland*, 17 U.S. 316 (1819), held that the Necessary and Proper Clause of the constitution grants Congress implied powers necessary to implement its enumerated powers.

9. **Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: Congress is not required to cite a specific constitutional provision for its authority. *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012). I would follow United States Supreme Court and Eighth Circuit precedent to evaluate the constitutionality of a law that does not reference a specific Article I enumerated power. I would approach the analysis as described in questions 2 and 3 above.

**10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: Yes, the United States Supreme Court has held that certain rights, not expressly enumerated in the Constitution, are protected under the Due Process Clauses of the Fifth and Fourteenth Amendments. Those unenumerated rights are those that are “deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 702 (1997). The United States Supreme Court has recognized various unenumerated rights such as the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); the right to have children, *Skinner v. Oklahoma ex rel. Williamson*, 326 U.S. 535; to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); 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 United States Supreme Court has held that that the Due Process Clauses of the Fifth and Fourteenth Amendments “specifically protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 US 702 (1997). Additionally, 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 United States Supreme Court precedent governs which rights are protected by substantive due process. If I were fortunate enough to be confirmed, I would follow United States Supreme Court precedent and Eighth Circuit precedent in determining any asserted constitutional right.

**13. What are the limits on Congress’s power under the Commerce Clause?**

Response: The United States Supreme Court identified the three broad categories of activity that Congress may regulate under its commerce power. “First, Congress may regulate the use of channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress’ commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce.” *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 United States Supreme Court has observed that a suspect class is one “saddled with such disabilities, or subjected to such history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 313 (1976) (quoting *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973)). The United States Supreme Court has held that race, religion, national origin and alienage are suspect classes under the Constitution and would trigger strict scrutiny. *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432 (1985); *City of New Orleans v. Dukes*, 427 U.S. 297 (1976).

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

Response: The United States Supreme Court has stated that the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as “a self-executing safeguard against the encroachment of aggrandizement of one branch at the expense of the other.” *Morrison v. Olson*, 487 U.S. 654 (1998).

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 review and apply binding United States Supreme Court and Eighth Circuit precedent in deciding a case in which one branch assumed an authority not granted it by the text of the Constitution. See *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: Empathy should not play a role in a judge’s consideration of a case. Judges are obligated to apply binding precedent to the facts of each case that comes 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 and unacceptable outcomes.

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 not aware that the invalidation of federal statutes by the Supreme Court has become significantly more common. As a Magistrate Judge I have faithfully applied United States Supreme Court and Eighth Circuit precedent and would continue to do so if I am fortunate enough to be confirmed as a District Judge.

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

Response: Black's Law Dictionary (11<sup>th</sup> ed. 2019), defines "judicial review" as "a court's power to review the actions of other branches or levels of government." 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 . . . 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: All elected officials take an oath to defend the Constitution and are bound by the United States Supreme Court's interpretation of the Constitution. *Cooper v. Aaron*, 348 U.S. 1 (1958). As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting further on how elected officials should balance competing interests they may have.

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: It is important to keep in mind the limited role of the judiciary. It is for the legislative branch and the executive branches to make and enforce the law. A judge's role is to apply the law to the facts of the case that is before the court. A judge should do this faithfully and impartially without passion, prejudice, fear, or favor. Each branch of government must remain faithful to their roles in the government. This is the only way the government may serve the people of the United States as guaranteed by the Constitution.

23. **As a federal judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a federal 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 federal judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: I am bound by United States Supreme Court precedent and Eighth Circuit precedent. This is what I have done for the last seven years as a Magistrate Judge and would continue to do if confirmed as a District Judge. A lower court is bound to follow precedent even if the court may question the precedent it is bound to apply. The Supreme Court is the only one that can overrule its 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. A sentencing judge may only consider the factors set forth in 18 U.S.C. § 3553(a), including pertinent Sentencing Commission policy statements. One such policy statement is that race, sex, national origin, creed religion, and socio-economic stats "are not relevant in the determination of a sentence." U.S.S.G. § 5H1.10.

- 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 or the context in which it was made. Black's Law Dictionary (11<sup>th</sup> ed. 2019) lists nine definitions of equity including "fairness; impartiality; evenhanded dealing."

- 26. Without citing Black's Law Dictionary, do you believe there is a difference between "equity" and "equality?" If so, what is it?**

Response: Merriam-Webster Dictionary defines "equity" as "justice according to a natural law or right; *specifically*: freedom from bias or favoritism." Merriam-Webster Dictionary defines "equality" as "the quality or state of being equal."

- 27. Does the 14<sup>th</sup> Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 25)?**

Response: As stated in response to Question 26, I am not familiar with the Biden Administration's statement defining "equity" or the context in which it was made. The 14<sup>th</sup> Amendment guarantees "the equal protection of the laws." If confirmed, I would faithfully follow Supreme Court and Eighth Circuit precedent applying the Fourteenth Amendment.

**28. Without citing Black's Law Dictionary, how do you define "systemic racism?"**

Response: I do not have my own definition for "systemic racism." Merriam-Webster Dictionary defines "systemic racism" as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)."

**29. Without citing Black's Law Dictionary, how do you define "critical race theory?"**

Response: I do not have my own definition for "critical race theory." Merriam-Webster Dictionary defines "critical race theory" as "a group or concepts (such as the idea that race) is a sociological rather than biological designation, and that racism pervades society and is fostered and perpetuated by the legal system) used for examining the relationship between race and the laws and legal institutions of a country and especially the United States."

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

Response: Please see my responses to Questions 28 and 29.

**SENATOR TED CRUZ**  
**U.S. Senate Committee on the Judiciary**

**Questions for the Record for Susan Mason Bazis, nominated to be United States District Judge for the District of Nebraska**

**I. Directions**

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.



## II. Questions

### 1. Is racial discrimination wrong?

Response: Yes. Racial discrimination is unlawful pursuant to federal statutes and the United States Constitution.

### 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 Magistrate Judge and a judicial nominee, I am prohibited from expressing an opinion regarding matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A)(6). Unenumerated rights, which are rights “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty,” are protected. *Washington v. Glusckberg*, 521 U.S. 702 (1997). If confirmed, as I have done for the last 16 years, I would faithfully apply United States Supreme Court and Eighth 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: As a Magistrate Judge for the last seven years, and a state court judge for almost ten years prior to being a Magistrate Judge, I have decided all cases that come before me based on the facts of the case and the applicable law. I have always tried to be fair and impartial. I am always prepared and review the applicable statutes, Constitution, and all Supreme Court and Eighth Circuit precedent on the issues. I then apply the law to the facts of the case in front of me and diligently and expeditiously rule on the matter. If confirmed as a District Judge, I will continue to abide by this philosophy and continue to be fully prepared for every hearing, make sure that all that come before me feel that they are heard, and fairly and impartially decide each matter as I have done for the last 16 years. I am not sufficiently familiar with the judicial philosophies of these Courts to provide an opinion on which judicial philosophy is most analogous to my own.

### 4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an “originalist”?

Response: I do not attach any particular label to myself. Black’s Law Dictionary (11<sup>th</sup> 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 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.” The United States Supreme Court has applied originalism to decide both

statutory and constitutional issues. *See, e.g., New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004). If confirmed, as I have done for the last 16 years, I will faithfully apply United States Supreme Court and Eighth Circuit precedent.

- 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 (11<sup>th</sup> 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." I do not attach any particular label to myself. If confirmed, I would, as I have done for the last 16 years, faithfully apply United States Supreme Court and Eighth 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 I were presented with a constitutional issue not resolved by United States Supreme Court or Eighth Circuit precedent, I would look at the text of the provision at issue and interpret it in a manner consistent with the methods of interpretation that the Supreme Court has used in the most analogous circumstances. Original public meaning of a legal text has been recognized as an appropriate means of constitutional interpretation in some instances, such as questions involving the Second Amendment. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). If this did not resolve the issue, I would then look to other circuit and district court decisions with analogous circumstances, as well as the canons of construction.

- 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: If confirmed I would faithfully apply United States Supreme Court and Eighth Circuit precedent to cases that are before me. In construing statutes, the Supreme Court has said that a 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, Georgia*, 140 S. Ct. 1731 (2020). The Supreme Court has taken a similar approach with some parts of the Constitution. *See, New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

- 8. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: The Constitution is an enduring document which does not change unless amended through the procedures prescribed in Article V of the Constitution. However, the Supreme Court has recognized that while the meaning of the Constitution is fixed according to the understandings of those who ratified it, it must “apply to circumstances beyond those the Founders specifically anticipated.” *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022). For example, “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.” *Id.*

**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 Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal beliefs I might hold or commenting on whether an opinion of the Supreme Court was “correctly decided.” See Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Dobbs v. Jackson Women’s Health* is binding precedent and if confirmed, I would fully and faithfully apply the decision.

**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 Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal beliefs I might hold or commenting on whether an opinion of the Supreme Court was “correctly decided.” See Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *New York Rifle & Pistol Association v. Bruen* is binding precedent and if confirmed, I would fully and faithfully apply the decision.

**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: As a Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal beliefs I might hold or commenting on whether an opinion of the Supreme Court was “correctly decided.” See Code of Conduct for United States

Judges, Canon 3(A)(6). However, the holding in *Brown v. Board of Education* regarding racial discrimination in public schools is not likely to be relitigated. Therefore, consistent with the Code of Conduct for United States Judges, I believe *Brown v. Board of Education* 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 Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal beliefs I might hold or commenting on whether an opinion of the Supreme Court was "correctly decided." See Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Students for Fair Admissions v. Harvard* is binding precedent and if confirmed, I would fully and faithfully apply the decision.

**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 Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal beliefs I might hold or commenting on whether an opinion of the Supreme Court was "correctly decided." See Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Gibbons v. Ogden* is binding precedent and if confirmed, I would fully and faithfully apply the decision.

**14. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: 18 U.S.C. § 3142 provides a rebuttable presumption of pretrial detention for certain crimes including: crimes of violence; narcotic offenses with a term of imprisonment of ten years or more; offenses with a maximum punishment of life imprisonment or death; crimes involving human trafficking or slavery; certain offenses involving minor victims; and crimes that involve the possession or use of a firearm or other destructive device.

**a. What are the policy rationales underlying such a presumption?**

Response: I am unaware of explicit policy rationales for imposing a rebuttable presumption of pretrial detention for certain offenses. I am also not aware of any United States Supreme Court or Eighth Circuit precedent that addresses Congress's rational underlying the presumption. However, 18 U.S.C. § 3142(e)(1) provides that after a

hearing, the judge is to consider the safety of the community and risk of flight in determining if pretrial detention is appropriate. Therefore, it appears that Congress determined that defendants charged with certain offenses are more likely to pose a danger to the community and present a greater risk of flight.

**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 Constitution and federal statutory law places limits on what obligations governments may impose on religious organizations. As to the Constitution, the Free Exercise Clause of the First Amendment acts as one of the limitations by restricting the government from treating “any comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 593 U.S. 61 (2021). In a situation where the record reveals animus or hostility toward religious belief, strict scrutiny is applied. *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719 (2018).

An example of a statutory limitation is the Religious Freedom Restoration Act of 1993, which prohibits the federal government from “substantially burden[ing] a person’s exercise of religion even if the burden results from a rule of general applicability,” unless the application of the burden “(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of further that compelling government interest.” 42 U.S.C. §2000bb-1 (a), (b). *See also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

**16. Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: Under the Free Exercise Clause of the First Amendment, enhanced protections are provided to religious freedom. As a result, government actions which burden an individual or organization’s religious freedom will be subject to strict scrutiny. *See, e.g., 303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023); *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719 (2018). However, where a law is neutral, generally applicable, and only incidentally burdens religious freedom, strict scrutiny does not apply. *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. 520 (1993).

**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 Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020), a church and synagogue filed § 1983 actions alleging that the Governor’s emergency Executive Order imposing occupancy restrictions on houses of worship during COVID-19 pandemic violated the Free Exercise Clause. The Supreme Court held that the applicants had clearly established their entitlement to injunctive relief pending appellate review. The Supreme Court found that the applicants were entitled to the injunction because they had shown that their First Amendment claims were likely to prevail, denying them relief would lead to irreparable injury, and granting relief would not harm the public interest. *Id.* The Supreme Court explained that there was a likelihood of success on the merits because the applicants had made a strong showing that the challenged restrictions violate “the minimum requirement of neutrality” to religion. *Id.* (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993)).

**18. Please explain the U.S. Supreme Court’s holding and rationale in *Tandon v. Newsom*.**

Response: Plaintiffs, who wished to gather for at-home religious exercise, brought an action alleging that the State’s Blueprint System for restrictions on private gatherings during the COVID-19 pandemic violated their First Amendment rights to free exercise, free speech, and freedom of assembly and their Fourteenth Amendment substantive due process and equal protection rights. The plaintiffs filed a motion for an emergency injunction pending appeal. The United States Supreme Court found the plaintiffs were entitled to an emergency injunction pending appeal. The Supreme Court found that the applicants were likely to succeed on the merits of their free exercise claim; they were irreparably harmed by the loss of free exercise rights “for even minimal periods of time”; and the State had not shown that “public health would be imperiled” by employing less restrictive measures. *Tandon v. Newsom*, 593 U.S. 61 (2021) (quoting *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020)). The Supreme Court explained that government regulations that are not neutral and generally applicable trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise. *Id.* The Supreme Court further explained that it is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue. *Id.*

**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 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: A cake shop and its owner refused to sell a wedding cake to a same-sex couple due to his religious beliefs. The Colorado Civil Rights Commission issued a cease and desist order requiring the shop owner to not violate Colorado's Anti-Discrimination Act (CADA) by discriminating against potential customers based on sexual orientation. The United States Supreme Court held that the Commission did not comply with the Free Exercise Clause's requirement of religious neutrality. The Supreme Court found that the Commission's treatment of the owner violated the State's duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint. The Supreme Court further found that the government, consistent with the Constitution's guarantee of free exercise, cannot 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. (*citing Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520.)

**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: Religious beliefs are protected under the Free Exercise Clause and Religious Freedom Restoration Act as long as they are sincerely held. *See Frazee v. Illinois Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989). The beliefs do not need to be consistent with a particular faith tradition. *See id.* at 834 (1989) ("[W]e reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization."); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014) (stating that the court's role is limited to determining if a person's religious belief is an "honest conviction," not whether that belief is reasonable). *see also Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 714 (1981) (holding that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection")

**a. Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: The United States Supreme Court held that federal courts' "narrow function" is to "determine whether the plaintiffs' asserted religious belief reflects an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014).

**b. Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: Please see my responses to Questions 21 and 21(a).

**c. Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: I am unaware of the Catholic Church's official position regarding 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 teacher's employment discrimination claims. The Supreme Court stated that 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." *Id.* (citing *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94 (1952)). The Supreme court stated independence of religious institutions in matters of "faith and doctrine" is closely linked to independence in "matters of church government." *Id.* Under the ministerial exception, courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." *Id.* The Supreme Court explained in evaluating the ministerial exception it is important to look at "what an employee does" rather than simply look for the title of "minister." *Id.* The Supreme Court explained that when a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow. The teachers in this case, due to their duties, fell within the ministerial exception and therefore foreclosed their employment discrimination claims brought against their religious organizations.

- 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 City of Philadelphia declined to renew a contract with a foster care agency that refused to certify same-sex couples as foster parents based on the agency's religious views. The Supreme Court held that the City's decision violated the Free Exercise Clause of the First Amendment. The Supreme Court found that the City's action was subject to strict scrutiny because the City's non-discrimination requirement in its standard foster care contract was not "generally applicable," instead it incorporated a system of "individual exemptions." *Id.* at 1878. Analyzing the case under strict scrutiny, the Supreme Court held that the City offered "no compelling reason why it has a particular interest in denying an exception to [the religious entity] while making them available to others."



*Id.* at 1882.

- 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 v. Makin*, 142 S. Ct. 1987 (2022), the United States Supreme Court held that Maine's non-sectarian requirement for its tuition assistance program violated the Free Exercise Clause of the First Amendment because the program's "nonsectarian" requirement created a carve-out for religious schools. The Supreme Court explained that by paying for tuition for certain students at private schools, "so long as the schools are not religious," was "discriminat[ing] against religion." Applying strict scrutiny, the Court held that Maine's program did not survive because a "State's anti-establishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise."

- 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 a school district violated the Free Exercise and Free Speech Clauses of the First Amendment when it fired a high school football coach for kneeling at midfield after games to offer a quiet prayer. The Supreme Court determined that the coach's prayer was unattributable to his duties as a coach and were protected by both the Free Exercise and Free Speech Clauses of the First Amendment, which protect the right of an individual to engage in religious observance without reprisal from the government.

- 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: *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), involved a Free Exercise challenge by an Amish community against the application of an ordinance requiring the installation of certain modern septic systems to dispose of gray water. The Court vacated the order requiring the Amish community to comply with the ordinance in light of *Fulton v. City of Philadelphia*. Justice Gorsuch concurred. He noted that the Religious Land Use and Institutionalized Persons Act mandates strict scrutiny for government actions that burdens religion. In Justice Gorsuch concurrence, he stated that "*Fulton* makes clear that the County and courts below misapprehended RLUIPA's demands," which Justice Gorsuch explained "requires application of 'strict scrutiny.'" Justice Gorsuch elaborated on the standard, stating that courts cannot rely on "broadly formulated" government interests, but instead must "scrutinize [] the asserted harm of granting specific exemptions to particular religious claimants." *Id.* (alternation in

original) (quoting *Fulton*, 141 S. Ct. at 1881).

- 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 Magistrate Judge and a judicial nominee, I am prohibited from expressing an opinion regarding matters that may come before the courts, including the constitutionality of federal courts. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, as I have done for the last 16 years, I would faithfully apply United States Supreme Court and Eighth Circuit precedent concerning the interpretation of 18 U.S.C. § 1507.

- 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: Under the Appointments Clause of the Constitution, the President has the authority to make political appointments with the advice and consent of the Senate. As a Magistrate Judge and a judicial nominee, I am prohibited from expressing an opinion on what the President and Senate should consider in exercising their constitutional duties. If confirmed, as I have done for the last 16 years, I will faithfully apply Supreme Court and Eighth Circuit precedent.

**32. If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?**

Response: Disparate impact claims are cognizable under certain federal anti-discrimination laws. *See, e.g., Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 539 (2015). I am not aware of Supreme Court or Eighth Circuit law addressing subconscious racial discrimination. If confirmed, I would faithfully apply any binding Supreme Court and Eighth Circuit precedent to any such issue that is properly raised in a case 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 question of whether the number of Supreme Court Justices should be increased or decreased is a policy issue for policymakers to consider. As a Magistrate Judge and judicial nominee, I am prohibited from expressing an opinion. If confirmed, as I have done as a judge for the last 16 years, I will faithfully apply Supreme Court and Eighth Circuit precedent.

**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 keep and bear arms, 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), *McDonald v. Chicago*, 561 U. S. 742 (2010), *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that the Second and Fourteenth Amendments protect an individual's right to keep and bear arms. The cases hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. Second Amendment rights are not subject to means-end scrutiny. Rather, to justify a regulation, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulations. The Court in *Heller* struck down laws banning handgun possession in the home and prohibiting people from rendering lawful firearms in their homes operable for immediate self-defense. In *McDonald*, the Court remanded the case for the Seventh Circuit to determine if Chicago's handgun ban was unconstitutional. In *Bruen*, the Court invalidated New York licensing statute because it required a showing of some greater need than the general population to carry a handgun.

**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. The Supreme Court has explained that the constitutional right to bear arms "in public for self-defense is not a 'second-class right.'" *New York State Rifle and Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022) (quoting *McDonald v. Chicago*, 561 U.S. 742, 780 (2010)).

**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 explained that the constitutional right to bear arms "in public for self-defense is not a 'second-class right.'" *New York State Rifle and Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022) (quoting *McDonald v. Chicago*, 561 U.S. 742, 780 (2010)).

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

Response: The President has the executive power to enforce laws under Article II of the Constitution. The executive's discretion to execute the laws is "broad" but not "unfettered" as it is subject to "constitutional constraints." *Wayte v. United States*, 470 U.S. 598, 608 (1985). As a Magistrate Judge and a judicial nominee, I am prohibited

from expressing an opinion or commenting regarding how this discretion should be applied. If confirmed, as I have done as a judge for the last 16 years, I will faithfully apply Supreme Court and Eighth Circuit precedent.

**41. Explain your understanding of what distinguishes an act of mere ‘prosecutorial discretion’ from that of a substantive administrative rule change.**

Response: Generally, prosecutorial discretion refers to the power of a prosecutor to decide how to proceed with a case in terms of whom to charge, what charges to bring, and whether to engage in plea bargaining. A substantive administrative rule change would be governed by the Administrative Procedure Act, which establishes the procedures for such rule changes. 5 U.S.C. §§ 551-559.

**42. Does the President have the authority to abolish the death penalty?**

Response: No. The federal death penalty is provided for by statute and the President does not have the authority to unilaterally change a federal statute.

**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 vacated a nationwide eviction moratorium that was imposed by the Centers for Disease Control and Prevention (CDC) in response to the COVID-19 pandemic. The Supreme Court determined that petitioners had a substantial likelihood in success on the merits regarding their claim that the CDC exceeded its statutory authority by imposing the moratorium. Considering the applicable factors relevant to determining whether to continue the stay, the Supreme Court held, “It is up to Congress, not the CDC, to decide whether the public interest merits further action here.” *Id.*

**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 Magistrate Judge and a judicial nominee for, I am prohibited from expressing an opinion on the propriety of prosecutorial announcements. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed as I have done as a judge for the last 16 years, I will faithfully apply Supreme Court and Eighth Circuit precedent.

**Senator John Kennedy  
Questions for the Record**

**Susan Bazis**

- 1. Are there any circumstances under which it is justifiable to sentence a criminal defendant to death? Please explain.**

Response: Yes. 18 U.S.C. § 3591 outlines certain offenses whereby defendants may be sentenced to death. The procedures for courts to follow when considering the death sentence are found in 18 U.S.C. § 3591-3599. If confirmed, I will faithfully follow binding precedent of the United States Supreme Court, Eighth Circuit and the federal statutory procedure for sentencing defendants, including 18 U.S.C. § 3591-3599.

- a. Should a judge's opinions on the morality of the death penalty factor into the judge's decision to sentence a criminal defendant to death in accordance with the laws prescribed by Congress and the Eighth Amendment?**

Response: No.

- 2. Is the U.S. Supreme Court a legitimate institution?**

Response: Yes.

- 3. Is the current composition of the U.S. Supreme Court legitimate?**

Response: Yes.

- 4. Please describe your judicial philosophy. Be as specific as possible.**

Response: As a Magistrate Judge for the last seven years, and a state court judge for almost ten years prior to being a magistrate judge, I have decided all cases that come before me based on the facts of the case and the applicable law. I have always tried to be fair and impartial. I am always prepared and review the statutes that are applicable, the constitution, and all Supreme Court and Eighth Circuit precedent on the issues. I then apply the law to the facts of the case in front of me and try to rule on the matter diligently and expeditiously. If confirmed as a District Judge, I will continue to abide by this philosophy and continue to be fully prepared for every hearing, make sure that all that come before me feel that they are heard, and fairly and impartially decide each matter as I have done for the last 16 years.

- 5. Is originalism a legitimate method of constitutional interpretation?**

Response: Yes. The United States Supreme Court has used this interpretive approach to resolve certain Constitutional matters. *See New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022); *McDonald v. City of Chicago*, 561 U.S. 742 (2010);

*District of Columbia v. Heller*, 544 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004).

- 6. If called on to resolve a constitutional question of first impression with no applicable precedents from either the U.S. Supreme Court or the U.S. Courts of Appeals, to what sources of law would you look for guidance?**

Response: As a judge for the last 16 years, and if confirmed as a District Judge, if confronted with a constitutional question of first impression with no applicable precedents from either the United States Supreme Court or the Eighth Circuit, I would begin by examining the text of the Constitutional provision at issue. If the text of the provision is unambiguous, then I would apply its plain meaning. If the text of the provision is ambiguous, I would look to other methods of statutory interpretation including the decisions of other Circuits and District Courts, as well as the canons of construction. If these additional sources do not provide sufficient guidance, I would look to legislative history of the provision at issue but only to the extent such analysis is permitted under the Supreme Court and Eighth Circuit precedent.

- 7. Is textualism a legitimate method of statutory interpretation?**

Response: Yes. See *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

- 8. When is it appropriate for a judge to look beyond textual sources when determining the meaning of a statute or provision?**

Response: See my response to Question 6.

- 9. Does the meaning (rather than the applications) of the U.S. Constitution change over time? If yes, please explain the circumstances under which the U.S. Constitution's meaning changes over time and the relevant constitutional provisions.**

Response: The meaning of the United States Constitution does not change over time. However, "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). See e.g., *United States v. Jones*, 565 U.S. 400, 404–405 (2012) (holding that installation of a tracking device was "a physical intrusion [that] would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted").

- 10. Please summarize Part II(A) of the U.S. Supreme Court's decision in *Brown v. Davenport*, 596 U.S. 118 (2022).**

Response: Part II(A) of *Brown v. Davenport* provides the historical background of writs of habeas corpus. The traditional understanding was that a judgment of conviction was "conclusive on all of the world." However, a habeas court could grant relief if the court

of conviction lacked jurisdiction over the defendant or his offense. A habeas court could only examine the power and authority of the court to act, not the correctness of its conclusions. However, in *Brown v. Allen*, 344 U.S. 443 (1953), the court held that a state-court judgment “is not res judicata” in federal habeas proceedings with respect to a petitioner’s federal constitutional claims. *Brown* suggested, a federal district court approaching the same case years later should be free to decide de novo whether the state-court proceedings “resulted in a satisfactory conclusion” and to issue habeas relief if that conclusion is found wanting. This resulted in a significant increase the number of habeas petitions before the federal courts. The Court responded with devising new rules to use to determine which cases may be meritorious in the ever growing number of habeas petitions.

**11. Please summarize Part IV of the U.S. Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).**

Response: Part IV of *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, sets forth the reasons why the affirmative action programs at Harvard and the University of North Carolina violated the Equal Protection Clause of the Fourteenth Amendment. The Court held the schools needed to meet strict scrutiny for their race-based admission policies. The schools claimed educational interest in using race as a factor was not a compelling interest for purposes of satisfying strict scrutiny. Additionally, the policies were not narrowly tailored to achieve those ends.

**12. Please summarize Part III of the U.S. Supreme Court’s decision in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).**

Response: Part III of *303 Creative LLC v. Elenis*, is a free speech case in which the United States Supreme Court held that the wedding websites the owner sought to create for her customers qualified as pure speech under the First Amendment. Therefore, the Court held that Colorado’s public accommodation law would unconstitutionally compel speech if it required the website designer to create wedding websites for same-sex couples against her own religious beliefs.

**13. Please summarize Part II of the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* (2022).**

Response: In Part II of *Dobbs v. Jackson*, the United States Supreme Court undertook an extensive historical review of liberty rights under the Due Process Clause of the Fourteenth Amendment. Liberty interests must be deeply rooted in history and tradition. The Court found that abortion liberty was not deeply rooted in history or tradition and therefore the federal constitution did not provide a right to abortion, and the authority to regulate abortion must be returned to the people and their elected representatives.

**14. Please summarize Part III of the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022).**



Response: In Part III of *Dobbs v. Jackson*, the United States Supreme Court analyzed the power of *stare decisis* had in determining whether the Supreme Court's prior holdings in *Roe v. Wade* and *Casey v. Planned Parenthood* should be upheld. The Court provided that in appropriate circumstance they must reconsider and, if necessary, overrule constitutional decisions. The Court in *Dobbs* used five factors to determine whether *stare decisis* should be used in applying prior Supreme Court precedent: the nature of the prior precedent's error; the quality of its reasoning; the "workability" of the rules the precedent created; its disruptive effect on other areas of the law; and the reliance interest in the prior precedent. After weighing each of these factors the Court held that "traditional *stare decisis* factors do not weigh in favor of retaining *Roe* or *Casey*."

**15. Please describe the legal rule employed in *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), and explain why the U.S. Supreme Court sided with the Petitioner.**

Response: *Rivas-Villegas v. Corte* is a case involving a § 1983 an excessive force claim. This case involved the rule that an officer is entitled to qualified immunity if the officers conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Based on the facts of this case there was no Supreme Court or Court of Appeals cases that put the officer on notice that his specific conduct was unlawful. Therefore, the officer was entitled to qualified immunity.

**16. When is it appropriate for a district judge to issue a nationwide injunction? Please also explain the legal basis for issuing nationwide injunctions and the relevant factors a district judge should consider before issuing one.**

Response: The Supreme Court has recognized that "one of the 'principles of equity jurisprudence' is that 'the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class.'" *Rodgers v. Bryant*, 942 F.3d 451, 458 (8th Cir. 2019) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)). Injunctive relief must be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Nebraska v. Biden*, 52 F.4th 1044 (2022) (quoting *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994)). The issue of a nationwide injunction was before the United States Supreme Court in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018). However, based on the Court's ruling, it became unnecessary for it to consider the propriety of the nationwide scope of the injunction issued by the district court. Justice Thomas in a concurring opinion did address the issue of nationwide injunctions and indicated he was skeptical that district courts have the authority to enter nationwide injunctions.

**17. Is there ever a circumstance in which a district judge may seek to circumvent a published precedent of the U.S. Court of Appeals under which it sits or the U.S. Supreme Court?**

Response: No.

**18. If confirmed, please describe what role U.S. Supreme Court dicta would play in your decisions.**

Response: Dicta is not law and has no binding precedent in future cases. Therefore, it is important to distinguish between dicta and case holdings. I would ensure, as I have for the last 16 years, that my decisions are based on United States Supreme Court and Eighth Circuit holdings, and not dicta.

**19. To the best of your recollection, please list up to 10 cases in which you served as lead counsel in a bench trial in federal district court or a case tried before a jury in federal district court.**

Response: I have been lead counsel in at least 43 cases in federal court. Almost all of them have been criminal matters, where I have handled numerous court hearings, motions, pleas and sentencings. On the civil matters, I was second chair but none of those matters went to trial. I have handled as lead counsel at least 150 trials in state court and have presided over 550 trials as a judge. Five of those trials have been in federal court.

**20. When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race and/or sex of the applicants play in your consideration?**

Response: None.

**21. Please list all social-media accounts you have had during the past 10 years with Twitter/X, Facebook, Reddit, Instagram, Threads, TikTok, and LinkedIn and the approximate time periods during which you had the account. If the account has been deleted, please explain why and the approximate date of deletion.**

Response: The only social-media account I have ever had is LinkedIn. I created an account in September 2009. I have never really used this account and forgot I had it until I reviewed my records in connection with applying to be a District Court Judge.

**22. Why should Senator Kennedy support your nomination?**

Response: I have the experience to be a District Court Judge. I have over 30 years of trial experience both as an attorney and a Judge in both civil and criminal matters. As an attorney I appeared in court almost every day. I have had at least 150 trials, both jury and non-jury trials. I have also handled hundreds of motions, both civil and criminal, and thousands of non-trial court hearings. I also prepared a Petition for Writ of Certiorari to the United States Supreme Court. As a judge for the last 16 years, I have handled at least 550 cases, both jury and non-jury, to verdict. As a state court judge my docket was evenly split between civil and criminal matters. I was a Judge in the highest volume court in the State of Nebraska. I was in the courtroom almost every day handling an average of 50 to 60 cases per day in court. As a magistrate judge I continue to have a

docket evenly divided between civil and criminal matters and I am in the courtroom almost every day. To get all of the work done I have a very strong work ethic and exceptional time management skills. As a judge for the last 16 years, I have treated all individuals that come before me fairly, impartially, and with respect. I also make sure that everyone has an opportunity to be heard. I have consistently received high marks from the attorneys in my area on my judicial performance evaluations. In addition, the American Bar Association's Standing Committee on the Federal Judiciary voted unanimously that I am "Well Qualified" to serve on the United States District Court for the District of Nebraska. I firmly believe this is due to my tremendous amount of experience and how I have conducted myself as a judge for the last 16 years.

**CHAIR**  
Hon. Ann Claire Williams (Ret.)  
acwilliams@jonesday.com  
(312) 269-1575

**VICE CHAIR**  
David L. Brown  
dlbrown@hmlawfirm.com  
(515) 244-2141

**FIRST CIRCUIT**  
Kay H. Hodge  
khodge@ncmla.com  
(517) 542-6789

**SECOND CIRCUIT**  
Dana M. Iversic  
dversic@pulscom.com  
(860) 424-4382

**THIRD CIRCUIT**  
G. Glenon Trowbridge  
gtrowbridge@caenllaw.com  
(978) 994-1700

**FOURTH CIRCUIT**  
Pamela Roberts  
p.roberts@bowmanandbrooke.com  
(803) 725-7423

**FIFTH CIRCUIT**  
Michael D. Hunt  
michael.hunt@phelps.com  
(275) 346-0285

**SIXTH CIRCUIT**  
Khaliah V. Spencer  
kspencer@hogan.com  
(313) 465-7654

**SEVENTH CIRCUIT**  
Nigel F. Tolman  
ntolman@proskauer.com  
(312) 962-3548

**EIGHTH CIRCUIT**  
Sonia Miller-Van Dier  
soniamv@spencerlaw.com  
(612) 756-7125

**NINTH CIRCUIT**  
John C. Dwyer  
jdwyer@cooley.com  
(505) 843-5228

**TENTH CIRCUIT**  
Eric S. Cather  
ecather@emerystaura.com  
(510) 808-2000

**ELEVENTH CIRCUIT**  
Jennifer M. Weddie  
jweddie@gslaw.com  
(303) 572-6500

**D.C. CIRCUIT**  
Michael L. Huang  
mhuang@penlaw.com  
(734) 678-1531

**FEDERAL CIRCUIT**  
Joseph Michael Drayton  
jdrayton@proskauer.com  
(212) 969-3479

**SPECIAL ADVISORS**  
Peter Bennett  
pbennett@thebennettclawfirm.com  
(207) 831-9999

Vincent Chang  
vincent.chang@davispolk.com  
(212) 450-4242

Susan Saltzstein  
ssaltzstein@skadden.com  
(212) 755-4132

**STAFF COUNSEL**  
Denise A. Cardman  
denise.cardman@americanbar.org



Please reply to:  
Hon. Ann Claire Williams (Ret.)  
Jones Day  
110 North Wacker Drive, Suite 4800  
Chicago, Illinois 60606  
acwilliams@jonesday.com

January 19, 2024

**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 Susan M. Bazis to the  
United States District Court for the District of Nebraska*

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 Susan M. Bazis, who has been nominated by the President to the United States District Court for the District of Nebraska. 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 Bazis is **"Well Qualified"** to serve on the United States District Court for the District of Nebraska.

Very truly yours,

Hon. Ann Claire Williams (Ret.)  
Chair, Standing Committee  
on the Federal Judiciary

cc: Edward N. Siskel, 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 Susan M. Bazis (*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).

Ernest Gonzalez; Ernesto Gonzalez

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

United States District Judge for the Western 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.

Office:

United States Department of Justice, Criminal Division, Narcotics and Dangerous Drug  
Section  
145 N Street, Northwest  
Suite 2E300  
Washington, DC 20002

Residence:

Plano, Texas

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

1962; San Antonio, Texas

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

1991 – 1993, Thurgood Marshall School of Law; J.D., 1993

1981 – 1987, The University of Texas at San Antonio; B.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.

2023 – present  
 United States Department of Justice, Criminal Division, Narcotics and Dangerous Drug  
 Section  
 145 N Street, Northwest  
 Suite 2E300  
 Washington, DC 20002  
 Senior Attorney Advisor

2003 – 2023  
 United States Attorney's Office for the Eastern District of Texas  
 101 East Park  
 Suite 500  
 Plano, Texas 75074  
 Chief of Organized Crime Drug Enforcement Task Forces (OCDETF) section for the  
 Eastern District of Texas (2022 – 2023)  
 Lead Assistant United States Attorney in the OCDETF section (2017 – 2022)  
 Assistant United States Attorney (2003 – 2023)

2000 – 2003  
 United States Attorney's Office for the Western District of Texas  
 111 East Broadway  
 Del Rio, Texas 78840  
 Assistant United States Attorney (OCDETF section)

2000  
 Texas Attorney General's Office  
 300 West 15th Street  
 Austin, Texas 78701  
 Assistant Attorney General IV/Special Assistant United States Attorney at the United  
 States Attorney's Office for the Western District of Texas

1994 – 2000  
 Bexar County District Attorney's Office  
 300 Dolorosa  
 San Antonio, Texas 78205  
 Assistant District Attorney

1987 – 1991  
 Southwest Texas Methodist Hospital  
 7700 Floyd Curl Drive  
 San Antonio, Texas 78229  
 Senior Accountant

1978 – 1987  
 West Coast Produce Company

750 Merida  
San Antonio, Texas 78207  
Accounting Clerk

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

I did not serve in the military. I 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.

Mesquite Police Department Narcotic Unit Outstanding Contribution Award (2023)

DEA Outstanding Performance Award – “Trap Mansion case” (2023)

FBI Texoma Criminal Enterprise Task Force Outstanding Performance Award (2023)

Homeland Security Investigations National Aviation Trafficking Investigation Award (2023)

Office of National Drug Policy U.S. Interdiction Coordinator Award for Special Recognition Counter Narcotics Force Enabler (2022)

Eastern District of Texas OCDETF Award for Outstanding Performance (2021)

FBI Outstanding Prosecutive Skills and Assistance to the FBI Award (2021)

FBI Outstanding Recognition and Prosecution of Transnational Criminal Organization Award – “Tyton Hester case” (2021)

Homeland Security Investigations Outstanding Performance Award – “Debra Mercer case” (2021)

JTF-1 National Aviation Trafficking Initiative (NATI) USIC Award – Detection and Monitoring (2019)

Eastern District of Texas Exemplary Performance in 959 Investigations and Transnational Crimes prosecutions (2019)

FBI Outstanding Prosecutive Skills and Assistance to the FBI Award (2019)

National Association of Former United States Attorney’s Exceptional Service Award

(2016)

Texas Lawyer Magazine Exceptional Minority Attorney Award (2015)

Texas Department of Public Safety Director's Award (2013)

Executive Office for the United States Attorney's Director's Award (2011)

Texas Department of Public Safety Certificate of Appreciation (2010)

National Association of Former United States Attorney's Exceptional Service Award (2010)

DEA Certificate of Appreciation – "Cinco Dedos case" (2009)

DEA Certificate of Appreciation – "Moola Zoola case" (2007)

DEA Certificate of Appreciation (2006)

DEA Outstanding and Meritorious Contributions Award "La Compania case" (2004 – 2006)

United States Attorney's Performance Awards (2000 – 2023)

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.

National Hispanic Bar Association (2023)

National Mexican American Bar Association (2023)

Texas State Bar Association (1994 – 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.

Texas, 1994

There have been no lapses in membership.

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



special admission to practice.

United States Court of Appeals for the Fifth Circuit, 2004  
 United States District Court for the District of Columbia, 2023  
 United States District Court for the Eastern District of Texas, 2004  
 United States District Court for the Northern District of Texas, 2014  
 United States District Court for the Western District of Texas, 2000

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.

League of United Latin American Citizens (LULAC) (2020 – 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, the organization listed above does not currently discriminate nor did it formerly discriminate on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

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.

March 6, 2020: Speaker, League of United Latin American Citizens (LULAC) Dallas Chorizo and Menudo meeting, Dallas, Texas. I spoke to the group about the problem of illegal drugs such as fentanyl and methamphetamine entering the United States from Mexico. I have no notes, transcript, or recording. The address for LULAC is West Twelfth Street, Dallas, Texas 75208.

June 12 – 14, 2019: Participant, *the second Transnational Criminal Organizations (TCO) Working Group*, Cartagena, Colombia. The mission of the working group was to engage in specialized training and to develop joint strategies and best practices to dismantle the transnational criminal organizations that threaten the United States, Mexico, and Colombia. The meeting was sponsored by the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT). I participated in question-and-answer panels. I have no notes, transcript, or recording. The address for OPDAT is 950 Pennsylvania Avenue Northwest, Washington DC 20530.

August 18 – 20, 2018: Participant, *the first Transnational Criminal Organizations (TCO) Working Group*, Mexico City, Mexico. The mission of the working group was to engage in specialized training and to develop joint strategies and best practices to dismantle the transnational criminal organizations that threaten the United States, Mexico, and Colombia. The meeting was sponsored by OPDAT. I participated in question-and-answer panels. I have no notes, transcript, or

recording. The address for OPDAT is 950 Pennsylvania Avenue Northwest, Washington DC 20530.

- 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.

*WFAA Dallas Investigative Report – Broken Trust*, ABC - 8 WFAA (Dallas, TX), June 28, 2023. Video available at <https://www.wfaa.com/video/news/special-reports/onalaska/broken-trust-the-onalaska-drug-plane-scandal/287-f9b28f63-b5d2-4d9c-8b0c-edc0fbc39f52>.

Tanya Eiserer & Mark Smith, *In Landmark Case, Trust Company Owner Convicted*, ABC - 8 WFAA (Dallas, TX), May 3, 2023. Copy supplied.

Tanya Eiserer & Mark Smith, *WFAA Dallas Investigative Report – A fugitive, a \$350M fraud case, a lot of airplanes and one tiny town*, ABC - 8 WFAA (Dallas, TX), February 27, 2023. Copy supplied.

*American Greed – Drunk with Power*, CNBC, February 21, 2023. Video available at <https://youtu.be/c-BrAOTIY7k?si=nUGIV-IuOvegS-bQ>.

Katy Vine, *An otherwise ordinary day*, Texas Monthly, December 2022. Copy supplied.

Chacour Koop, *Why were planes registered in a Texas town with no airports? It's about drugs, feds say*, Star-Telegram, March 2, 2021. Copy supplied.

Tanya Eiserer & Mark Smith, *WFAA investigation spurs federal probe that*, ABC - 8 WFAA (Dallas, TX), February 26, 2021. Copy supplied.

*Narco Wars – Rise of the Narco Army*, National Geographic, January 21, 2021. Video available at <https://www.nationalgeographic.com/tv/shows/narco-wars/episode-guide/season-01/episode-06-rise-of-the-narco-army/vdka21777516>.

Ginger Thompson, *How the U.S. Triggered a Massacre in Mexico*, ProPublica, June 12, 2017. Copy supplied.

Guillermo Contreras & Kate Carlson, *Mass killing by the Zetas is described; Witness says more than 300 slain*, San Antonio Express News, July 13, 2016. Copy supplied.

Jason Trahan, *Dallas is stop for Italy bound drugs Mexican operatives unloading cocaine to Mafia overseas*, DallasNews.com, April 21, 2009. Copy supplied.

Tiara M. Ellis, *Charges filed in ID theft Frisco: Man accused of money laundering, wire fraud in global scam*, DallasNews.com, November 23, 2006. Copy supplied.

Jason Trahan, *Suspected drug ringleader pleads guilty, Lugo ran cocaine into Dallas area for the Juarez Cartel*, DallasNews.com, September 17, 2005. Copy supplied.

Laila Fadel, *Worker at ranch accepts plea deal*, Star-Telegram, April 20, 2005. Copy supplied.

Leila Fadel, *Ranch will house 3 restaurants*, Star-Telegram, January 14, 2005. Copy supplied.

Longtime County Commissioner gets nine years on drug charge, Associated Press, December 15, 2001. Copy supplied.

Kate Hunger, *Drug arraignment set for Zavala pair; Officials face fed conspiracy charges*, San Antonio Express News, December 11, 2001. Copy supplied.

Kate Hunger, *Escort service owner enters prostitution plea*, San Antonio Express News, October 13, 1999. Copy supplied.

Kate Hunger, *Man gets 15 years in friend's shooting*, San Antonio Express News, September 1, 1999. Copy supplied.

Kate Hunger, *Jury hands killer probation, fine*, San Antonio Express News, June 23, 1999. Copy supplied.

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

I have not held 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;
 

I have never served as a clerk to a judge.
  - ii. whether you practiced alone, and if so, the addresses and dates;
 

I have never been a solo practitioner.
  - iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature

of your affiliation with each;

1994 – 2000  
Bexar County District Attorney's Office  
101 West Nueva Street  
San Antonio, Texas 78205  
Assistant District Attorney

2000  
Texas Attorney General's Office  
300 West 15th Street  
Austin, Texas 78701  
Assistant Attorney General IV/Special Assistant United States Attorney

2000 – 2003  
United States Attorney's Office for the Western District of Texas  
111 East Broadway  
Del Rio, Texas 78840  
Assistant United States Attorney

2004 – 2023  
United States Attorney's Office for the Eastern District of Texas  
101 East Park Boulevard  
Suite 500  
Plano, Texas 75074  
Assistant United States Attorney

2023 – present  
Department of Justice, Criminal Division, Narcotics and Dangerous Drug  
Section  
145 N Street, Northwest  
Suite 2E300  
Washington, DC 20002  
Senior Attorney Advisor

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

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

b. Describe:

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

I began my legal career at the Bexar County District Attorney's Office in San Antonio, Texas. Starting in the County Court, I prosecuted misdemeanor crimes, from driving while intoxicated to assault, eventually ascending to the felony District Courts, where my responsibilities expanded to encompass cases ranging from aggravated assault to capital murder. My role as an Assistant District Attorney required the meticulous review and examination of cases for evidence sufficiency, collaboration with state and local law enforcement agencies, presentation of cases to the grand jury for indictment, and extensive trial advocacy. I carried a substantial docket and tried hundreds of cases before a jury.

In 2000, I joined the United States Attorney's Office for the Western District of Texas in Del Rio. My portfolio in this capacity predominantly comprised immigration and narcotics violations.

In 2003, I joined the United States Attorney's Office for the Eastern District of Texas in Plano. Here, I managed the largest docket in the Eastern District and the entire United States, with over 900 defendants under my purview. As a member of the Organized Crime Drug Enforcement Task Force (OCDETF), I assumed the roles of Chief for the OCDETF section and Lead Prosecutor for the Eastern District of Texas OCDETF section.

In these leadership capacities, I oversaw a team of Assistant United States Attorneys, directing the prosecution of both domestic and international OCDETF cases. My responsibilities extended to prosecuting non-OCDETF criminal cases involving violent crimes or firearms, extraditing, and prosecuting foreign defendants, and representing the Eastern District of Texas in Central and South America.

Furthermore, I took on the challenge of prosecuting international and maritime drug traffickers, collaborating closely with federal and foreign law enforcement agencies. Notably, my role required extensive travel to represent the Eastern District of Texas in various international forums. Additionally, I presented cases to the federal grand jury for indictment, conducted legal research, drafted legal briefs and memoranda, and presented oral arguments before the Fifth Circuit Court of Appeals.

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

As a prosecutor for my entire legal career, I have represented the State of Texas or the United States in large and complex multi-defendant domestic and international criminal cases.



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

As an Assistant District Attorney, I appeared in court daily. As an Assistant United States Attorney, I appeared in court several times per week initially, with my appearances becoming less frequent as I took on more supervisory roles.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 70% |
| 2. state courts of record:  | 30% |
| 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.

Over the course of my 29-year career as a prosecutor, I have tried more than 250 jury trials, culminating in verdicts. This includes more than 120 state jury trials and more than 135 federal jury trials. I was lead counsel along with a co-counsel for 95 percent of the cases presented before a jury and was co-counsel for the remaining 5 percent of the cases presented before a jury.

- i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 99% |
| 2. non-jury: | 1%  |

- 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. Valencia-Aristizabal et al.*, 4:19cr277 (E.D. Tex) (Mazzant, J.)

I am the lead counsel for the United States in the prosecution of the Galindo-Gallegos Transnational Criminal Organization (TCO). I supervise and provide strategic advice to the investigative team that indicted and is prosecuting over 60 defendants from this TCO. I presented this case to the grand jury and have argued for pretrial detention on most of the defendants who have been arrested. This comprehensive investigation targeted Mr. Galindo-Gallegos, the orchestrator of the Galindo-Gallegos TCO, known for its extensive network encompassing load coordinators, distribution cells, laboratory operators, brokers, and couriers. Galindo-Gallegos collaborates closely with family members, notably his son, Mr. Gallegos Jr. (Gallegos), who independently operates a sub-drug trafficking organization.

The Galindo-Gallegos TCO is responsible for transporting multi-kilogram quantities of cocaine, fentanyl, methamphetamine, and heroin from Durango, Mexico, to the United States. Since October 2016, investigators have apprehended numerous co-conspirators, shedding light on the inner workings of the TCO. The investigation unveiled a significant drug distribution network spanning across the United States.

Debriefings with co-conspirators revealed that Galindo-Gallegos serves as the primary source of supply for illegal drugs reaching United States-based distributors. Subsequent distribution involves a network of distributors across the country. Notably, this case has resulted in the largest seizure of fentanyl in the United States to date, with more than 2 million fentanyl-laced pills seized. The investigation further identified independent couriers operating distribution cells and stash houses across the United States.

The Galindo-Gallegos DTO also purchased high-caliber firearms with drug proceeds, subsequently importing them to Mexico for distribution to members of the Sinaloa Cartel. Presently, Galindo-Gallegos, Gallegos, and five other defendants are fugitives in Mexico. I have prepared and submitted provisional arrest warrants and requests for extradition for the fugitives who are hiding in Mexico. More than 60 defendants associated with the Galindo-Gallegos TCO have been arrested and are pending trial or sentencing.

Representation Dates: 2016 – present

Co-Counsel

Colleen Bloss  
United States Attorney's Office Eastern District of Texas  
101 East Park Boulevard  
Suite 500  
Plano, TX 75075  
(903) 618-9880

Counsel for Defendants

Eva Judith Arellano (for Mr. Vallejo-Iracheta)  
8035 East R.L. Thornton Freeway  
Suite 317  
Dallas, TX 75228  
(972) 707-7773

Cynthia M. Barbare (for Ms. Vaughn)  
8344 East R.L. Thornton Freeway  
Suite 404  
Dallas, TX 75228  
(214) 207-7264

Micah Shawn Belden (for Mr. Gallardo-Luna)  
711 North Travis Street  
Sherman, TX 75090  
(903) 744-4252

Clark E. Birdsall (for Mr. Gallardo-Luna)  
9110 Scyene Road  
Dallas, TX 75227  
(214) 828- 9911

Glenn A. Brenner (for Mr. Corral Reyes)  
603 Munger Avenue  
Suite 235  
Dallas, TX 75202  
(972) 212-7124

Timothy Edward Brown (for Mr. Camarillo)  
111A North Travis Street  
Suite #5  
Sherman, TX 75090  
(818) 500-5553

Jim Burnham (for Mr. Cortez-Sanchez)  
6116 North Central Expressway  
Suite 515

Dallas, TX 75206  
(214) 750-6616

Luis Roberto Campos (for Mr. Quezada-Flores)  
1965 Fort Worth Avenue  
Dallas, TX 75208  
(214) 364-5613

Garland Don Cardwell (for Mr. Castro)  
123 South Travis Street  
Sherman, TX 75090  
(903) 893-8161

William David Cox III (for Mr. Garcia)  
325 North Saint Paul Street  
Suite 2100  
Dallas, TX 75201  
(214) 220-3111

Darlina Carla Crowder (for Mr. Ramirez)  
7950 Legacy Drive  
Suite 360  
Plano, TX 75024  
(214) 544-0061

Thomas Anthony D'Amore (for Mr. Martinez-Gonzalez)  
4144 North Central Expressway  
Suite 250  
Dallas, TX 75204  
(214) 821-1919

Leigh Warren Davis (for Mr. Ornelas)  
1901 Central Drive  
Suite 708  
Bedford, TX 76021  
(817) 868-9500

Neal Andrew Davis (for Mr. Ramos)  
1545 Heights Boulevard  
Houston, TX 77008  
(713) 227-4444

Rafael De La Garza II (for Mr. Marquez)  
3941 Legacy Drive  
Suite 204-A192  
Plano, TX 75023

(972) 351-2769

Colleen Dunbar (for Mr. Ovalle)  
3141 Hood Street  
Suite 100  
Dallas, TX 75219  
(214) 535-9935

Olegario Corral Estrada (for Ms. Robles-Deras)  
5224 W. Jefferson Boulevard  
Dallas, TX 75211  
(214) 331-4400

Marc Joseph Fratter (for Ms. Del Fin-Villarreal)  
101 East Park Boulevard  
Suite 355  
Plano, TX 75074  
(214) 471-3434

Carlos Hervey Gomez (for Ms. Lopez)  
777 Main Street  
Suite 600  
Fort Worth, TX 76102  
(817) 476-7233

Phillip Paul Gomez (for Ms. Lopez)  
2704 Valley View Lane  
Farmers, Branch, TX 75234  
(469) 522-1600

Stephen James Green (for Mr. Sakotic)  
8350 North Central Expressway  
Suite 19th Floor  
Dallas, TX 75206  
(214) 600-7255

Linda Guadarrama (for Mr. Olivares)  
1300 West Lynn Street  
Suite #115  
Austin, TX 78703  
(512) 669-3700

Taly Haffar (for Mr. Sakotic)  
8150 North Central Expressway  
Dallas, TX 75214  
(214) 734-2124

Matthew Dexter Hamilton (for Mr. Montesinos-Morales)  
123 West Houston Street  
Sherman, TX 75090  
(903) 892-8500

Phillip Michael Hawk, Jr. (for Mr. Quezada-Flores)  
5999 Custer Road  
Suite 110-111  
Frisco, TX 75035  
(972) 438-4357

Roger E. Haynes (for Mr. Suarez-Osoria)  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 526-3300

John Michael Helms, Jr. (for Mr. Sibrian)  
8100 John W. Carpenter Freeway  
Suite 200  
Dallas, TX 75247  
(469) 951-8496

Frank Warren Henderson (retired) (for Mr. Valencia-Aristizabal)  
600 East Taylor Street  
Suite 400  
Sherman, TX 75090  
(903) 892-4448

Jeffery Kearney (for Mr. Sakotic)  
3100 West 7th Street  
Suite 420  
Fort Worth, TX 76107  
(817) 336-5600

Camille M. Knight (for Ms. Chavez-Alonso)  
900 Jackson Street  
Suite 430  
Dallas, TX 75202  
(214) 871-1133

Steven Ryan LaFuente (for Mr. Pedraza)  
1920 McKinney Avenue  
Dallas, TX 75201  
(214) 886-6864

Kirk Fredric Lechtenberger (for Mr. Suarez-Osoria)  
183 Parkhouse Street  
Dallas, TX 75207  
(214) 871-1804

Peter A. Lesser (for Mr. Vallejo-Iracheta)  
8035 East R.L. Thornton Freeway  
Suite 317  
Dallas, TX 75228  
(214) 630-3066

Michael Phillip Levine (for Mr. Ibarra)  
325 North Saint Paul Street  
Suite 2100  
Dallas, TX 75201  
(214) 741-6500

Phillip A. Linder (for Mr. Quae-Thai Tran)  
330 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 252-9900

Michael Curtis Lowe (for Mr. Martinez)  
700 North Pearl Street  
Suite 2170  
Dallas, TX 75201  
(214) 526-1900

Starling Marshall McCallum (for Mr. Peralta)  
3838 Oak Lawn Avenue  
Suite 1124  
Dallas, TX 75219  
(214) 871-2719

Bryan Mac Morris (for Mr. Rodriguez-Reyes)  
7600 San Jacinto Place  
Suite 200  
Plano, TX 75204  
(214) 597-8127

Brian George O'Shea (for Mr. Valencia-Aristizabal)  
7460 Warren Parkway  
Suite 270  
Frisco, TX 75070

(469) 363-8506

John Daniel Oliphant, Jr. (for Mr. Mendez)  
3626 North Hall Street  
Suite 630  
Dallas, TX 75219  
(469) 879-8531

Frank A. Perez (for Ms. Lopez)  
9110 Scyene Road  
Dallas, TX 75227  
(214) 828-9911

Mark Anthony Perez (for Mr. Rodriguez-Reyes)  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 752-0505

Joel Keith Petrazio (for Mr. Ornelas)  
5465 Legacy Drive  
Suite 650  
Plano, TX 75024  
(972) 965-1016

Philip David Ray (for Ms. Robles-Deras)  
2770 Main Street  
Suite 261  
Frisco, TX 75033  
(469) 588-6770

Robert Edward Richardson (for Mr. Vallejo)  
118 South Crockett Street  
Sherman, TX 75090  
(903) 893-7541

Gaylon Perry Riddles (for Mr. Quezada-Flores)  
207A North Travis Street  
Sherman, TX 75090  
(903) 893-2878

Nathan Heath Rogers (for Ms. Martin)  
900 Jackson Street  
Suite 330  
Dallas, TX 75202  
(214) 871-4900



Kevin Blake Ross (for Mr. Brown)  
8150 North Central Expressway  
Suite M2070  
Dallas, TX 75206  
(214) 731-3151

Douglas Hugh Schopmeyer (for Mr. Piedra)  
600 East Taylor Street  
Suite 4000  
Sherman, TX 75090  
(903) 892-4448

Todd Donald Shapiro (for Mr. Vallejo)  
701 East 15th Street  
Suite 204  
Plano, TX 75074  
(972) 423-0033

Jed Ross Silverman (for Mr. Ramos)  
1221 Studewood Street  
Houston, TX 77008  
(713) 226-8800

Robert Ray Simmons (for Mr. Coronado)  
8344 East R.L. Thornton Freeway  
Suite 404  
Dallas, TX 75228  
(214) 324-4417

Cody Lee Skipper (for Mr. Sanchez-Cortez)  
2001 Bryan Street  
Suite 1905  
Dallas, TX 75201  
(214) 850-9229

Thomas Scott Smith (for Mr. Marquez)  
P.O. Box 354  
Sherman, TX 75091  
(903) 868-8686

Catherine Stanley (for Mr. Sakotic)  
3100 West 7th Street  
Suite 420  
Fort Worth, TX 76107  
(817) 336-5600

Billy Jack Stovall, II (for Mr. Salomon)  
770 Windrose Avenue  
Suite G300  
Plano, TX 75024  
(214) 887-0911

N Lee Tatum (for Mr. Vaughn)  
113 North Commerce Street  
P.O. Box 1211  
Gainesville, TX 76240  
(940) 580-3501

John R. Teakell (for Ms. Garcia Luna)  
2911 Turtle Creek Boulevard  
Suite 300  
Dallas, TX 75219  
(214) 523-9076

Kyle Timothy Therrain (for Mr. Valencia-Aristizabal)  
7300 State Highway 121  
Suite 400  
McKinney, TX 75070  
(972) 359-0577

Matthew A. Toback (for Mr. Suarez-Osoria)  
330 South Riverfront Boulevard  
Dallas, TX 75207  
(214) 720-9233

Michael J. Todd (for Mr. Martinez)  
700 North Pearl Street  
Suite 2170  
Dallas, TX 75201  
(214) 630-8633

Maria Tu (for Ms. Martinez)  
6600 Chase Oaks Boulevard  
Suite 150  
Plano, TX 75023  
(972) 964-8366

Ronald Wayne Uselton (for Mr. Rodriguez-Reyes)  
402 West Lamar Street  
Suite 101  
Sherman, TX 75090

(903) 893-9624

Derk Allan Wadas (for Ms. Vaughn)  
700 South Central Expressway  
Suite 550  
Allen, TX 75013  
(972) 548-7167

Phillip David Wainscott (for Mr. Pedraza)  
2435 North Central Expressway  
Suite 1251  
Richardson, TX 75080  
(214) 749-5701

Kenneth Weatherspoon (for Ms. Martin)  
325 North Saint Paul Street  
Suite 2475  
Dallas, TX 75201  
(214) 922-0212

Richard Earl Weaver (for Ms. Lopez)  
130 South Kentucky Street  
McKinney, TX 75069  
(972) 562-0935

James P. Whalen (for Mr. Olivarez)  
9300 John Hickman Parkway  
Suite 501  
Frisco, TX 75035  
(214) 368-2560

David Keith Willeford (for Mr. Lara)  
P.O. Box 11  
Greenville, TX 75403  
(903) 455-1991

Russell Wilson, II (for Mr. Morgan)  
1910 Pacific Avenue  
Suite 12050  
Dallas, TX 75201  
(469) 573-0211

Christopher Woodward (for Mr. De Jesus)  
2525 McKinnon Street  
Suite 420  
Dallas, TX 75201

(214) 215-1130

2. *United States v. Mercer-Ewin*, 4:20 cr212 (E.D. Tex.) (Mazzant, J.)

Since 2019, I have been the lead counsel for the United States in this prosecution. In this case, I devised a strategy of telephonic intercepts, undercover operations, and financial probes that ultimately uncovered evidence on the organization's leadership in the United States and Guatemala. I put together a team of different agencies to investigate this case which included Homeland Security Investigations, Internal Revenue Service-Criminal Investigations, Drug Enforcement Administration (DEA), Federal Aviation Administration (FAA), the Department of Commerce, and various foreign law enforcement and regulatory agencies in Central and South America.

The investigation uncovered a network of third-party airplane brokers and title companies in the United States collaborating with illicit entities, including narcotics trafficking organizations. The primary objective was to facilitate trade-based money laundering and the trafficking of narcotics through the purchase and sale of aircraft.

This intricate probe revealed that identified DTOs were associated with transporting multi-kilogram shipments of cocaine. Confidential sources indicated that these organizations utilized aircraft to transport large quantities of cocaine from South American countries like Colombia and Venezuela to Central American countries such as Guatemala and Belize. Subsequently, land transportation was employed to traffic narcotics from the interior of Mexico to areas closer to the United States border, with the destination being U.S. markets. I coordinated and worked closely with investigators and prosecutors in Colombia and Guatemala and coordinated a united front to combat this type of drug trafficking.

Defendant Mercer, through her companies, including Aircraft Guaranty Corporation (AGC), was implicated in a scheme to obfuscate the Export Administration regulation. This involved enabling foreign entities, not meeting FAA citizenship requirements, to register aircraft in the United States. Mercer and co-conspirators violated various criminal statutes, including conspiracy to commit wire fraud, bank fraud, money laundering, and narcotics trafficking.

The defendants exploited their status as U.S. citizens to execute a three-part scheme that facilitated international drug trafficking. This included violating FAA and Department of Commerce regulations to register aircraft in the U.S., concealing true ownership and exportation. When law enforcement seized registered aircraft laden with drugs, defendants deregistered or transferred ownership. Finally, the defendants engaged in layered aircraft sales transactions to conceal the movement of illicit proceeds, participating in a complex third-party money laundering scheme.

Several illegally registered and exported aircraft were utilized by transnational criminal organizations in countries like Colombia, Venezuela, Ecuador, Belize, Honduras, Guatemala, and Mexico. The investigation exposed drug distribution networks'

preference for smuggling cocaine from source countries using private aircraft, acquired through trade-based and third-party money laundering schemes.

The illicit proceeds, estimated by law enforcement to quadruple upon reaching the U.S. market, were then transported as bulk cash from the U.S. to Mexico. This was accomplished by various means and involved purchasing more aircraft and cocaine. To conceal their illegal activity, the defendants exported aircraft to foreign countries without filing Electronic Export Information. Aircraft were maintained in these foreign countries, occasionally sold without payment of taxes, or reporting changes of ownership, aligning with AGC's advertised business model.

Foreign governments seized several U.S.-registered aircraft containing multi-ton shipments of cocaine. FAA records revealed that these aircraft were held in trust by AGC for the benefit of foreign entities. Notably, one aircraft was sold to a convicted drug trafficker associated with the Sinaloa cartel and registered to AGC. Through my team's efforts, AGC is no longer in operation.

In January 2023, Ms. Mercer faced trial in Sherman, Texas. I organized the presentation of the case to the jury and coordinated the logistics for getting more than 20 critical witnesses from foreign countries (Mexico, Guatemala, Honduras, Belize, and Colombia). I handled the questioning of the lead investigators and witnesses and presented the closing argument. After a month-long trial, Mercer was found guilty of two counts of drug trafficking, one count of money laundering, and one count of wire fraud. Sentencing will occur later this year.

Representation Dates: 2019 – present

Co-Counsel

Colleen Bloss  
Heather Rattan  
United States Attorney's Office Eastern District of Texas  
101 East Park Boulevard  
Suite 500  
Plano, TX 75074  
(903) 618-9880

Robert Austin Wells  
United States Attorney's Office Eastern District of Texas  
110 North College Street  
Suite 700  
Tyler, TX 75702  
(903) 590-1400

Lesley Davis Brooks  
United States Attorney's Office Eastern District of Texas

600 East Taylor Street  
Suite 2000  
Sherman, TX 75090  
(903) 868-9454

Counsel for Defendants

Vicki Zemp Behenna (for Ms. Moffett)  
210 West Park Avenue  
Suite 3030  
Oklahoma City, OK 73102  
(405) 232-3800

William Brett Behenna (for Ms. Moffett)  
210 Park Avenue  
Suite 3030  
Oklahoma City, OK 73102  
(405) 415-4551

John W. Coyle, III (for Ms. Mercer)  
125 Park Avenue  
Oklahoma City, OK 73102  
(405) 232-1988

Matthew P. Cyran (for Ms. Mercer)  
630 West 63rd Street  
Oklahoma City, OK 73105  
(405) 858-8899

Rafael De La Garza II (for Ms. Mercer)  
3941 Legacy Drive  
Suite 204-A192  
Plano, TX 75023  
(972) 351-2769

Carlos A. Garcia (for Mr. Villaurrutia)  
1305 East Griffin Parkway  
Mission, TX 78572  
(956) 584-1448

Dan Calvin Guthrie, Jr. (for Mr. Machado)  
4131 North Central Expressway  
Suite 900  
Dallas, TX 75204  
(214) 953-1000

J Craig Jett (for Mr. Marcos)  
900 Jackson Street  
Suite 330  
Dallas, TX 75202  
(214) 871-4900

Sidney Michael McColloch (for Mr. Machado)  
3131 McKinney Avenue  
Suite 600  
Dallas, TX 75204  
(214) 643-6055

Jaime Pena (for Mr. Villaurrutia)  
3900 North 10th Street  
Suite 1050  
McAllen, TX 78501  
(956) 948-2221

Charles C. Weddle, III (for Ms. Mercer)  
5532 North Western Avenue  
Oklahoma City, OK 73118  
(405) 858-8899

Joe Ellis White, Jr. (for Ms. Mercer)  
5532 North Western Avenue  
Oklahoma City, OK 73118  
(405) 858-8899

Kate C. White (for Ms. Mercer)  
630 Northeast 63rd Street  
Oklahoma City, OK 73105  
(405) 858-8899

3. *United States v. Boulden et al.*, 4:20cr382 (E.D. Tex.) (Jordan, J.)

In my capacity as lead counsel for the United States, I oversaw a case that charged 136 individuals with a range of offenses including conspiracy to interfere with interstate commerce, interference with interstate commerce, use or brandishing of a firearm during a crime of violence, conspiracy to transport stolen property in interstate or foreign commerce, conspiracy to commit mail fraud, conspiracy to commit wire fraud, and conspiracy to commit money laundering.

As the lead counsel for the United States, I brought together a multi-agency effort involving federal, state, and local law enforcement. I crafted an investigative plan that included subpoenas, financial analysis, search warrants, audio recorded meetings, and the use of several cooperating witnesses wearing a wire. This intricate case revolved around

the prosecution of members belonging to a multi-layered criminal organization, orchestrating the theft of personal electronics—cell phones, tablets, laptops, and smartwatches—in the North Texas area. These stolen items were then exported overseas for resale. The organization was comprised of runners, suppliers, device traffickers, and exporters. Some defendants engaged in armed robberies, while others employed various fraud and identity theft schemes to pilfer electronics.

Beginning in late October 2020, a series of armed takeover-style robberies occurred at AT&T, T-Mobile, and Verizon retail cell phone stores in the Dallas area. A total of 23 armed takeover robberies were committed or attempted across various locations in Texas, resulting in an estimated loss exceeding \$750,000. In December 2020, four individuals from the robbery crew were arrested following an armed robbery at an AT&T cell phone store in Fort Worth, Texas. The subsequent investigation linked these individuals to Global One Wireless, a Dallas-based cell phone business. The owners of Global One Wireless, operating through a parent corporation, RJ Telecom, facilitated the sale of stolen products abroad by shipping merchandise to foreign import companies in Dubai, United Arab Emirates, and Hong Kong.

The conspirators employed various methods, including compromised store employees, to activate phones using fake identities or fraudulently adding lines to legitimate customer accounts. Additional schemes involved using fake and legitimate identity information to swap SIM cards, enabling the defendants to verify banking information through text messages and withdraw funds from customer accounts.

The illicit operation resulted in nearly \$100 million worth of products sold to foreign importers, with approximately 20,000 products acquired through identity theft. The overall estimated losses exceeded \$150 million.

To date, more than 120 individuals have been arrested, and law enforcement officials have seized more than \$16 million in assets, including cash, bank accounts, real estate, and stolen goods recovered from a warehouse. One hundred of the defendants have pled guilty to one or several charges, with no defendant opting for trial. Sentences in this case have ranged from 3 years of probation to 180 months of imprisonment.

Representation Dates: 2020 – present

Co-Counsel

Colleen Bloss  
United States Attorney's Office for the Eastern District of Texas  
101 East Park Boulevard  
Suite 500  
Plano, TX 75075  
(903) 618-9880

Counsel for Defendants



Michelle Allen McCoy (for Mr. Boulden)  
7460 Warren Parkway  
Suite 270  
Frisco, TX 75034  
(469) 362-8506

Fariah Amin (for Mr. Aziz)  
34-18 Northern Boulevard  
Suite 5-37  
New York, NY 11101  
(917) 737-2008

Jeffrey J. Ansley (for Mr. Simmons)  
300 Crescent Court  
Suite 400  
Dallas, TX 75074  
(469) 895-4790

James Ralph Aulbaugh (for Mr. Shorter)  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 500-0430

Donald Lee Bailey (for Ms. Vargas-Gutierrez)  
309 North Willow  
Sherman, TX 75090  
(903) 892-9185

Heather Jean Barbieri (for Mr. Karimov)  
1400 Gables Court  
Plano, TX 75075  
(972) 424-1902

Kristen Cox Beckman (for Mr. Karimov)  
8150 North Central Expressway  
Suite M2070  
Dallas, TX 75206  
(214) 674-1368

Micah Belden (for Mr. Lewis)  
711 North Travis Street  
Sherman, TX 75090  
(903) 744-4252

William Reynolds Biggs (for Mr. Israel)  
301 Commerce Street  
Suite 2001  
Fort Worth, TX 76102  
(817) 332-3822

Howard Benjamin Blackmon (for Mr. Simmons)  
7950 Legacy Drive  
Suite 360  
Plano, TX 75204  
(214) 544-0061

Amy R. Blalock (for Mr. Simmons)  
P.O. Box 765  
Tyler, TX 75710  
(903) 262-7520

Glenn A. Brenner (for Ms. Thibodeaux)  
603 Munger Avenue  
Suite 235  
Dallas, TX 75202  
(972) 212-7124

James Lee Bright (for Mr. Sarfaraz)  
2926 Maple Avenue  
Suite 200  
Dallas, TX 75201  
(214) 720-7777

Joseph Davis Brown (for Mr. Simmons)  
100 North Travis Street  
Suite 205  
Sherman, TX 75090  
(903) 487-4700

Scott Brown (for Mr. Sarfaraz)  
320 Hemphill Street  
Fort Worth, TX 76104  
(817) 810-0400

Timothy Edward Brown (for Mr. Caldwell)  
111A North Travis Street  
Sherman, TX 75090  
(818) 500-5553

Sean Ryan Buckley (for Mr. Parpia)

1806 23rd Avenue  
Suite C  
Gulfport, MS 39501  
(228) 933-4411

Doyle Raymond Bunch, III (for Mr. Salameh)  
900 Jackson Street  
Suite 330  
Dallas, TX 75202  
(214) 871-4900

Patricia Garza Burruss (for Ms. Taylor)  
2626 Cole Avenue  
Suite 300  
Dallas, TX 75204  
(214) 659-1453

Raul Antonio Canez (for Mr. Nepomuceno-Hierro)  
P.O. Box 1966  
Fort Worth, TX 76101  
(817) 999-7374

Rolando Cantu (for Mr. Khalil)  
515 Pecan Boulevard  
McAllen, TX 78501  
(956) 267-9898

Garland Don Cardwell (for Mr. Iglesias)  
123 South Travis Street  
Sherman, TX 75090  
(903) 893-8161

Kara Letisha Carreras (for Ms. Crespo-Rios)  
604 East 4th Street  
Suite 101  
Fort Worth, TX 76102  
(817) 795-9956

Kendall Scott Castello (for Mr. Ahmed)  
13747 Montfort Drive  
Suite 315  
Dallas, TX 75240  
(469) 814-8266

Robert M. Castle, III (for Mr. Aziz)  
100 Crescent Court

Suite 1200  
Dallas, TX 75201  
(214) 257-7211

Carl David Cedar (for Mr. Watkins)  
701 East 15th Street  
Suite 101  
Plano, TX 75074  
(214) 300-5262

Robert Clary (for Ms. Montes)  
405 Windward Drive  
Murphy, TX 75248  
(972) 757-5690

Cody Lee Cofer (for Mr. Tavarez)  
604 East 4th Street  
Suite 101  
Fort Worth, TX 76102  
(682) 777-3336

Christopher Sean Coker (for Ms. Edwards)  
3131 McKinney Avenue  
Suite 800  
Dallas, TX 75204  
(214) 740-9955

James Henry Creedon (for Mr. Eichelberger)  
5 Cowboys Way  
Suite 300  
Frisco, TX 75034  
(972) 850-6864

Darlina Carla Crowder (for Mr. Karimov)  
7950 Legacy Drive  
Suite 360  
Plano, TX 75024  
(214) 544-0061

Vickers Lee Cunningham, Sr. (for Mr. Tahiri)  
4303 North Central Expressway  
Suite 200  
Dallas, TX 75205  
(972) 445-5100

Leigh Warren Davis (for Mr. Wilkins)

1901 Central Drive  
Suite 708  
Bedford, TX 76021  
(817) 868-9500

Rafael De La Garza (for Mr. Smittick)  
3941 Legacy Drive  
Suite 204-A192  
Plano, TX 75023  
(972) 351-2769

Wayne Dickey (for Ms. Jasinki)  
110 North College Street  
Suite 1122  
Tyler, TX 75702  
(903) 531-9233

Dimitri Dube (for Mr. Cooper)  
325 North Saint Paul Street  
Dallas, TX 75201  
(469) 233-1159

Catherine Ann Rushlow Dunnavant (for Mr. Green)  
P.O. Box 171464  
Arlington, TX 76003  
(817) 938-8782

Shayan Elahi (for Mr. Khalil)  
P.O. Box 630827  
Irving, TX 75063  
(407) 902-5282

F R Buck Files, Jr. (for Mr. Tisdale)  
109 West Ferguson Street  
Tyler, TX 75702  
(903) 595-3573

Heather Fisher (for Mr. Calhoun)  
1104 North Locust Street  
Denton, TX 76201  
(214) 264-9676

James Know Fitzpatrick (for Mr. Bhangda)  
500 North Akard Street  
Suite 2150  
Dallas, TX 75201

(214) 237-0900

Jason Brent Freeman (for Mr. Reeves)  
7011 Main Street  
Frisco, TX 75034  
(214) 984-3410

Joey Dan Fritts (deceased) (for Ms. Washington)

Hugh Alexander Fuller (for Mr. Bhusal)  
2150 South Central Expressway  
Suite 200  
McKinney, TX 75070  
(972) 905-0572

Greggory Michael Gallian (for Ms. Washington)  
3500 Maple Avenue  
Suite 720  
Dallas, TX 75219  
(214) 432-8860

Lukas Zakarias Garcia (for Mr. Salameh)  
1717 Main Street  
Suite 4625  
Dallas, TX 75201  
(214) 665-6930

Sally Glenn Goodman (for Mr. Gonzalez)  
325 North Saint Paul Street  
Suite 2030  
Dallas, TX 75201  
(214) 748-3230

Ryan M. Grant (for Mr. Trent)  
15455 Dallas Parkway  
Suite 540  
Addison, TX 75001  
(214) 526-3350

Gregory Clay Gray (for Mr. Selexman)  
21 River Lane  
Lake Charles, LA 70605  
(972) 771-5525

Stephen James Green (for Mr. Thompson)  
8350 North Central Expressway

Suite 19th Floor  
Dallas, TX 75206  
(214) 600-7255

Taly Haffar (for Mr. Roden)  
8150 North Central Expressway  
Dallas, TX 75214  
(214) 734-2124

Matthew Dexter Hamilton (for Mr. Wiltz)  
123 West Houston Street  
Sherman, TX 75090  
(903) 892-8500

Phillip Michael Hawk, Jr. (for Mr. Lewis)  
5999 Custer Road  
Suite 110-111  
Frisco, TX 75035  
(972) 438-4357

Steven Todd Hayden (for Mr. Armstrong)  
1720 Regal Row  
Suite 230  
Dallas, TX 75235  
(214) 678-9663

David Kelton Haynes (for Mr. Smith)  
2600 West Eldorado Parkway  
Suite 220  
McKinney, TX 75070  
(972) 542-1793

Roger E. Haynes (for Mr. Salameh)  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 526-3300

John Michael Helms, Jr. (for Mr. Aziz)  
8100 John W. Carpenter Freeway  
Suite 200  
Dallas, TX 75247  
(469) 951-8496

Erin Elizabeth Hendricks (for Mr. Mohammed)  
8150 North Central Expressway

Suite M2070  
Dallas, TX 75206  
(214) 380-4566

John William Hopping (for Mr. Youngblood)  
15959 North Dallas Parkway  
Suite 400  
Dallas, TX 75248  
(214) 599-2000

Matthew Patrick Horak (for Mr. Nepomuceno-Hierro)  
25911 Oak Ridge Drive  
The Woodlands, TX 77380  
(713) 225-8000

Richard Daniels Howard (for Mr. Lee)  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 221-1444

Heath Enix Hyde (for Ms. Simmons)  
214 Connally Street  
Suite A  
Sulphur Springs, TX 75482  
(903) 439-0000

Niles Stefan Illich (for Mr. Sims)  
15455 Dallas Parkway  
Suite 540  
Addison, TX 75001  
(214) 987-4100

Randall B. Isenberg (for Mr. Tahiri)  
4303 North Central Expressway  
Dallas, TX 75205  
(214) 696-9253

Kambira Rashida Jones Morgan (for Mr. Constantin)  
2201 Main Street  
Suite 800  
Dallas, TX 75201  
(972) 525- 7416

Bruce Kaye (for Mr. Salameh)  
2309 Boll Street



Dallas, TX 75204  
(214) 733-7438

William Paul Kennedy (for Ms. Quinn)  
121 South Austin Avenue  
Denison, TX 75020  
(972) 939-4878

Camille M. Knight (for Mr. Armstrong)  
900 Jackson Street  
Suite 430  
Dallas, TX 75202  
(214) 871-1133

Mark Travis Lassiter (for Mr. Anwar)  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 845-7007

Christopher Whitener Lewis (for Mr. Obeidat)  
1717 Main Street  
Suite 4625  
Dallas, TX 75201  
(214) 665-6930

Phillip A. Linder (for Mr. Brown)  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 252-9900

Michael Curtis Lowe (for Ms. Qualls)  
700 North Pearl Street  
Suite 2170  
Dallas, TX 75201  
(214) 526-1900

Christine Michelle Lugo (for Mr. Whitlow)  
101 North Greenville Avenue  
Suite C-39  
Allen, TX 75002  
(972) 984-0869

Paul Taliaferro Land (for Mr. Tahiri)  
900 Jackson Street

Suite 330  
Dallas, TX 75202  
(214) 871-4900

Starling Marshall McCallum (for Mr. Arnold)  
3838 Oak Lawn Avenue  
Suite 1124  
Dallas, TX 75219  
(214) 871-2719

Brandon Nelson McCarthy (for Mr. Aziz)  
2121 North Pearl Street  
Suite 1100  
Dallas, TX 75201  
(214) 765-3680

Cadoc Artemio (Tim) Menchu (for Mr. Rankin)  
2603 Oak Lawn Avenue  
Suite 200  
Dallas, TX 75219  
(214) 629-7866

Christine Marie Merchant (for Ms. Omar)  
17304 Preston Road  
Suite 1250  
Dallas, TX 75252  
(214) 538-7393

James A. Metcalf (for Ms. Firu)  
8100 Dallas Parkway  
Suite 115a  
Plano, TX 75024  
(972) 733-3223

Ryan Jonathan Meyer (for Mr. Aziz)  
2121 North Pearl Street  
Suite 1100  
Dallas, TX 75201  
(214) 765-3627

Zan Emil Moltz (for Ms. Jasinski)  
2320 Cuesta Lane  
McKinney, TX 75070  
(214) 695-8656

James Joseph Mongares, Jr. (for Mr. Nguyen)

8150 North Central Expressway  
Suite M1101  
Dallas, TX 75206  
(214) 468-8100

Amanda Fisher Moore (for Ms. Davis)  
6333 East Mockingbird Lane  
Suite 147-662  
Dallas, TX 75214  
(214) 669-9674

Bryan Mac Morris (for Mr. Blay)  
7600 San Jacinto Place  
Suite 200  
Plano, TX 75204  
(214) 597-8127

Jeffrey Ray Morrow (for Mr. Aziz)  
8100 John W. Carpenter Freeway  
Dallas, TX 75247  
(214) 800-2086

Brian O'Shea (for Mr. Boulden)  
7460 Warren Parkway  
Suite 270  
Frisco, TX 75070  
(469) 362-8506

Jon Michael O'Tool (for Mr. Branch)  
700 South Central Expressway  
Suite 550  
Allen, TX 75013  
(972) 548-7167

Marcus Taylor Olds (for Ms. Smith)  
111A North Travis Street  
Suite 5  
Sherman, TX 75090  
(903) 609-1598

Scott Palmer (for Mr. Sims)  
15455 Dallas Parkway  
Suite 540  
Addison, TX 75001  
(214) 987-4100

Thomas Pappas (for Mr. Iglesias)  
900 Jackson Street  
Suite 330  
Dallas, TX 75202  
(214) 871-4900

Christopher Leigh Peele (for Mr. Bhangda)  
4002 East Hwy 290  
Dripping Springs, TX 78620  
(512) 417-0334

Joel Keith Petrazio (for Ms. Glenn)  
5465 Legacy Drive  
Suite 650  
Plano, TX 75024  
(972) 965-1016

Brian Daniel Poe (for Mr. Reeves)  
909 Throckmorton Street  
Fort Worth, TX 76102  
(817) 870-2022

Letitia D. Quinones-Hollins (for Ms. Hardee)  
2202 Ruth Street  
Houston, TX 77004  
(713) 481-7420

Philip David Ray (for Mr. Anwar)  
2770 Main Street  
Suite 261  
Frisco, TX 75033  
(469) 588-6770

Katherine Lydia Reed (for Mr. Moore)  
8150 North Central Expressway  
Suite M1101  
Dallas, TX 75206  
(214) 468-8100

Robert Edward Richardson (for Mr. Smith)  
118 South Crockett Street  
Sherman, TX 75090  
(903) 893-9585

Gaylon Perry Riddles (for Mr. Beard)  
207A North Travis Street

Sherman, TX 75090  
(903) 893-2878

Rachel Malone Riley (for Mr. Aziz)  
2121 North Pearl Street  
Suite 1100  
Dallas, TX 75201  
(214) 765-3639

Nathan Heath Rogers (for Mr. Cooks)  
900 Jackson Street  
Suite 330  
Dallas, TX 75202  
(214) 871-4900

Kevin Blake Ross (for Mr. Karimov)  
8150 North Central Expressway  
Suite M2070  
Dallas, TX 75206  
(214) 731-3151

Ryne Thomas Sandel (for Mr. Stewart)  
9300 John Hickman Parkway  
Suite 501  
Frisco, TX 75035  
(214) 368-2560

Sinan Sari (for Mr. Bhusal)  
8330 Lyndon B. Johnson Freeway  
Suite 710  
Dallas, TX 75243  
(201) 899-6194

Douglas Hugh Schopmeyer (for Mr. Young)  
600 East Taylor Street  
Suite 4000  
Sherman, TX 75090  
(903) 892-4448

Gonzalo Serrano (for Mr. Armstrong)  
7300 State Highway 121  
Suite 400  
McKinney, TX 75070  
(972) 369-0577

Cody Lee Skipper (for Mr. Simmons)

2001 Bryan Street  
Suite 1905  
Dallas, TX 75201  
(214) 850-9229

Matthew Joseph Smid (for Mr. Israel)  
301 Commerce Street  
Suite 2001  
Fort Worth, TX 76102  
(817) 332-3822

John Hunter Smith (for Mr. Scott)  
707 West Washington Street  
Sherman, TX 75092  
(903) 893-8177

Thomas Scott Smith (for Mr. Taylor)  
P.O. Box 354  
Sherman, TX 75090  
(903) 868-8686

Peter Christian Smythe (for Mr. Tarver)  
835 East Lamar Boulevard  
Suite 264  
Arlington, TX 76011  
(817) 666-9475

Arnold Augur Spencer (for Mr. Aziz)  
201 Main Street  
Suite 1375  
Fort Worth, TX 76102  
(214) 385-8500

Derek Ryan Staub (for Ms. Byers)  
2101 Cedar Springs Road  
Suite 900  
Dallas, TX 75201  
(214) 545-3472

John W. Stickels (for Mr. Harlston)  
P.O. Box 121431  
Arlington, TX 76012  
(817) 379-9282

Billy Jack Stovall, II (for Mr. Leach)  
770 Windrose Avenue

Suite G300  
Plano, TX 75024  
(214) 887-0911

N Lee Tatum (for Mr. Santana-Polanco)  
113 North Commerce Street  
P.O. Box 1211  
Gainesville, TX 76240  
(940) 580-3501

Michael J. Todd (for Mr. Ahmed)  
700 North Pearl Street  
Suite 2170  
Dallas, TX 75201  
(214) 630-8633

Maria Tu (for Mr. Moore)  
6200 Chase Oaks Boulevard  
Suite 102  
Plano, TX 75023  
(972) 964-8366

Russell Sloan Turkel (for Mr. Sims)  
15455 Dallas Parkway  
Suite 540  
Addison, TX 75001  
(214) 987-4100

Michael John Uhl (for Mr. Sarfaraz)  
500 North Akard Street  
Suite 2150  
Dallas, TX 75201  
(214) 237-0900

Ronald Wayne Uselton (for Ms. Qualls)  
402 West Lamar  
Suite 101  
Sherman, TX 75090  
(903) 893-9624

Suzy Juddieth Vanegas (for Mr. Santana-Polanco)  
5050 Capitol Avenue  
Suite 225  
Dallas, TX 75206  
(469) 608-0621

Colby Claude Vokey (for Mr. Barchetti)  
6924 Spanky Branch Court  
Dallas, TX 75248  
(214) 697-0274

Dirk Wadas (for Mr. Green)  
700 South Central Expressway  
Suite 550  
Allen, TX 75013  
(972) 548-7167

Daniel H. Wannamaker (for Mr. Razzak)  
1012 Rio Grande Street  
Austin, TX 78701  
(512) 236-9929

Richard Earl Weaver (for Mr. Simmons)  
130 South Kentucky Street  
McKinney, TX 75069  
(972) 562-0935

Bree Boulware West (for Mr. Johnson)  
320 South R.L. Thornton Freeway  
Suite 300  
Dallas, TX 75203  
(214) 941-1881

James P. Whalen (for Mr. Rascoe)  
9300 John Hickman Parkway  
Suite 501  
Frisco, TX 75035  
(214) 368-2560

David Keith Willeford (for Mr. Roberson)  
P.O. Box 11  
Greenville, TX 75403  
(903) 455-1991

Graham Thayer Williamson, II (for Mr. Johnson)  
6060 North Central Expressway  
Suite 560  
Dallas, TX 75206  
(214) 824-9461

Sarah Qureshi Wirskye (for Mr. Ahmed)  
5220 Spring Valley Road



Suite 200  
Dallas, TX 75254  
(972) 725-7941

Lucas C. Wohlford (for Mr. Aziz)  
100 Crescent Court  
Suite 1200  
Dallas, TX 75201  
(214) 257-7214

David Chris Wright (for Mr. Whitmire)  
1011 Surrey Lane  
Suite 200  
Flower Mound, TX 75022  
(214) 646-3248

Brady Thomas Wyatt, III (for Mr. Mohsin)  
3300 Oak Lawn Avenue  
Suite 600  
Dallas, TX 75219  
(214) 559-9115

4. *United States v. Brown*, 4:21cr152 (E.D. Tex.) (Kernodle, J.)

In my role as the lead prosecutor for the United States, I directed the prosecution of a violent home invasion robbery where a victim was seriously and permanently injured. I coordinated the efforts of a multi-agency investigation and supervised and gave advice as to the collection and safeguarding of vital evidence. On October 3, 2020, Deputies of the Grayson County Sheriff's Office responded to a robbery at the Dollar General in Tom Bean, Texas. Dispatch relayed that an armed male, masked, had robbed the store, and fled in a dark passenger car on Highway 11. Assisting Officers of the Tom Bean Police Department apprehended a possible suspect, Mr. Holt, near Highway 11.

The next day, Investigators from the Sherman, Texas Police Department received information about Mr. Holt's arrest from other investigators with the Grayson County Sheriff's Office. Holt, implicated in the Dollar General robbery, became a person of interest in other Sherman and nearby county robberies. Investigators sought additional details from Tom Bean Officers, leading to the discovery of a black ski mask near Holt's arrest location. In a subsequent interview, Holt revealed that Mr. Black and Mr. Brown were involved in the Dollar General robbery.

During the investigation, a Facebook video posted by Black showed Brown wearing a mask, corroborating their involvement. On October 21, 2020, surveillance at a residence in Sherman, Texas, known to be frequented by Brown and Black led to their arrest. Brown was taken into custody without incident and the residence was searched. A search of the residence uncovered a loaded tan 9mm pistol, matching the description provided

by Holt.

With the evidence seized from the search at the residence in Sherman, Texas, investigators were then able to link Holt, Brown, and Black to a series of store and fast-food restaurant robberies and to a home invasion on October 13, 2020, in Tarrant County, Texas, where the victims were held hostage, and their son was shot in the stomach and arm. The investigation further connected Brown and Black to the incident through DNA analysis, matching Brown to the DNA found as evidence from the home invasion. A tan Canik Model TP9 9mm handgun found during the search of the residence in Sherman was linked to the bullet removed from the victim's arm. Subsequent DNA analysis identified Black as the source of the DNA on the handgun grips and trigger.

In February 2023, Black went to trial, and the jury convicted him on all counts. As the lead prosecutor for the United States, I played a pivotal role in presenting the evidence that led to the conviction. I handled the voir dire, opening statements, questioned the primary witnesses, introduced the DNA evidence, and presented the closing argument for the United States. The defendant now faces a sentence of 10 years to life and will be sentenced later this year. Brown pled guilty to a recommended sentence of 360 months and Holt pled guilty to a recommended sentence of 180 months.

Representation Dates: 2020 – 2023

Co-Counsel

Colleen Bloss  
Tracey Batson  
United States Attorney's Office Eastern District of Texas  
101 East Park Boulevard  
Suite 500  
Plano, TX 75075  
(903) 618-9880

Counsel for Defendants

Zachary Ferguson (for Mr. Abram)  
101 Summit Avenue  
Suite 304  
Fort Worth, TX 76102  
(817) 566-5879

Stephen James Green (for Mr. Abram)  
8350 North Central Expressway  
Suite 19th Floor  
Dallas, TX 75206  
(214) 600-7255

Frank Warren Henderson (for Mr. Holt)  
600 East Taylor Street  
Suite 400  
Sherman, TX 75092  
(903) 892-4448

Joel Keith Petrazio (for Mr. Black)  
5465 Legacy Drive  
Suite 650  
Plano, TX 75024  
(972) 965-1016

Ryne Thomas Sandel (for Mr. Brown)  
9300 John Hickman Parkway  
Suite 501  
Frisco, TX 75035  
(214) 368-2560

5. *United States v. Majors et al.*, 4:19cr021 (E.D. Tex.) (Mazzant, J.)

As lead counsel for the United States, I prosecuted a FBI investigation involving the kidnapping and robbery of an 83-year-old victim in Colorado by a family of criminals from Colorado and Oklahoma. I led a multi-agency investigation that included federal, state, and local law enforcement. I crafted an investigative plan that included subpoenas, financial analysis, search warrants, use of cooperating co-defendants and telephone intercepts. The case concluded with guilty pleas from all defendants, resulting in sentences ranging from 180 to 540 months of imprisonment.

Representation Dates: 2018 – 2022

Co-Counsel

Colleen Bloss  
United States Attorney's Office Eastern District of Texas  
101 East Park Boulevard  
Suite 500  
Plano, TX 75075  
(903) 618-9880

Robert Austin Wells  
United States Attorney's Office Eastern District of Texas  
110 North College Street  
Suite 700  
Tyler, TX 75702  
(903) 590-1400

Counsel for Defendants

Robert Gerard Arrambide (for Mr. Majors)  
510 West Morgan Street  
Denison, TX 75020  
(469)865-4941

Denise Benson (for Mr. Majors)  
7460 Warren Parkway  
Suite 270  
Frisco, TX 75034  
(469) 362-8506

Micah Belden (for Ms. Stonebarger)  
711 North Travis Street  
Sherman, TX 75090  
(903) 744-4252

Amy R. Blalock (for Ms. Majors)  
P.O. Box 765  
Tyler, TX 75710  
(903) 262-7520

Heather Fisher (for Ms. Majors)  
1104 North Locust Street  
Denton, TX 76201  
(214) 264-9676

David Kelton Haynes (for Mr. Majors)  
2600 West Eldorado Parkway  
Suite 220  
McKinney, TX 75070  
(972) 542-1793

Cody Lee Skipper (for Mr. Majors)  
2001 Bryan Street  
Suite 1905  
Dallas, TX 75201  
(214) 850-9229

Dirk Wadas (for Mr. Majors)  
700 South Central Expressway  
Suite 550  
Allen, TX 75013  
(972) 548-7167

James Wesley Volderding (for Mr. Majors)  
 110 North College Street  
 Suite 1850  
 Tyler, TX 75702  
 (903) 597-6622

6. *United States v. Banks et al.*, 4:18cr131 (E.D. Tex.) (Jordan, J.)

As the lead prosecutor representing the United States in this case involving a series of strong-arm robberies, I oversaw proceedings related to a conspiracy spanning from 2017 to 2019. I supervised and directed the investigative efforts of several law enforcement agencies. The criminal activities at issue extended beyond the Eastern District of Texas, encompassing cities such as Plano, Allen, McKinney, and Texarkana. Furthermore, the suspects were implicated in robberies across various locations in Texas, as well as in Georgia, North Carolina, Missouri, Arkansas, Florida, Illinois, and Tennessee. As lead prosecutor, I ensured that evidence collected in other states was lawfully seized and properly preserved for admissibility later if necessary. The estimated losses incurred by financial institutions due to these criminal actions were approximately \$2,779,000. The suspects were identified as affiliated with a criminal gang based in the 5th Ward area of Houston known as the Money Street Market Gang, or MSMG.

In August 2018, a federal grand jury indicted 27 individuals on charges of conspiracy to commit robbery, interfering with interstate commerce, and robbery interfering with interstate commerce. The charges resulted in guilty pleas from all defendants. Subsequently, sentences ranging from 135 to 240 months of imprisonment were imposed.

Representation Dates: 2018 – 2023

Co-Counsel

Colleen Bloss  
 United States Attorney's Office Eastern District of Texas  
 101 East Park Boulevard  
 Suite 500  
 Plano, TX 75075  
 (903) 618-9880

Counsel for Defendants

David Wesley Barlow (for Ms. Montgomery)  
 510 Park Street  
 Suite 450  
 Beaumont, TX 77701  
 (409) 838-2168

Amy Blalock (for Mr. Dorsey)

P.O. Box 765  
Tyler, TX 75710  
(903) 262-7520

Kristen Renea Brown (for Mr. Adams)  
17304 Preston Road  
Suite 1250  
Dallas, TX 75252  
(214) 446-3909

Garland Don Cardwell (for Mr. Freeman)  
123 South Travis Street  
Sherman, TX 75090  
(903) 893-8161

Jason D. Cassel (for Mr. Smith)  
P.O. Box 2361  
Longview, TX 75606  
(903) 758-5200

Carl David Cedar (for Mr. Boutte)  
701 East 15th Street  
Suite 101  
Plano, TX 75074  
(214) 300-5262

Darlina Carla Crowder (for Mr. King)  
7950 Legacy Drive  
Suite 360  
Plano, TX 75024  
(214) 544-0061

Leigh Warren Davis (for Mr. Dorsey)  
1901 Central Drive  
Suite 708  
Bedford, TX 76021  
(817) 868-9500

Rafael De La Garza (for Mr. Arrington)  
3941 Legacy Drive  
Suite 204-A192  
Plano, TX 75023  
(972) 351-2769

Dimitri Dube (for Mr. Becks)  
325 North Saint Paul Street

Dallas, TX 75201  
(469) 233-1159

Heather M. Fisher (for Mr. Dorsey)  
1104 North Locust Street  
Denton, TX 76201  
(214) 264-9676

Joey Dan Fritts (deceased) (for Ms. Adams)

Barry Kieth Gore (for Mr. Randle)  
2301 Virginia Parkway  
McKinney, TX 75071  
(972) 529-2220

Douglas Charles Greene, Sr. (deceased) (for Mr. Mapp)

Matthew Dexter Hamilton (for Mr. Harris)  
123 West Houston Street  
Sherman, TX 75090  
(903) 892-8500

Steven Todd Hayden (for Mr. Mapp)  
1720 Regal Row  
Suite 230  
Dallas, TX 75235  
(214) 678-9663

Roger E. Haynes (for Mr. McQuarn)  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 526-3300

Camille M. Knight (for Mr. Gore)  
900 Jackson Street  
Suite 430  
Dallas, TX 75202  
(214) 871-1133

Phillip A. Linder (for Mr. Celestine)  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 252-9900

Starling Marshall McCallum (for Mr. Smith)  
3838 Oak Lawn Avenue  
Suite 1124  
Dallas, TX 75219  
(214) 871-2719

Cadoc Artemio (Tim) Menchu (for Mr. Ware)  
2603 Oak Lawn Avenue  
Suite 200  
Dallas, TX 75219  
(214) 629-7866

James M. Morris (for Mr. Adams)  
213 North Crockett Street  
Suite 102  
Sherman, TX 75090  
(903) 868-1995

Michael John Pannitto (for Mr. Arrington)  
600 East Taylor Street  
Suite 4000  
Sherman, TX 75090  
(903) 892-4448

Mark Anthony Perez (for Mr. Becks)  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 752-0505

Joel Keith Petrazio (for Mr. Blunt)  
5700 Granite Parkway  
Suite 200  
Plano, TX 75024  
(972) 965-1016

Philip David Ray (for Mr. Banks)  
2770 Main Street  
Suite 261  
Frisco, TX 75033  
(469) 588-6770

Robert Edward Richardson (for Mr. Pinson)  
118 South Crockett Street  
Sherman, TX 75090  
(903) 893-9585



Mark Gregory Rodriguez (for Mr. Pinson)  
701 South Howard Avenue  
Suite 201  
Tampa, FL 33606  
(813) 227-9642

Cody Lee Skipper (for Mr. Toliver)  
2001 Bryan Street  
Suite 1905  
Dallas, TX 75201  
(214) 850-9229

Thomas Scott Smith (for Mr. Phillips)  
P.O. Box 354  
Sherman, TX 75090  
(903) 868-8686

N Lee Tatum (for Mr. Lancelin)  
113 North Commerce Street  
P.O. Box 1211  
Gainesville, TX 76240  
(940) 580-3501

Maria Tu (for Mr. Dorsey)  
6200 Chase Oaks Boulevard  
Suite 102  
Plano, TX 75023  
(972) 964-8366

Derk Allan Wadas (for Ms. Stanley)  
105 North Benge Street  
McKinney, TX 75070  
(972) 548-7167

Richard Earl Weaver (for Mr. Banks Motton)  
130 South Kentucky Street  
McKinney, TX 75069  
(972) 562-0935

James P. Whalen (for Mr. Dorsey)  
9300 John Hickman Parkway  
Suite 501  
Frisco, TX 75035  
(214) 368-2560

David Keith Willeford (for Ms. Montgomery)  
P.O. Box 11  
Greenville, TX 75403  
(903) 455-1991

7. *United States v. Donado et al.*, 4:18cr144 (E.D. Tex.) (Mazzant, J.)

This case started with an investigation initiated in 2015, as United States and Colombian law enforcement authorities collaborated to scrutinize a DTO masterminded and led by Ms. Donado; her husband, Mr. Gallego; and Mr. Gomez. The investigation revealed the DTO's involvement in large-scale cocaine trafficking operations, encompassing the transportation of cocaine from Central and South America to destinations such as the United States, the Dominican Republic, and Europe. As the lead prosecutor for the United States, I supervised a team of investigators in the United States and Colombia. This case was an OCDETF case, investigated by the Drug Enforcement Administration (Dallas, Texas; Cartagena, Colombia; and Bogota, Colombia offices), Internal Revenue Service, and prosecutors and investigators in Colombia, Guatemala, and Mexico. I devised a plan to identify the structure and dismantle the DTO with the use of wire intercepts, cooperating witnesses, drug seizures in Colombia and the United States and extraditions to the United States. I also organized a coordinated takedown in Colombia targeting the leaders of the DTO. Only one defendant has not been extradited. Mr. Gomez is serving a sentence in Colombia and will be extradited after he completes his sentence in Colombia. Sentences for the 10 defendants who have been extradited in this case have ranged from 78 to 240 months.

Representation Dates: 2015 – 2023

Co-Counsel

Colleen Bloss  
United States Attorney's Office Eastern District of Texas  
101 East Park Boulevard  
Suite 500  
Plano, TX 75075  
(903) 618-9880

Counsel for Defendants

Michelle Allen McCoy (for Mr. Zappa-Molina)  
7460 Warren Parkway  
Suite 270  
Frisco, TX 75034  
(469) 362-8506

Donald Lee Bailey (for Mr. Gallo-Donado)  
309 North Willow

Sherman, TX 75090  
(903) 892-9185

Garland Don Cardwell (for Mr. Villar-Sierra)  
123 South Travis Street  
Sherman, TX 75090  
(903) 893-8161

Kara Letisha Carreras (for Mr. Garzon-Bustos)  
604 East 4<sup>th</sup> Street  
Suite 101  
Fort Worth, TX 76102  
(817) 795-9956

Leigh Warren Davis (for Mr. Villar-Sierra)  
1901 Central Drive  
Suite 708  
Bedford, TX 76021  
(817) 868-9500

Rafael De La Garza II (for Ms. Arango-Marin)  
3941 Legacy Drive  
Suite 204-A192  
Plano, TX 75023  
(972) 351-2769

Stephen James Green (for Ms. Arango-Marin)  
8350 North Central Expressway  
Suite 19<sup>th</sup> Floor  
Dallas, TX 75206  
(214) 600-7255

Hilda Morales Hahn (for Mr. Isaza-Gomez)  
P.O. Box 190627  
Dallas, TX 75219  
(972) 899-4466

Roger E. Haynes (for Mr. Alvarez-Conde)  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 526-3300

Sterling Marshall McCallum (for Mr. Febregas-Fisvel)  
325 North Saint Paul Street  
Suite 2100

Dallas, TX 75201  
(214) 871-2719

Brian George O'Shea (for Mr. Zappa-Molina)  
7460 Warren Parkway  
Suite 270  
Frisco, TX 75070  
(469) 363-8506

Robert Edward Richardson (for Mr. Hernandez-Ossa)  
118 South Crockett Street  
Sherman, TX 75090  
(903) 893-7541

Gaylon Perry Riddles (for Mr. Montes-Restrepo)  
207A North Travis Street  
Sherman, TX 75090  
(903) 893-2878

Billy Jack Stovall, II (for Mr. Hernandez)  
770 Windrose Avenue G300  
Plano, TX 75024  
(214) 887-0911

Ronald Wayne Uselton (for Mr. Siossi-Manjarres)  
402 West Lamar Street  
Suite 101  
Sherman, TX 75090  
(903) 893-9624

Richard Earl Weaver (for Ms. Rodriguez-Rodriguez)  
130 South Kentucky Street  
McKinney, TX 75069  
(972) 562-0935

James P. Whalen (for Ms. Gallo-Donado)  
9300 John Hickman Parkway  
Suite 501  
Frisco, TX 75035  
(214) 368-2560

8. *United States v. Minota et al.*, 4:16cr46 (E.D. Tex.) (Mazzant, J.)

As the lead prosecutor for the United States, I spearheaded the prosecution of multiple substantial international maritime violation cases. The defendants in these cases were intricately involved in the illicit importation of significant quantities of cocaine from

Colombia and Ecuador, employing various vessels such as go-fast boats, semi-submersibles, and fishing boats. As the lead prosecutor, I directed the efforts of a multi-agency group of investigators which included the Drug Enforcement Administration (Dallas, Texas; Cartagena, Colombia; and Bogota, Colombia), Homeland Security Investigations, Internal Revenue Service, Federal Bureau of Investigation, prosecutors, and investigators from Colombia, Guatemala, Honduras, and Mexico. Working closely with my team, I was able to devise a strategy whereby I could leverage the extraterritorial reach afforded by international maritime laws of the United States and the collaborative agreements in place with nations such as Colombia and other Central American countries.

This judicial endeavor effectively curtailed the inflow of thousands of kilograms of cocaine into the United States and Mexico. The prosecution's success in navigating the complexities of international maritime law and leveraging diplomatic agreements underscored the commitment to safeguarding national interests and upholding the rule of law on a global scale. Sentences in this case ranged from 120 to 360 months of imprisonment.

Representation Dates: 2015 – 2022

Co-Counsel

Heather Rattan  
United States Attorney's Office Eastern District of Texas  
101 East Park Boulevard  
Suite 500  
Plano, TX 75075  
(214) 477-2743

Counsel for Defendants

Denise Benson (for Mr. Chiriboga-Hinestroza)  
7460 Warren Parkway  
Suite 270  
Frisco, TX 75034  
(469) 362-8506

Juan Diego Berrio (for Mr. Cuellar-Gallego)  
2333 Brickell Avenue  
Suite A-1  
Miami, FL 33129  
(305) 358-0940

Joey Dan Fritts (deceased) (for Mr. Albornoz-Posso)

John Michael Helms, Jr. (for Mr. Obando-Montano)

8100 John W. Carpenter Freeway  
Suite 200  
Dallas, TX 75247  
(469) 951-8496

Michael Philip Levine (for Mr. Martinez-Minota)  
325 North Saint Paul Street  
Suite 2100  
Dallas, TX 75210  
(214) 741-6500

James Brett Smith (for Mr. Obando-Montano)  
P.O. Box 354  
Sherman, TX 75090  
(903) 868-8686

Maria Tu (for Mr. Obando-Montano)  
6200 Chas Oaks Boulevard  
Suite 102  
Plano, TX 75023  
(972) 964-8366

Ronald Wayne Uselton (for Mr. Martinez-Minota)  
402 West Lamar Street  
Suite 101  
Sherman, TX 75090  
(903) 893-9624

9. *United States v. Trevino et al.*, 4:12cr19 (E.D. Tex.) (Crone, Jordan, JJ.)

I served as lead counsel for the United States in this prosecution of members of one of the most dangerous cartels in Mexico, which led to the indictment of the leaders of the Zeta Cartel. The Zeta Cartel was importing and distributing \$4 million worth of drugs in the Dallas metroplex on a weekly basis. The Zeta Cartel was also purchasing large quantities of high caliber firearms in the United States and importing the firearms into Mexico, where it perpetrated extensive and extreme violence against its rival cartels and the general public. As lead prosecutor for the United States, I worked closely with a multi-agency group of domestic and international investigators. I devised a strategy of wiretaps, undercover operations, financial probes, seizures domestically and internationally, extraditions, use of cooperating co-defendants, subpoenas and several coordinated takedowns in the United States, Mexico, and Colombia. This case had a significant impact in the Dallas metropolitan area and the United States because it reduced the quantity of illegal drugs available for distribution and ultimately led to the capture of its leaders and the downfall of the Zeta Cartel. One hundred and seventy-six defendants were indicted both in the United States, Mexico, Guatemala, and Colombia.

This case was unique in that we were able to establish the entire chain of distribution from seizures on the streets of Dallas to laboratories in the jungles of Colombia. One defendant went to trial and was convicted and sentenced to 360 months in prison. On September 13, 2021, one of the Zeta Cartel's upper management members was sentenced to life imprisonment at the federal courthouse in Plano, Texas. Six other high-level members were sentenced to 480 months in 2023. Other sentences have ranged from 120 months to life imprisonment.

Representation Dates: 2010 – 2023

Co-Counsel

Colleen Bloss  
United States Attorney's Office Eastern District of Texas  
101 East Park Boulevard  
Suite 500  
Plano, TX 75075  
(903) 618-9880

Counsel for Defendants

George Patrick Black (for Mr. Valdez)  
Wayne Ray Dickey  
110 North College Street  
Suite 1122  
Tyler, TX 75702  
(903) 531-9233

Jesus Mario Gamez (for Mr. Fernandez-De Luna)  
816 Camaron Street  
Suite 1.15  
San Antonio, TX 78212  
(210) 222-0500

Douglas Charles Greene, Sr. (deceased) (for Mr. Landon)

Hilda Morales Hahn (for Mr. Guizar-Valencia)  
P.O. Box 190627  
Dallas, TX 75219  
(972) 899-4466

Heath Enix Hyde (for Mr. Figuerroa)  
214 Connally Street  
Suite A  
Sulphur Springs, TX 75482  
(903) 439-0000

Camille M. Knight (for Mr. Figueroa)  
900 Jackson Street  
Suite 430  
Dallas, TX 75202  
(214) 871-1133

John Andrew Kuchera (for Mr. Landon)  
210 North 6th Street  
Waco, TX 76701  
(254) 754-3075

Phillip A. Linder (for Mr. Torres-Solorzano)  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 252-9900

Christopher Douglas Mulder (for Mr. Velasquez-Caballero)  
2001 Bryan Street  
Suite 1905  
Dallas, TX 75201  
(214) 953-1919

Douglas D Mulder (deceased) (for Mr. Velasquez-Caballero)

Brian O'Shea (for Mr. Mancha-Atyade)  
7460 Warren Parkway  
Suite 270  
Frisco, TX 75070  
(469) 362-8506

Frank A. Perez (for Mr. Guadalajara)  
9110 Scyene Road  
Dallas, TX 75227  
(214) 828-9911

Mark Anthony Perez (for Mr. Mancha-Atyade)  
330 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219  
(214) 752-0505

Bobbie Peterson Cate (for Mr. Garza-Gaytan)  
120 South Crockett Street  
Sherman, TX 75090



(903) 870-1007

David J. Pire (for Mr. Valdez)  
4144 North Central Expressway  
Suite 250  
Dallas, TX 75204  
(214) 821-1919

Gaylon Perry Riddles (for Mr. Montes-Ruiz)  
207A North Travis Street  
Sherman, TX 75090  
(903) 893-2878

Gabriel Robles (for Mr. Macio Haslip)  
3025 Liberty Drive  
Corsicana, TX 75110  
(214) 850-3361

Sergio J. Sanchez (for Mr. Guizar-Valencia)  
6400 North 10th Street  
Suite 30  
McAllen, TX 75110  
(956) 687-7700

Billy Jack Stovall, III (for Mr. Brown)  
7700 Windrose Avenue  
Suite G300  
Plano, TX 75024  
(214) 887-0911

Maria Tu (for Mr. Landon)  
6200 Chase Oaks Boulevard  
Suite 102  
Plano, TX 75023  
(972) 964-8366

10. *United States v. Arbuckle*, 4:06cr198 (E.D. Tex.) (Schnieder, J.)

In my role as the lead prosecutor for the United States, I directed the prosecution of a groundbreaking case that centered on the laundering of millions of dollars through eBay accounts spanning both Europe and the United States. Notably, this case marked a pioneering effort in 2007, as it was the first prosecution of an individual who had been utilizing debit cards for the extensive international laundering of substantial sums of money. The defendant employed eBay accounts acquired from Russian hackers, linking these accounts to his own company, which managed debit card access accounts. Through this intricate scheme, the defendant illicitly siphoned off millions of dollars from

unsuspecting victims.

This case was investigated by the U.S. Drug Enforcement Administration-Dallas with assistance from the Federal Bureau of Investigation, Bureau of Alcohol, Tobacco, Firearms and Explosives, Texas Department of Public Safety, Dallas County Sheriff's Office, and the Frisco, Texas Police Department. I coordinated this team of federal, state, and local investigators. I responded to numerous pre-trial motions filed by the defendant and prepared witnesses for trial and submitted all filings prior to trial. On the day of trial, the defendant pled guilty to conspiracy to commit wire fraud and aggravated identity theft. The defendant was sentenced to 10 years of imprisonment followed by a term of five years of supervised release after imprisonment.

Representation Dates: 2006 – 2008

Co-Counsel

Samuel Cantrell  
United States Attorney's Office for the Eastern District of Texas  
101 East Park Boulevard  
Suite 500  
Plano, TX 75075  
(972) 509-1201

Counsel for Defendant

Samuel Alba  
10 Exchange Place  
Floor 11  
Salt Lake City, UT 84111  
(801) 322-9234

Gerald Wayne Cobb  
121 West Hickory Street  
Denton, TX 76201  
(940) 566-7010

James Alexander Drummond  
220 1/2 East Main Street  
Suite 2  
Norman, OK 73069  
(405) 310-4040

Mark Anthony Perez  
3300 Oak Lawn Avenue  
Suite 700  
Dallas, TX 75219

(214) 752-0505

Mark Alan Ruppelt  
515 West Silver Spring Drive  
Suite K-200  
Glendale, WI 53217  
(414) 847-6447

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 my capacity as a prosecutor within the United States Department of Justice, I have actively engaged in the mentorship of prosecutors within the Eastern District of Texas. Throughout my 23-year tenure as a federal prosecutor, my training involvement has spanned diverse areas such as trial advocacy, cross-examination techniques, witness preparation, utilization of cooperating defendants, wire intercepts, immigration matters, firearms cases, and various other legal topics. I am also actively engaged in the Overseas Prosecutorial Development, Assistance and Training (OPDAT) program, which has involved providing legal instruction and training to prosecutors in Mexico, Guatemala, and Colombia.

Furthermore, from February to August 2023, I served as Resident Legal Adviser (RLA) for the Department of Justice at the United States Embassy in Guatemala City, Guatemala. In this capacity, I functioned as a liaison between law enforcement and prosecutors in both the United States and Guatemala. As RLA, my responsibilities extended to providing counsel to the ambassador on legal matters of interest to the Department of Justice, as well as offering assistance on any other legal issues of concern to the ambassador.

I have not performed lobbying activities or registered as a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

None.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts, and other future benefits which you expect to derive from previous business

relationships, professional services, firm memberships, former employers, clients, or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

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

None.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

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

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I will continue to recuse myself from any case in which I or an immediate family member has a financial interest, as well as any case involving a party I prosecuted. Otherwise, no family members or other persons, parties, categories of litigation, or financial arrangements are likely to present actual or potential conflicts of interest for me.

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

If confirmed, I would continue to resolve any potential conflict of interest by adhering to the Code of Conduct for United States Judges, 28 U.S.C. § 455, and 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.

Throughout my legal career, I have exclusively served the community as both a state and federal prosecutor. While I haven't directly represented indigent clients due to potential conflicts, I have remained dedicated to supporting the disadvantaged within my community. I actively engage in volunteer work, collaborating with local organizations such as my church and food bank. This commitment extends to participation in food drives, meal preparation initiatives, and the orchestration of clothing and food collections. Furthermore, I contribute my time and effort to annual community events, such as the Thanksgiving meal sponsored by local businesses, exemplifying my ongoing commitment to community service and humanitarian projects.

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 May 27, 2022, I submitted an application to the judicial screening committee for Senator John Cornyn and Senator Ted Cruz. On March 17, 2023, I interviewed with the screening committee. On May 5, 2023, I interviewed with Senator Cornyn. On May 10, 2023, I interviewed with Senator Cruz. On May 25, 2023, I was notified that Senators Cornyn and Cruz had submitted my name to the White House as a potential candidate for nomination. On August 2, 2023, the White House Counsel's Office informed me that Senators Cornyn and Cruz had recommended me as a potential candidate for nomination. On August 8, 2023, I interviewed with attorneys from the White House Counsel's Office, who informed me on October 26, 2023, that I would be moving forward in the selection process. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 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. Ernest Gonzalez**  
**Nominee to be United States District Judge for the Western District of Texas**

1. **Are you a citizen of the United States?**

Response: Yes.

2. **Are you currently, or have you ever been, a citizen of another country?**

Response: No.

- a. **If yes, state countries and dates of citizenship.**

Response: Not applicable.

- b. **If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**

Response: Not applicable.

- i. **If not, please explain why.**

Response: Not applicable.

3. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No. It is not appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument.

4. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No. It is not appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time.

5. **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, it is not appropriate to consider foreign law in constitutional interpretation.

6. **Please explain whether you agree or disagree with the following statement: “The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach.”**

Response: I disagree with the statement. The interpretation of the United States Constitution should be based solely on the application of the text and construing the text in accord with its original meaning. “Value judgments” should play no role in the interpretation of the Constitution.

7. **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: No. Federal judges are required to apply the law to the facts of the case. A federal judge should faithfully and impartially apply Supreme Court and Circuit precedent to the facts of the case.

8. **Do you consider a law student’s public endorsement of or praise for an organization listed as a “Foreign Terrorist Organization,” such as Hamas or the Popular Front for the Liberation of Palestine, to be disqualifying for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a “no.”**

Response: Yes.

9. **In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University’s student bar association wrote “Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary.” Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a “no.”**

Response: Yes.

10. **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: 28 U.S.C. section 2255(a) provides: “a prisoner in custody under a federal sentence of a court established by 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 a 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 period.”

- 11. 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: The Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), held that race-based admissions “must comply with strict scrutiny, they may never use race as a stereotype or negative, and – at some point – they must end.” *Id.* at 213. The Court held that the admissions systems at issue failed each of these criteria and invalidated them under the Equal Protection Clause of the Fourteenth Amendment. Specifically, the Court held that the admissions policy goals asserted were commendable, but not sufficiently coherent for purposes of strict scrutiny. The Court also determined that the admissions programs failed to articulate a meaningful connection between the means they employ and the goals they pursue. *Id.* at 214-215. The Court held that the race-based admissions systems failed to comply with the Equal Protection Clause that race may never be used as a “negative” and that it may not operate as a stereotype. *Id.* at 218. The Court’s conclusion was that the programs failed to survive strict scrutiny because they use race as both a negative and as an impermissible stereotype, and they have no logical endpoint. *Id.* at 225.

- 12. 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 served on the hiring committee for potential Assistant United States Attorneys at the United States Attorney’s Office for the Eastern District of Texas.

- 13. 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.

14. **Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

Response: No.

15. **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.

16. **Under current Supreme Court and Fifth Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?**

Response: Yes. The Supreme Court and the Fifth Circuit have held that racial classifications are analyzed by a reviewing court under strict scrutiny. "[S]uch classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interest." *Adarand Construction, Inc. v. Peña*, 515 U.S. 200, 221 (1995); 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).

17. **Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.**

Response: The Supreme Court found that it would be an impermissible abridgement of the First Amendment's free Speech rights for the state of Colorado, through its enforcement of Colorado Anti-Discrimination Act, to compel the owner of a limited liability company that provided website and graphic design services, and which sought to enter website business, to create speech she did not believe by forcing her to convey on wedding websites messages inconsistent with her religious belief that marriage should be reserved to unions between one man and one woman. Colorado sought to make her choose between speaking as the state demanded and not face sanctions or face sanctions for expressing her own beliefs. In Part III, the Court held that creating websites involved the creator's speech and that compelling speech the creator did not wish to provide

violated her First Amendment rights. *303 Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023).

18. 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. The Supreme Court held that the Free Speech Clause of the First Amendment protects students from being forced to salute the American flag or say the Pledge of Allegiance. This case has not been overruled. To the extent this question asks for my personal opinion as to the correctness of Supreme Court precedent, as a district court nominee, I am 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.

19. **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 it 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.

20. **What is the standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: True threats of violence 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. In a criminal prosecution, the government

must prove that the defendant acted recklessly, “consciously disregard[ing] a substantial and [unjustifiable] risk that the conduct would cause harm to another.” *Id.* at 79.

21. **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 found that “the proper characterization of a question as one of fact or law is sometimes slippery” and often unclear. *Thompson v. Keohane*, 516 U.S. 99, 110-11 (1995). 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. CWC Capital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018). 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)).

22. **Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?**

Response: Sentencing decisions in federal cases are governed by the factors provided in 18 U.S.C. section 3553(a). The 3553(a) factors include the nature and circumstances of the offense, the history and characteristics of the defendant, and the need for the sentence to serve various purposes, such as deterrence, protection of the public, and rehabilitation. It provides guidance to ensure that sentences are fair and appropriate. If I am confirmed as a district court judge, I will consider all the applicable factors to impose a sentence that is sufficient, but not greater than necessary to comply with the purpose of sentencing.

23. **Please identify a Supreme Court decision from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: As a district court judge nominee, the Code of Conduct generally 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.

24. **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 district court judge nominee, the Code of Conduct 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.

25. **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.”

26. **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 addressing the constitutionality of 18 U.S.C. § 1507. However, 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. As a district court nominee, the Code of Conduct 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.

27. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**

- a. **Was *Brown v. Board of Education* correctly decided?**

Response: As a nominee for the district court, the Code of Conduct generally precludes me from commenting on the correctness of Supreme Court decisions. However, because it is unlikely that the issue of racial segregation in schools will come before me, I can state that this decision was correctly decided.

- b. **Was *Loving v. Virginia* correctly decided?**

Response: As a nominee for the district court, the Code of Conduct generally precludes me from commenting on the correctness of Supreme Court decisions. However, because it is unlikely that issues relating to miscegenation laws will come before me, I can state that that this decision was correctly decided.

c. **Was *Griswold v. Connecticut* correctly decided?**

Response: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. 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: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. 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: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. 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: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. 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: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. 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: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. 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: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. 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: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. 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: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. 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.

**28. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

Response: The Supreme Court has held 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. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. 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’”. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 143 S. Ct. 2111, 2126 (2022).

**29. Demand Justice is a progressive organization dedicated to “restor[ing] ideological balance and legitimacy to our nation’s courts.”**

- a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Are you currently in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

**30. The Alliance for Justice is a “national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society.”**

- a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Are you currently in contact with anyone associated with the Alliance for Justice? If so, who?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

31. **Arabella Advisors is a progressive organization founded “to provide strategic guidance for effective philanthropy” that has evolved into a “mission-driven, Certified B Corporation” to “increase their philanthropic impact.”**

- a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**

Response: No.

- c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

- d. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

32. **The Open Society Foundations is a progressive organization that “work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens.”**

- a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

- c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

33. **Fix the Court is a “non-partisan, 501(C)(3) organization that advocates for non-ideological ‘fixes’ that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people.”**

- a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Are you currently in contact with anyone associated with Fix the Court? If so, who?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Fix the Court? If so, who?**

Response: No.

34. **Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: On May 22, 2022, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Western District of Texas. On March 17, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. On May 5, 2023, I interviewed with Senator Cornyn. On May 10, 2023, I interviewed with Senator Cruz. On August 8, 2023, I interviewed with attorneys from the White House Counsel’s Office. Since October 26, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me. On January 10, 2024, the President sent my nomination to the United States Senate.

35. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

36. **During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

37. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

38. **During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

39. **During your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

40. **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?**

Response: Not applicable.

- ii. **What advice did they give?**

Response: Not applicable.

- iii. **Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

Response: Not applicable.

41. **List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.**

Response: On May 22, 2022, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Western District of Texas. On March 17, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. On May 5, 2023, I interviewed with Senator Cornyn. On May 10, 2023, I interviewed with Senator Cruz. On August 8, 2023, I interviewed with attorneys from the White House Counsel's Office. Since October 26, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me. On January 10, 2024, the President sent my nomination to the United States Senate.

42. **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 January 31, 2024. 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  
January 24, 2023  
Questions for the Record  
Senator Amy Klobuchar**

For Ernest Gonzalez, nominee to be U.S. District Judge for the Western District of Texas

**For nearly two decades you served in the U.S. Attorney's Offices for the Eastern and Western Districts of Texas. As an Assistant U.S. Attorney, you served as the Chief for the Organized Crime Drug Enforcement Task Force and managed one of the largest dockets in the entire United States, with over 900 defendants under your purview. Additionally, you have tried over 135 federal jury trials.**

- **Can you tell us how these experiences have shaped your career and how they will shape your service as a federal district court judge?**

Response: With almost three decades of dedicated service as an Assistant United States Attorney, I bring a wealth of experience to the role of a judge. Throughout my career, I have tirelessly worked alongside committed colleagues, demonstrating a daily commitment to public service, community protection, and the pursuit of equal justice under the law. My transition from an advocate to a neutral arbiter is guided by a profound understanding of the federal court dynamics, having handled a diverse range of criminal cases at every stage, from the filing of criminal complaints to navigating criminal charges, trials, and appeals.

As a seasoned prosecutor and supervisor, I recognize the paramount importance of fair and objective case evaluation, meticulously considering evidence and the law while unwaveringly respecting and protecting the rights of all involved. My leadership experience has involved the collaborative management of attorneys and staff, overseeing a broad spectrum of criminal matters, and mentoring newer attorneys as they hone their skills.

If confirmed, my extensive experience as a prosecutor would undoubtedly guide my approach as a judge, enhancing my ability to adjudicate cases with

fairness, diligence, and a deep commitment to upholding the principles of justice.

- **How has your experience managing one of the largest dockets in the nation as an Assistant U.S. Attorney prepared you to manage a judicial caseload as a federal district court judge?**

Response: Managing one of the largest dockets in the nation as an Assistant United States Attorney has uniquely prepared me for the task of handling a judicial caseload as a federal district court judge. Navigating this substantial caseload has honed my ability to multitask and delegate effectively, emphasizing the importance of time management and collaboration.

This experience has taught me the significance of efficient work practices and the value of effective teamwork. Handling a large docket has also equipped me with the skill to swiftly comprehend complex issues, identify crucial facts, and conduct thorough research, resulting in cogent and successful legal analysis and writing.

In my leadership role overseeing federal prosecutors and law enforcement officers, I've refined my analytical approach to legal matters and enhanced my management skills. If confirmed, I am eager to leverage these leadership and case management skills to adeptly handle an equally large and intricate docket as a federal district court judge. My experience positions me well to make a meaningful contribution to the legal community, ensuring the administration of justice is both efficient and just.

Senator Hirono Questions for the Record for the January 24, 2024, Hearing in the Senate Judiciary Committee entitled "Nominations."

**QUESTIONS FOR ERNEST GONZALEZ**

**Sexual Harassment**

As part of my responsibility as a member of this committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

QUESTIONS:

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

Response: No.

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

Response: No.



**Senator Jon Ossoff**  
**Questions for the Record for Ernest Gonzalez**  
**January 24, 2024**

- 1. Will you pledge to faithfully apply the law without bias and without regard for your personal policy or political preferences?**

Response: Yes.

- 2. How will you approach First Amendment cases?**

Response: As a judge, I would approach First Amendment cases by strictly adhering to Supreme Court and Fifth Circuit precedent, balancing rights and considering the context of speech or expression. *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020); *Carson v. Makin*, 142 S. Ct. 1987 (2022); *Janus v. AFSCME*, 138 S. Ct. 2448 (2018).

- a. In your view, why are First Amendment protections of freedom of speech, publication, assembly, and exercise of religion vital in our society?**

Response: First Amendment protections of freedom of speech, publication, assembly, and the exercise of religion are vital in our society because they safeguard individual autonomy, foster a robust democracy through diverse perspectives, encourage innovation and progress, allow for peaceful protest and change, promote cultural and social diversity, and contribute to overall individual well-being. These freedoms are foundational to a dynamic and resilient society that values open discourse, tolerance, and the exchange of ideas.

- 3. In your experience, why is it critical that indigent defendants have access to public defense under the Sixth Amendment right to counsel and precedent set in *Gideon v. Wainwright*?**

Response: Public defense for indigent defendants, as mandated by *Gideon v. Wainwright* and the Sixth Amendment, is crucial to ensure fair trials, protecting constitutional rights, prevent coerced confessions, enhance legal expertise, reduce disparities, and preserve confidence in the legal system. This ensures that everyone, regardless of financial status, has access to competent representation and upholds the principles of justice.

- 4. In your experience, what are the challenges faced by parties in civil or criminal proceedings for whom English is not their first language?**

Response: Parties facing legal proceedings with English as a non-native language may encounter challenges such as communication barriers, difficulty understanding legal processes, limited access to legal information, finding language appropriate legal representation, potential cultural differences, heightened fear and anxiety, and a shortage

of qualified interpreters. Addressing these challenges involves enhancing access to interpreters, providing translated legal materials, and promoting cultural competency within the legal system.

**a. What do you see as the role of language access in courts in protecting due process rights and ensuring access to justice?**

Response: Language access in courts plays a crucial role in protecting due process rights and ensuring access to justice. It facilitates effective communication for individuals with limited English proficiency, allowing them to fully understand legal proceedings, participate meaningfully, and make informed decisions. Without proper language access, there is a risk of misunderstandings, potential violations of due process, and barriers to justice, disproportionately affecting non-native English speakers. Implementing language access measures, such as providing interpreters and translated materials, is essential for upholding the principles of fairness, equity, and access to justice and legal proceedings.

**Senator Mike Lee**  
**Questions for the Record**

**Ernest Gonzalez, Nominee for District Court Judge for the Western District of Texas**

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

Response: My judicial philosophy will be to faithfully apply the law to the facts of the case before me, to decide cases and legal issues fairly without bias or prejudice, to treat the litigants with respect, and to provide them an opportunity to be heard. I would work to issue clear rulings that make the holdings and the underlying rationale clear, give all parties a fair and open hearing, and to rule only on the facts and the record, using Supreme Court and Fifth Circuit precedent, and the method of interpretation that is embodied in that precedent.

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

Response: The plain text of the statute is the first thing and the primary source of interpretation. And if the meaning is plain on the face of the statute, then the interpretation process stops there. If there is any ambiguity about the meaning of the plain language or the statute itself, then I would refer to precedent and interpretations of the statute that are controlling in the Fifth Circuit and Supreme Court. If there was no directly controlling precedent, I would look for interpretations of analogous statutes or precedent in other circuits that would be guiding in some way or at least helpful.

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

Response: I would first determine whether the Supreme Court or Fifth Circuit had previously interpreted the specific constitutional provision at issue. If there was no precedent, I would consider the text of the provision and the meaning of the terms at issue, as well as the method of interpretation that the Supreme Court or Fifth Circuit has used in the most analogous circumstance and any persuasive authority from other jurisdictions.

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

Response: The Supreme Court 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: The plain text of the statute is the first thing and the primary source of interpretation. And if the meaning is plain on the face of the statute, then the interpretation process stops there. If there is any ambiguity about the meaning of the plain language or the statute itself, then I would refer to precedent and interpretations of the statute that are controlling in the Fifth Circuit and Supreme Court. If there was no directly controlling precedent, I would look for interpretations of analogous statutes or precedent in other circuits that would be guiding in some way or at least helpful.

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. *See Bostock v. Clayton County*, 140 S. Ct. 1731, 1739 (2020).

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

Response: In order to establish standing under Article III of the United States Constitution, a party must demonstrate: (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. *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 United States Constitution gives Congress certain enumerated powers. The Necessary and Proper Clause of the Constitution, however, empowers Congress to make laws necessary to implement its enumerated powers. *McCullough v. Maryland*, 17 U.S. 316 (1891); U.S. Const. Art. I, § 8, cl. 18 (vesting in Congress the power to “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers”).

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 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.” *Nat. Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012). If confronted with this issue as a judge, I would apply 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 Fifth and Fourteenth Amendments protect certain unenumerated “fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotation marks and citations omitted). In *Glucksberg*, the Court collected cases previously recognizing such rights, including the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), and direct the education and upbringing of one’s children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

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

Response: Please see 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 the use of contraceptives by married couples was protected under substantive due process. 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*. The Supreme Court held that the economic rights at stake in *Lochner* are subject to the restraints of due process. 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: “[A] suspect class is one ‘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.” *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976) (quoting *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28 (1973)). Race, alienage, national origin, and religion are suspect classes that would trigger strict scrutiny. *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: Checks and balances and the separation of powers within our Constitution’s structure acts as a “self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.” *Morrison v. Olson*, 487 U.S. 654, 693 (1988). 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).

**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 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: Judges are required to put aside all their personal views, opinions or beliefs and apply the law following relevant Supreme Court and Circuit precedent.

**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. 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 am unfamiliar with any study which has reached the conclusion stated in the question. I have not studied the trend described in this question either, 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: “Judicial review” is the judiciary’s role “to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803).” Black’s Law Dictionary 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).

**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, 17-20 (1958) (explaining that elected officials are bound to follow Supreme Court decisions based on the doctrine of judicial supremacy).

**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 and enforce the law, respectively. Judges are neither responsible for creating legislation or making new laws nor are they empowered to do so.

**23. As a federal judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a federal 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 federal 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, a judge should utilize the constitutional framework and interpretation employed by the Supreme Court and Fifth Circuit in the most analogous 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: The factors that a judge may appropriately consider when sentencing an individual defendant are prescribed by Congress in Title 18 United States Code § 3553(a). Section 3553(a) instructs courts to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id.* § 3553(a)(6). Race and certain other demographic factors (i.e., sex, national origin, creed, religion, and socio-economic status) are not relevant in the determination of a sentence.

- 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). If this issue would happen to come before if I am confirmed, I would fully and faithfully apply any applicable binding Supreme Court and Fifth Circuit precedent to decide any case involving this issue.

- 26. Without citing Black's Law Dictionary, do you believe there is a difference between "equity" and "equality?" If so, what is it?**

Response: The Oxford American Dictionary defines "equity" as "the quality of being fair and impartial." Equity, Oxford American Dictionary (2010). While "equality" is



defined as “the state of having the same rights, opportunities, or advantages as others.” If a case required me to decide the difference between “equity” and “equality,” I would consider the parties’ arguments, independently research the applicable law, and faithfully apply Supreme Court and Fifth Circuit precedent.

27. **Does the 14<sup>th</sup> Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 25)?**

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 United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.” I am unaware of any Supreme Court or Fifth Circuit precedent addressing whether the Equal Protection Clause guarantees “equity” as defined by the Biden Administration. 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. **Without citing Black’s Law Dictionary, how do you define “systemic racism?”**

Response: Merriam-Webster’s Dictionary (11th ed. 2023) defines “systemic racism” as “the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems.”

29. **Without citing Black’s Law Dictionary, how do you define “critical race theory?”**

Response: Merriam-Webster’s Dictionary (11th ed. 2023) defines “critical race theory” as “a group of concepts used for examining the relationship between race and the laws and legal institutions of a country.”

30. **Do you distinguish “critical race theory” from “systemic racism,” and if so, how?**

Response: In essence, systemic racism is a broader societal issue, while critical race theory is a specific academic framework that offers a lens for analyzing and addressing the complexities of racial dynamics within systemic structures.

**Senator John Kennedy  
Questions for the Record**

**Ernest Gonzalez**

- 1. Are there any circumstances under which it is justifiable to sentence a criminal defendant to death? Please explain.**

Response: Yes. Whether an offense is punishable by death and the procedures for imposition of the death penalty are decisions made by the legislative branch. 18 U.S.C. §§ 3591-93. 18 U.S.C. §3591 contains certain offenses whereby defendants may be sentenced to death. If confirmed as a district court judge, I would faithfully and impartially apply all applicable laws, including those related to the death penalty.

- a. Should a judge's opinions on the morality of the death penalty factor into the judge's decision to sentence a criminal defendant to death in accordance with the laws prescribed by Congress and the Eighth Amendment?**

Response: No.

- 2. Is the U.S. Supreme Court a legitimate institution?**

Response: Yes.

- 3. Is the current composition of the U.S. Supreme Court legitimate?**

Response: Yes.

- 4. Please describe your judicial philosophy. Be as specific as possible.**

Response: My judicial philosophy will be to faithfully apply the law to the facts of the case before me, to decide cases and legal issues fairly without bias or prejudice, to treat the litigants with respect, and to provide them an opportunity to be heard. I would work to issue clear rulings that make the holdings and the underlying rationale clear, give all parties a fair and open hearing, and to rule only on the facts and the record, using Supreme Court and Fifth Circuit precedent, and the method of interpretation that is embodied in that precedent.

- 5. Is originalism a legitimate method of constitutional interpretation?**

Response: According to a number of Supreme Court precedents, originalism is a legitimate method of constitutional interpretation. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008); *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

- 6. If called on to resolve a constitutional question of first impression with no applicable precedents from either the U.S. Supreme Court or the U.S. Courts of Appeals, to what sources of law would you look for guidance?**

Response: I would consider the text of the provision and the meaning of the terms at issue, as well as the method of interpretation that the Supreme Court or Fifth Circuit has used in the most analogous circumstance and any persuasive authority from other jurisdictions. I would look for interpretations of analogous statutes or precedent in other circuits that would be guiding in some way or at least helpful. And then, last, if all else failed, consistent with Supreme Court precedent, looking to the legislative history and other canons of construction would be another source of divining the meaning of the provision as Congress intended it.

- 7. Is textualism a legitimate method of statutory interpretation?**

Response: Textualism is a legitimate method of statutory interpretation. *See Bostock v. Clayton County*, 140 S. Ct. 1731, 1739 (2020).

- 8. When is it appropriate for a judge to look beyond textual sources when determining the meaning of a statute or provision?**

Response: The plain text of the statute is the first thing and the primary source of interpretation. And if the meaning is plain on the face of the statute, then the interpretation process stops there. If there is any ambiguity about the meaning of the plain language or the statute itself, then I would refer to precedent and interpretations of the statute that are controlling in the Fifth Circuit and Supreme Court. If there was no directly controlling precedent, I would look for interpretations of analogous statutes or precedent in other circuits that would be guiding in some way or at least helpful.

- 9. Does the meaning (rather than the applications) of the U.S. Constitution change over time? If yes, please explain the circumstances under which the U.S. Constitution's meaning changes over time and the relevant constitutional provisions.**

Response: The meaning of the U.S. Constitution does not change over time. The Supreme Court has held that, "although [the Constitution's] 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 Ass'n, Inc. v. Bruen*, 597 U.S. 1, 3 (2022).

- 10. Please summarize Part II(A) of the U.S. Supreme Court's decision in *Brown v. Davenport*, 596 U.S. 118 (2022).**

Response: Part II(A) of *Brown v. Davenport*, 596 U.S. 118, 142 S. Ct. 1510 (2022), the Court outlined the history of habeas petitions and provided a historical background for the Court's decision that before a state prisoner could obtain federal habeas relief, both the *Brecht v. Abrahamson*'s "serious and injurious effect or influence on the verdict"-test

(507 U.S. 619, 113 S. Ct. 1710 (1993)) as well as the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2254(d) must be met by the prisoners bringing the habeas petition. The Supreme Court was concerned that federal courts were granting federal habeas relief to state prisoners much too frequently, a practice that threatened the presumption of finality of state court convictions: “The traditional distinction between jurisdictional defects and mere errors in adjudication no longer restrained federal habeas courts. Full-blown constitutional error correction became the order of the day.” *Brown*, 596 U.S. at 130, 142 S. Ct. at 1522. The Court noted that frequent granting of relief had the effect of trivializing the writ, which resulted in “an exploding caseload of habeas petitions from state prisoners” and created the risk that meritorious cases could be lost like needles in a haystack. *Id.* at 130-131. For this reason, and within this context the Supreme Court held that before relief could be granted, a state prisoner must prevail on both *Brecht* and § 2254(d).

**11. Please summarize Part IV of the U.S. Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).**

Response: The Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), held that race-based admissions “must comply with strict scrutiny, they may never use race as a stereotype or negative, and – at some point – they must end.” *Id.* at 213. The Court held that the admissions systems at issue failed each of these criteria and invalidated them under the Equal Protection Clause of the Fourteenth Amendment. Specifically, the Court held that the admissions policy goals asserted were commendable, but not sufficiently coherent for purposes of strict scrutiny. The Court also determined that the admissions programs failed to articulate a meaningful connection between the means they employ and the goals they pursue. *Id.* at 214-215. The Court held that the race-based admissions systems failed to comply with the Equal Protection Clause that race may never be used as a “negative” and that it may not operate as a stereotype. *Id.* at 218. The Court’s ultimate conclusion was that the programs failed to survive strict scrutiny because they use race as both a negative and as an impermissible stereotype, and they have no logical endpoint. *Id.* at 225.

**12. Please summarize Part III of the U.S. Supreme Court’s decision in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).**

Response: The Supreme Court found that it would be an impermissible abridgement of the First Amendment’s free Speech rights for the state of Colorado, through its enforcement of Colorado Anti-Discrimination Act, to compel the owner of a limited liability company that provided website and graphic design services, and which sought to enter website business, to create speech she did not believe by forcing her to convey on wedding websites messages inconsistent with her religious belief that marriage should be reserved to unions between one man and one woman. Colorado sought to make her choose between speaking as the state demanded and not face sanctions or face sanctions for expressing her own beliefs. In Part III, the Court held that creating websites involved

the creator's speech and that compelling speech the creator did not wish to provide violated her First Amendment rights. *303 Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023).

**13. Please summarize Part II of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2022).**

Response: In Part II of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the Court applying the *Washington v. Glucksberg* framework, explained the standard used in determining whether the Fourteenth Amendment's reference to "liberty" protects a particular right, and whether the right at issue in *Dobbs* was rooted in our Nation's history and tradition and an essential component of what has been described as "ordered liberty," and whether the right to obtain an abortion was part of a broader entrenched right supported by other precedents. *Id.* at 234. In its analysis, the Court held that a state's regulation of abortion is not a sex-based classification and not subject to the "heightened scrutiny" that applies to such classifications. *Id.* at 237. "When we engage in that inquiry in the present case, the clear answer is that the Fourteenth Amendment does not protect the right to an abortion." *Id.* at 240. It further held that the right to abortion is not deeply rooted in the Nation's history and traditions.

**14. Please summarize Part III of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022).**

Response: In Part III of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 596 U.S. 215 (2022), the Court considered the doctrine of stare decisis. In doing so, the Court laid out five factors it considered when overruling the previous precedent of *Roe v. Wade* and *Casey v. Planned Parenthood*. Specifically, the Court gave "the nature of their error, the quality of their reasoning, the 'workability' of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance," as its reasoning for overruling precedent. *Id.*

**15. Please describe the legal rule employed in *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), and explain why the U.S. Supreme Court sided with the Petitioner.**

Response: *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), involved the doctrine of qualified immunity. The Supreme Court applies a two-part analysis to determine whether an official is entitled to qualified immunity: First, whether the facts alleged by the plaintiff amount to a constitutional violation; Second, was the constitutional right clearly established at the time of the misconduct. *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S. Ct. 808, 818 (2009). The Court also employed the legal rule that when determining qualified immunity in a Fourth Amendment context, specificity is important so that an officer has notice that his or her specific conduct is unlawful. *Id.* at 6 (holding that "to show a violation of clearly established law, Cortesluna must identify a case that put Rivas-Villegas on notice that his specific conduct was unlawful."). In this case, the Court reversed the Ninth Circuit's determination that the officer was not entitled to qualified

immunity because the officer did not have notice that a specific use of force was unlawful. *Id.* at 9. Applying the rule to the facts of the case, the Court considered the officer's conduct, and concluded that the conduct did not violate a clearly established right against excessive force. The officer was therefore entitled to qualified immunity.

**16. When is it appropriate for a district judge to issue a nationwide injunction? Please also explain the legal basis for issuing nationwide injunctions and the relevant factors a district judge should consider before issuing one.**

Response: The authority for nationwide injunction is derived from the equitable powers of federal courts and is typically based on Rule 65 of the Federal Rules of Civil Procedure. The equitable powers of the federal courts refer to their authority to apply principles of fairness and justice in addition to legal rules. This allows courts to issue equitable remedies, such as injunctions or specific performance, to address unique circumstances where strict application of the law may not suffice. Rule 65 governs the issuance of injunctions and restraining orders in federal civil cases. When a court issues an injunction, it is typically intended to provide relief to the parties involved in the case. However, in some situations, courts have issued a nationwide injunction, which extends the reach of the court's order beyond the immediate parties to the lawsuit. This means that the injunction applies not only to the parties involved in the case but also to individuals or entities across the entire nation. The authority for a nationwide injunction has been a subject of legal and scholarly debate. Proponents argue that it can be a necessary tool for ensuring uniformity and avoiding a patchwork of conflicting legal standards across different jurisdictions. Opponents argue that it may exceed the traditional scope of the equitable relief and interfere with the principle of comity between federal courts and other branches of government. It should be noted, however, that injunctions are "a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). As to the circumstances under which a nationwide injunction against the implementation of federal laws or policies would be proper, that issue currently comes before federal courts. As a district court judge nominee, the Code of Conduct precludes me from making public comment on the merits of a matter pending or impending in any court. Providing an opinion on a matter that could someday be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I would apply Supreme Court and Fifth Circuit precedent in addressing a case involving a request for a nationwide injunction.

**17. Is there ever a circumstance in which a district judge may seek to circumvent a published precedent of the U.S. Court of Appeals under which it sits or the U.S. Supreme Court?**

Response: No.

**18. If confirmed, please describe what role U.S. Supreme Court dicta would play in your decisions.**

Response: If confirmed, I will follow binding precedent of the Supreme Court and the Fifth Circuit. Dicta is not binding precedent.

**19. To the best of your recollection, please list up to 10 cases in which you served as lead counsel in a bench trial in federal district court or a case tried before a jury in federal district court.**

Response: Cases tried in federal court before a jury:

U.S. v. Jose Torrias – 4:21cr252 (E.D. Tex.)

U.S. v. Debra Mercer-Erwin – 4:20cr212 (E.D. Tex.)

U.S. v. Brian Black – 4:21cr152 (E.D. Tex.)

U.S. v. Victor Lopez-Llamas – 4:18cr205 (E.D. Tex.)

U.S. v. Tyton Hester – 4:18cr85 (E.D. Tex.)

U.S. v. Jennifer Culpepper – 4:19cr266 (E.D. Tex.)

U.S. v. Omar Garcia-Agosto and Steven Mathis – 4:19cr265 (E.D. Tex.)

U.S. v. Juan Arreola – 4:17cr176 (E.D. Tex.)

U.S. v. Efrain Vasquez – 4:17cr107 (E.D. Tex.)

U.S. v. Juan Cadenas-Urena – 4:18cr49 (E.D. Tex.)

**20. When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race and/or sex of the applicants play in your consideration?**

Response: Race and/or sex would play no role in my consideration of persons seeking to serve as a law clerk in my chambers.

**21. Please list all social-media accounts you have had during the past 10 years with Twitter/X, Facebook, Reddit, Instagram, Threads, TikTok, and LinkedIn and the approximate time periods during which you had the account. If the account has been deleted, please explain why and the approximate date of deletion.**

Response: I have no social media accounts.

**22. Why should Senator Kennedy support your nomination?**

Response: It would be a great honor and privilege to continue to be a public servant and serve my country as an Article III judge. If confirmed, my judicial philosophy would be to faithfully apply the law to the facts of the case before me, to decide cases and legal issues fairly without bias or prejudice, to treat the litigants with respect, and to provide them an opportunity to be heard. I would work diligently to issue clear rulings that make

the holdings and the underlying rationale clear, give all parties a fair and open hearing, and to rule only on the facts and the record, using the Supreme Court and Fifth Circuit precedent, and the method of interpretation that is embodied in that precedent. My 30 years of public service and legal experience make me well-prepared to meet the challenges and responsibilities of an Article III judge. Having prosecuted some of the most dangerous criminals in the United States and abroad and handling the largest docket of complex cases and defendants in the nation, with over 235 jury trials in my career, I know what it takes to handle a large docket and litigate complex cases. My broad-based experience enables me to analyze and resolve even novel legal issues adeptly, and with confidence. Additionally, on January 22, 2024, the American Bar Association's Standing Committee on the Federal Judiciary advised that it is of the unanimous opinion that I am "Well Qualified" to serve on the United States District Court for the Western District of Texas. My reputation for professional competence and integrity has earned the support of both of my home state senators, Senators John Cornyn and Ted Cruz. It would be an honor and privilege to receive Senator Kennedy's support as well.





## *League of United Latin American Citizens*

**NATIONAL PRESIDENT**  
**DOMINGO GARCIA**

**CHIEF OPERATING  
OFFICER**  
**RAFAELA SCHWAN**

**NATIONAL OFFICERS**  
**Roger Rocha**  
Immediate Past President

**Summer Gonzalez**  
Treasurer

**Richard Estrada Jr.**  
Youth President

**Ella Mendosa**  
VP for Elderly

**Emma Lomano**  
VP for Women

**Mari Carogedo**  
VP for Youth

**Delma Grootela**  
VP for Young Adults

**Richard Estrada**  
VP for Farwest

**Jose Lopez**  
VP for Midwest

**James Pulada**  
VP for Northeast

**Lydia Medrano**  
VP for Southeast

**Lupe Torres**  
VP for Southwest

**STATE DIRECTORS**

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Arizona

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**Jesse Garcia**

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Kansas

**Malu Elizondo**

Nevada

**Fred Baca**

New Mexico

**Rudy Rosales**

Texas

**Bella Paz**

Utah

**Jose Palacios**

Wisconsin

May 5, 2023

Honorable John Cornyn  
United States Senate  
Washington, D.C. 20510

Dear Senator Cornyn,

Greetings from the League of United Latin American Citizens (LULAC), the nation's oldest and largest Latino civil rights membership organization. As national president of LULAC I have the opportunity, privilege and honor of recommending candidates for positions of great importance and responsibility to our country for positions within the government. In this capacity I am proud to submit our organization's strongest endorsement in support of Ernest Gonzalez for United States District Judge. LULAC truly believes that Mr. Gonzalez is the ideal candidate for a critical judicial vacancy in either Laredo or Del Rio, Texas.

Mr. Gonzalez' is a first generation American, he is the youngest of seven siblings from immigrant parents. He was raised in San Antonio, Texas and quickly learned the values of hard work, being ethical in all things and treating everyone with civility and respect; the type of values which make our nation great. Though raised in a socio-economically challenged neighborhood, he was able to overcome this and many other obstacles and became a true success story.

LULAC is exceptionally proud of Mr. Gonzalez's dedication in the legal field to public service in his capacity as an Assistant United States Attorney for the Eastern District of Texas. Mr. Gonzalez' body of work has contributed significantly to not only the safety and well-being of our Latino community, but to the safety of all the communities where Mr. Gonzalez has worked throughout Texas. Since 2004, when he began his career as a federal prosecutor Mr. Gonzalez has not relented in the prosecution and bringing to justice many high-level leaders and organizers of domestic and international drug trafficking cartels, and in the process placing himself in danger. However, Mr. Gonzalez has never been deterred by threats to his own safety, unfortunately, of which there have been a number. Further, in addition to bringing cartel leaders to justice he has also prosecuted white collar defendants including one which resulted in the loss of over \$500 million.

As a result of his extraordinary work, Mr. Gonzalez was selected by his office as the lead prosecutor for the Eastern District of Texas Organized Crime Drug Enforcement Task Force (OCDEF). Astonishingly, he has successfully tried over 400 jury trials, with an approximate conviction percentage rate of ninety-eight percent. Throughout his career Mr. Gonzalez has extradited individuals from Mexico, Colombia, Guatemala and Panama. Many of the individuals being high-profile defendants indicted and wanted in the United States.

Mr. Gonzalez has also secured convictions in landmark cases, such as *US v. Mercer-Erwin*, in which the defendant was found guilty on May 4, 2023 of money laundering, wire fraud; conspiracy to manufacture and distribute cocaine; and conspiracy to manufacture and distribute cocaine knowing it would be imported into the United States. This case gained national recognition due to the nature of the charges and how she exploited the airplane registration process, to obtain money from the cartel. Mr. Gonzalez's efforts were invaluable in securing a conviction, making our Nation safer.<sup>1</sup>

Adding to his credentials is his life experience as a native-born Texan who is bicultural and is fluently bi-lingual in the Spanish language. Further, Mr. Gonzalez has years of relevant federal legal experience as his years of federal experience is steeped within the U.S. - Mexico border region. He served as a Special Assistant United States Attorney in Del Rio, Texas, where he prosecuted significant criminal cases, including firearm and drug trafficking and associated violent crime. Mr. Gonzalez gained necessary foundational legal experience serving as an Assistant District Attorney and Law Clerk within the Bexar (San Antonio) and Harris County (Houston) District Attorney's offices, respectfully.

Senator Cornyn, LULAC is deeply committed to support actions that reduce violence along the U.S. - Mexico border and continue to confront the drug and human trafficking and smuggling in the Texas border region. For this reason, LULAC contends that Mr. Gonzalez has the necessary background, relevant experience, and achievements to make him an ideal federal judge. Your support of Ernest Gonzalez is a crucial step in advancing that battle for the security and safety of our communities.

Sincerely,



Domingo Garcia  
LULAC National President

<sup>1</sup> United States Attorney's Office, May 4, 2023. "Oklahoma City Woman Convicted of Federal Drug Trafficking, Money Laundering, and Financial Crimes in Eastern District of Texas"  
<https://www.justice.gov/usao-edtx/pr/oklahoma-city-woman-convicted-federal-drug-trafficking-money-laundering-and-financial>



May 23, 2023

Honorable John Cornyn  
United States Senate  
Washington, D.C. 20510

Re: Ernest Gonzalez for U.S. District Judge  
Southern District of Texas (Laredo) & Western District of Texas (Del Rio)

Dear Senator Cornyn:

The Mexican American Bar Association of Texas (MABATx) is a statewide organization composed of attorneys committed to the advancement of Latinos in the legal profession and the empowerment of the Latino community through service and advocacy. In furtherance of goals, MABATx supports the appointment of qualified Hispanics to the U.S. Judiciary. MABATx has chapters in the major urban centers of Texas including Dallas, Houston, Austin, San Antonio, El Paso, and Ft. Worth.

MABATx is proud to endorse the appointment of Ernest Gonzalez to serve as U.S. District Judge for either the Southern District of Texas in Laredo, Texas or the Western District of Texas in Del Rio, Texas. MABATx believes Mr. Gonzalez is uniquely qualified to serve as a U.S. District Judge at either location based on his background, solid impressive credentials and his commitment and perseverance to protect the citizens of the United States and to hold those individuals who threaten public safety and violate United State laws accountable.

Mr. Gonzalez possesses the necessary credentials, federal court admissions, relevant court & trial experience, and criminal law expertise to serve as U.S. District Judge in a U.S. District Court. Mr. Gonzalez has the temperament and ability to adjudicate the high-volume, criminal & narcotics focused proceedings in the district courts assigned to handle these cases along the U.S. / Mexico border.

As his resume indicates, Mr. Gonzalez has served as Assistant U.S. Attorney for the Eastern District of Texas in Plano, Texas from January 2004 to the present. In recognition of his talent, he was appointed lead counsel for the Eastern District of Texas Organized Crime Drug Enforcement Task Force (OCDETF) and supervised six of the Assistant U. S. Attorneys assigned there. As an Assistant U.S. Attorney, he prosecuted domestic and international organized crime drug cases, maintaining one of the most robust international drug prosecution portfolios in the nation. Because the Eastern District also has an international component, he was involved in the prosecution and extradition of wrongdoers for violations of United States and international law primarily from Mexico, Colombia, Guatemala, and Panama.

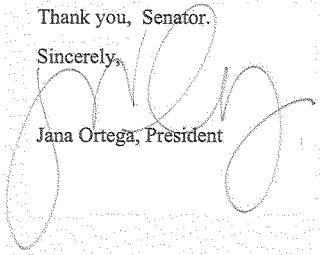
As evident from responses to the FJEC Questionnaire, Mr. Gonzalez has successfully prosecuted over four hundred jury trials, some involving indictments with multiple defendants and in the complex cases, the introduction of large amounts of physical and testimonial evidence. A review of the testimonials from some of the cases illustrates a keen understanding of the nature of the organizations and networks involved in these illegal commercial enterprises and illustrates the depth of investigation undertaken which involved collaboration with international law partners to successfully prosecute.

Mr. Gonzalez's successful career can only be attributed to resoluteness and determination to overcome the hardships and obstacles in his life. He is bi-lingual, a first generation American, a family man brought up in the values of South Texas to work hard with integrity, with respect for others and the law. Having also traveled extensively to Central and South America, he is totally bi-cultural and understanding of the cultural nuances inherent in the border region experience. His life experience together with federal and legal experience make him a formidable prosecutor and lead counsel for the U.S. Government.

The Mexican American Bar Association of Texas is committed to the appointment of qualified, Hispanic attorneys to the nation's judiciary. Ernest Gonzalez has the relevant experience, credentials and expertise to serve as a federal judge in a border region U.S. District Court. Further, as a U.S. prosecutor, Mr. Gonzalez has adhered to the highest standard for honesty and ethics in the pursuit of justice. Given today's border situation, Mr. Gonzalez' demonstrated dedication to the preservation and protection of U.S. law and public safety, make him worthy of your favorable consideration for appointment.

Thank you, Senator.

Sincerely,

  
Jana Ortega, President

July 11, 2023

**Mariana D. Bravo**  
NATIONAL PRESIDENT



**VIA ELECTRONIC MAIL**

Honorable John Cornyn  
U.S. Senate  
517 Hart Senate Office Building  
Washington, DC 20510

Honorable Ted Cruz  
U.S. Senate  
27A Russell Senate Office Building  
Washington, DC 20510

Stuart Delery  
White House Counsel  
The White House  
1600 Pennsylvania Avenue N.W.  
Washington, DC 20500

**RE: Endorsement of Ernest Gonzalez for Federal Judge**

Dear Senators Cornyn and Cruz and White House Counsel Delery:

We write on behalf of the Hispanic National Bar Association (HNBA) to endorse the nomination of Ernest Gonzalez to the District Judge for the United States District Court for the Western District of Texas and the Southern District of Texas.

The HNBA is a non-profit, non-partisan national membership association that represents the interests of Hispanic attorneys, judges, law professors, law students, and other legal professionals in the United States and Puerto Rico. One of the HNBA's many institutional objectives is to advocate and work to ensure that the federal and state judiciary is diverse and reflects the citizens that come before the courts on a daily basis.

The HNBA has conducted due diligence on Mr. Gonzalez. Our evaluation included an initial paper screening of resumes, social media, and writings/articles to establish minimum qualifications. Candidate and reference interviews along with interviews with peers, and community leaders were conducted to assess relevant legal experience, scholarly work, temperament, reputation, and involvement in the Hispanic community. Mr. Gonzalez has an impressive career, is actively involved in the local legal community, and has a good temperament for the bench.

July 11, 2023

**Mariana D. Bravo**  
NATIONAL PRESIDENT



He earned a Bachelor's of Business Administration, with a concentration in Accounting, from the University of Texas at San Antonio in May 1987. He obtained his Juris Doctorate from Thurgood Marshall School of Law in December 1993.

Immediately following law school, he was an Assistant District Attorney for Bexar County District Attorney's Office where he prosecuted violent crime and narcotics cases and successfully prosecuted over sixty jury cases to verdict. Mr. Gonzalez then became a Special Assistant United States Attorney for the Southwest Border Task Force, with a primary focus on violent crimes and drug trafficking. He presented cases to federal grand juries for indictment and prepared legal briefs, memoranda, and motions. He then became an Assistant United States Attorney in the Western District of Texas where he prosecuted immigration, drug, and firearms cases along the border, and successfully prosecuted over thirty jury trials.

Since January 2004, Mr. Gonzalez has been employed as an Assistant United States Attorney in the Eastern District of Texas. In his current role, he serves as the lead prosecutor for the Organized Crime Drug Enforcement Task Force ("OCDETF"); he supervises six OCDETF AUSA's, prosecutes domestic and international OCDETF cases (including one of the most robust international drug prosecution portfolios in the nation), and argues appellate matters before the Fifth Circuit Court of Appeals.

He is admitted to practice in the State of Texas, the Eastern District of Texas, the Western District of Texas, and the 5th Circuit U.S. Court of Appeals.

Mr. Gonzalez is well respected and admired by his colleagues and other members of the Bar for his high intellect, notable competence, and good character.

We endorse Ernest Gonzalez for your consideration and selection for District Judge for the United States District Court for the Western District of Texas and the Southern District of Texas.

If you have any questions concerning this endorsement, please do not hesitate to contact us at the HNBA National Office at (202) 223-4777 or contact Mariana Bravo directly at [president@hnba.com](mailto:president@hnba.com).

Thank you for your consideration.

Sincerely,

Mariana Bravo  
HNBA National President

Robert Raben  
Chair, HNBA Judiciary Committee

July 11, 2023

**Mariana D. Bravo**  
NATIONAL PRESIDENT



Alexander Gonzalez  
Co-Chair, HNBA Judiciary Committee

cc:  
Daniel Mateo, HNBA National President-Elect



**CHAIR**  
Hon. Ann Claire Williams (Ret.)  
acwilliams@jonesday.com  
(312) 269-1575

**VICE CHAIR**  
David L. Brown  
dlbrown@hendlaw.com  
(515) 244-2141

**FIRST CIRCUIT**  
Kay H. Hodge  
khodge@nrmllc.com  
(517) 542-6789

**SECOND CIRCUIT**  
Dana M. Irevic  
drevic@pulscom.com  
(860) 424-4382

**THIRD CIRCUIT**  
G. Glenon Troublefield  
gtroublefield@caenllaw.com  
(978) 994-1700

**FOURTH CIRCUIT**  
Pamela J. Roberts  
pajroberts@bowmanandbrooke.com  
(803) 725-7423

**FIFTH CIRCUIT**  
Michael D. Hunt  
michael.hunt@phelps.com  
(275) 346-0285

**SIXTH CIRCUIT**  
Khalish V. Spencer  
kspencer@hooigan.com  
(313) 465-7654

**SEVENTH CIRCUIT**  
Nigel F. Tolman  
ntolman@proskauer.com  
(312) 962-3548

**EIGHTH CIRCUIT**  
Sonia Miller Van Dert  
soniamv@saperlaw.com  
(312) 756-7125

**NINTH CIRCUIT**  
John C. Dwyer  
jdwyerj@cooley.com  
(550) 843-5228

**TENTH CIRCUIT**  
Eric S. Cather  
ecather@emeyerslaw.com  
(510) 808-2000

**ELEVENTH CIRCUIT**  
Jennifer M. Weddie  
jweddie@gslaw.com  
(303) 572-6500

**D.C. CIRCUIT**  
Michael L. Huang  
mhuang@penlaw.com  
(734) 678-1531

**FEDERAL CIRCUIT**  
Joseph Michael Drayton  
jdrayton@proskauer.com  
(212) 969-3479

**SPECIAL ADVISORS**  
Peter Bennett  
pbennett@shebennettclaw.com  
(207) 831-9999

Vincent Chang  
vincent.chang@davispolk.com  
(212) 450-4242

Susan Saltzstein  
ssaltzstein@skadden.com  
(212) 755-4132

**STAFF COUNSEL**  
Denise A. Cardman  
denise.cardman@americanbar.org



Please reply to:  
Hon. Ann Claire Williams (Ret.)  
Jones Day  
110 North Wacker Drive, Suite 4800  
Chicago, Illinois 60606  
acwilliams@jonesday.com

January 22, 2024

**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 Ernesto Gonzalez to the United States District  
Court for the Western 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 Ernesto Gonzalez, who has been nominated by the President to the United States District Court for the Western District of Texas. 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. Gonzalez is **"Well Qualified"** to serve on the United States District Court for the Western District of Texas.

Very truly yours,

Hon. Ann Claire Williams (Ret.)  
Chair, Standing Committee  
on the Federal Judiciary

cc: Edward N. Siskel, 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)  
Ernesto Gonzalez (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).  
  
Robin Michelle Meriweather
2. **Position:** State the position for which you have been nominated.  
  
Judge, United States Court of Federal Claims
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.  
  
United States District Court for the District of Columbia  
333 Constitution Avenue, Northwest  
Washington, DC 20001  
  
Residence: Alexandria, Virginia
4. **Birthplace:** State year and place of birth.  
  
1974; Detroit, Michigan
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
1995 – 1998, Yale Law School; J.D., 1998  
  
1991 – 1995, University of Michigan; B.A. (high honors and high distinction), 1995
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.  
  
2017 – present  
United States District Court for the District of Columbia  
333 Constitution Avenue, Northwest

Washington, DC 20001  
Magistrate Judge

2007 – 2017

United States Attorney's Office for the District of Columbia  
601 D Street, Northwest  
Washington, DC 20004  
Deputy Chief (Civil Division) (2011 – 2017)  
Assistant United States Attorney (Civil Division) (2007 – 2017)

1999 – 2007; Summer 1998; Summer 1997

Jenner and Block, LLP  
1099 New York Avenue, Northwest, Suite 900  
Washington, DC 20001  
Associate (1999 – 2007)  
Summer Associate (Summer 1998, Summer 1997 (split with Chicago office))

1998 – 1999

United States Court of Appeals for the District of Columbia Circuit  
333 Constitution Avenue, Northwest  
Washington, DC 20001  
Law Clerk to the Honorable Merrick B. Garland

Fall 1997

Professor Drew S. Days, III  
Yale Law School  
127 Wall Street  
New Haven, Connecticut 06511  
Coker Fellow

Summer 1996

Sonnenschein Nath and Rosenthal  
(now merged into Dentons, formerly SNR Denton)  
233 South Wacker Drive, # 5900  
Chicago, Illinois 60608  
Summer Intern

Summer 1995

Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Summer Intern (through Sponsors for Educational Opportunity)

Other Affiliations (Uncompensated)

2023 – present

American Bar Association  
 321 North Clark Street  
 Chicago, Illinois 60654  
 Secretary, Labor and Employment Law Section

2018 – present

Jack and Jill of America, Inc.  
 Alexandria - Mount Vernon Chapter  
 5810 Kingstowne Center Drive  
 P.O. Box 120 – 250  
 Alexandria, Virginia 22315  
 Recording Secretary (2019 – 2021)  
 Co-Chair, Five Star Committee (2020 – present)  
 Chair, Bylaws Committee (2017 – 2019)

2017 – 2022

Federal Magistrate Judges Association  
 P.O. Box 249  
 Stanardsville, Virginia 22973  
 Director (DC)

2013 – 2018 (approximately)

Historical Society of the District of Columbia Circuit  
 333 Constitution Avenue, Northwest, Room 4714  
 Washington, DC 20001  
 Member, Board of Directors

2013 – 2015

Dress for Success, Washington DC  
 1126 16th Street, Northwest, Suite 250  
 Washington, DC 20036  
 Member, Advisory Board

2005 (approximately) – 2011

Yale Law School Alumni Association of Washington, D.C.  
 (no current address)  
 Board Member (2005 – 2011)  
 President (2008 – 2011)

1996 – 1997

Black Law Students Association  
 Yale Law School  
 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 Attorney's Office for the District of Columbia  
 Excellence In Management Award (2016)  
 Special Achievement Award (2008, 2010, 2011, 2012). Additional dates may exist.

Yale Law School  
 Coker Fellow (1997)  
 Yale Law Journal, Senior Editor (1997 – 1998), Editor (1996 – 1997)

University of Michigan  
 Bachelor of Arts with High Honors in English Literature (1995)  
 Bachelor of Arts with High Distinction in French (1995)  
 James B. Angell Scholar (1992 – 1994 (approximately))  
 Dean's Merit Scholar (1991 – 1992 (approximately))  
 Phi Beta Kappa Honor Society (1994)  
 Undergraduate Honors Program (1991 – 1993)

I was also awarded various educational scholarships from the University of Michigan and private entities that provided academic scholarships for incoming college freshmen. I do not recall the names of the specific scholarships or the specific years they were awarded.

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.

Administrative Office of U.S. Courts  
 Member, Magistrate Judges Advisory Group (2019 – 2022)

American Bar Association  
 Secretary, Labor & Employment Law Section (2022 – present)  
 Secretary-Elect, Labor & Employment Law Section (2021 – 2022)

Black Law Students Association  
 Member (1995 – 1998)  
 President, Yale Law School chapter (1996 – 1997)

Federal Magistrate Judges Association

Director (DC) (2017 – 2022)  
Member, Diversity Committee (2018 – present)

National Bar Association (approximately 2008 – present)

United States Court of Appeals for the District of Columbia Circuit  
Member, Advisory Committee on Procedures (approximately 2016 – 2017)

United States District Court for the District of Columbia  
Member, Committee on Pro Se Litigation (approximately 2018 – present)

Washington Bar Association (approximately 2010 – present)

Yale Law School Alumni Association, Washington, DC (approximately 1999 – 2011)  
Board Member (2005 – 2011)  
President (2008 – 2011)

Yale Law School, Washington, D.C. Alumni Steering Committee (2012 – 2018)

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, 2004  
Illinois, 1998

I allowed my membership in the Illinois bar to lapse in 2016 because I no longer practiced in Illinois. There have been no other 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 District of Columbia Circuit, 2006  
United States District Court for the District of Columbia, 2005

There have been no lapses in membership.

11. **Memberships:**

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

Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Jack and Jill of America, Inc., Alexandria – Mount Vernon Chapter (2017 – present)

Chair, Bylaws Committee (2017 – 2019)

Co-Chair, Five Star Committee (2020 – present)

Recording Secretary (2019 – 2021)

Higher Achievement Program, Mentor (approximately 2010 – 2012)

Maya Angelou Charter School, Mentor (do not recall dates)

University of Michigan Alumni Association (intermittently from 1995 – 2021)

- 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.

Jack and Jill of America, Inc., a non-profit organization that focuses on educational and cultural opportunities for children, limits membership to mothers but has a fathers' auxiliary. To the best of my knowledge, none of the other organizations listed in response to Question 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.

## 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.

November 9, 2023: Secretary's Address, American Bar Association, Labor and Employment Law Section Conference, Seattle, Washington. Speech supplied.

October 28, 2023: Panelist, Robert E. Wone Judicial Clerkship and Internship Conference, Washington, DC. I participated in a panel and spoke to law students about applying for federal clerkships and the benefits of federal clerkships. I have no notes, transcript, or recording. The address for the 2023 Robert E. Wone Judicial Clerkship and Internship Conference is Georgetown Law Center, McDonough Hall, 600 New Jersey Avenue, Northwest, Washington, DC 20001.

April 14, 2023: Panelist, "E-Discovery at a Crossroads," Rabiej Litigation Law Center, George Washington University Law School, Washington, DC. Notes supplied.

March 2, 2023: Judge, Moot Court, Historical Society for the District of Columbia Circuit, Washington, DC. I served as a judge for high school students' presentations of oral arguments using a hypothetical fact pattern and selected a "best advocate" among students who presented argument before me. I have no notes, transcript, or recording. The address for the Historical Society for the District of Columbia Circuit is 333 Constitution Avenue, Northwest, Room 4714, Washington, DC 20001.

April 27, 2022: Guest, Greater Washington Area Chapter, Women Lawyers Division, National Bar Association, "GWAC Dinner Series." I was the featured guest at an informal dinner open to members of GWAC and spoke to attendees

about my career. I have no notes, transcript, or recording. The address for GWAC is P.O. Box 77254, Washington, DC 20013.

March 4, 2022: Judge, Moot Court, Historical Society for the District of Columbia Circuit, Virtual Event. I served as a judge for high school students' presentations of oral arguments using a hypothetical fact pattern and selected a "best advocate" among students who presented argument before me. I have no notes, transcript, or recording. The address for the Historical Society for the District of Columbia Circuit is 333 Constitution Avenue, Northwest, Room 4714, Washington, DC 20001.

March 6, 2021: Panelist, Robert E. Wone Judicial Clerkship and Internship Conference, Washington, DC. I participated in a panel and spoke to law students about applying for federal clerkships and the benefits of federal clerkships. I have no notes, transcript, or recording. The address for the 2021 Robert E. Wone Judicial Clerkship and Internship Conference is Asian Pacific American Bar Association Educational Fund, P.O. Box 2209, Washington, DC 20013.

October 15, 2020: College of Labor and Employment Lawyers CLE, "Civility in the Courtroom, Using Professionalism as a Strategic Tool in an Employment Case," Virtual Event. Notes supplied.

July 24, 2019: Faculty, National Institute for Trial Advocacy Deposition Skills Workshop, Georgetown University Law Center, Washington, DC. I evaluated and spoke to attorney participants in a mock deposition workshop. I have no notes, transcript, or recording. The address for the Georgetown University Law Center is 600 New Jersey Avenue, Northwest, Washington, DC 20001.

May 24, 2019: Panelist, Judge's Forum, U.S. District Court for the District of Columbia. Notes supplied.

October 23, 2018: Panelist, Federal Bar Association & Metropolitan Washington Employment Lawyers' Association, "Motions Practice in Employment Cases," United States District Court for the District of Columbia. I participated in a panel for a session regarding discovery motions, as part of a half-day conference. I have no notes, transcript, or recording. The address for the U.S. District Court for the District of Columbia is 333 Constitution Avenue, Northwest, Washington, DC 20001.

April 27, 2018 (approximately): Panelist, Judge's Forum, U.S. District Court for the District of Columbia. Notes supplied.

May 18, 2017: Investiture of Magistrate Judge Robin M. Meriweather, United States District Court for the District of Columbia. Remarks supplied.

Approximately 2015 – 2016: Teacher, Project LEAD. For two semesters, I co-



taught a leadership and critical thinking curriculum to 5th grade students in a weekly class at a public school in Southeast DC through Project LEAD. I do not recall the precise dates of the classes. I have no notes, transcript, or recording. The address for Project LEAD is United States Attorney's Office for the District of Columbia, 601 D Street Northwest, Washington DC 20004.

- 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.

When I was in high school or college, the local newspaper had a short article about my academic accomplishments. I have not located a copy of the article and do not recall the date. Apart from that, I have not given any interviews to newspapers, magazines, other publications, or radio or television stations.

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 January 2017, I have served as a United States Magistrate Judge for the United States District Court for the District of Columbia. 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 chose five finalists. In the second stage, the United States District Judges of the District of Columbia made the final selection from the five finalists. I am currently serving an eight-year renewable term. The United States District Court for the District of Columbia is a court of limited jurisdiction, and the jurisdiction of United States Magistrate Judges is defined by 28 U.S.C. § 636.

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

Three, including a civil bench trial conducted earlier this year and for which judgment is pending. Additionally, I have taken guilty pleas and imposed sentences in approximately 6 misdemeanor cases.

- i. Of these cases, approximately what percent were:

jury trials:	34%
bench trials:	66%

- ii. Of these cases, approximately what percent were:

civil proceedings:	66 %
criminal proceedings:	34 %

- 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. *Hammons v. Islamic Republic of Iran*, No. 19-cv-2518 (ACR), 2023 WL 5933340 (D.D.C. July 24, 2023), *R. & R. adopted*, 2023 WL 6211248 (Sep. 25, 2023)

This case arose under the Foreign Sovereign Immunities Act's terrorism exception, and the plaintiffs were individuals who resided at Camp Sullivan in Afghanistan at the time of a terrorist bombing and several of their family members. Plaintiffs sued Iran, alleging that it materially supported the Taliban terrorists who perpetrated the attack, and that the attack was an extrajudicial killing that caused plaintiffs physical and emotional injuries. Plaintiffs filed a motion for default judgment on liability, asking that the court issue an order finding Iran liable to plaintiffs under theories of assault, battery, intentional infliction of emotional distress, and solatium. I reviewed the motion for default judgment and supporting legal memoranda and affidavits and I recommended that the court grant default judgment regarding liability in favor of several plaintiffs. I recommended that the court deny without prejudice the default judgment motion for a subset of plaintiffs who had not submitted sufficient evidence to support their claims and allow those plaintiffs to supplement the record. The district judge adopted my recommendation.

Counsel for Plaintiffs:

Randy D. Singer  
Kevin Allin Hoffman  
Maryam M. Atty  
Singer Hoffman, LLC  
1209A Laskin Road  
Virginia Beach, VA 23451  
(757) 301-9995

Counsel for Defendant:

None

2. *Perikli S. Z. v. Kijakazi*, No. 20-cv-812 (BAH), 2023 WL 3372309 (D.D.C.

May 11, 2023)

This case involves a challenge to the Social Security Administration's decision to suspend Mr. Z.'s receipt of retirement benefits based on his deportation from the United States. I issued a report and recommendation recommending that the court affirm the Social Security Administration ruling. The presiding district judge adopted the recommendation.

Counsel for Plaintiff:

Plaintiff proceeded *pro se*.

Counsel for Defendant:

Brittany Johanna Gigliotti  
Amanda Lockshin  
Social Security Administration Office of the General Counsel  
Office of the General Counsel  
6401 Security Boulevard  
Baltimore, MD 21235  
(215) 597-1890

3. *Sanchez Sanchez v. Ultimo, LLC d/b/a Malbec Restaurant*, No. 19-cv-3188 (RMM)

This case arises under the Fair Labor Standards Act and corresponding DC state laws, and involves claims that a restaurant unlawfully failed to pay overtime to the plaintiff. The parties filed cross-motions for summary judgment requesting that the court resolve certain aspects of the case in their favor. Plaintiff sought partial summary judgment and asked the court to rule that defendants violated federal and local wage and hour laws by failing to pay plaintiff overtime, that plaintiff was not an executive who was exempt from overtime pay requirements, that the owner of the restaurant should be jointly and severally liable for any damages owed, and that plaintiff should receive liquidated damages. Defendant sought summary judgment on all claims and asked the court to rule that the restaurant lacked sufficient revenue to be covered by the Fair Labor Standards Act and that Mr. Sanchez's duties made him ineligible for overtime under federal and state law. I resolved the parties' motions for summary judgment and concluded that disputed questions of fact precluded the entry of summary judgment on the merits of plaintiff's claims for unpaid overtime. I subsequently presided over a bench trial. This case remains pending, and I will issue a ruling after the parties submit proposed findings of fact and conclusions of law. Opinion on summary judgment provided.

Counsel for Plaintiff:

Michael K. Amster  
Edith Thomas  
Zipin, Amster & Greenberg, LLC  
8757 Georgia Avenue, Suite 400  
Silver Spring, MD 20910  
(301) 587-9373

Counsel for Defendant:

Michael E. Veve  
Michael E. Veve, PLLC  
320 S. West Street, Suite 310  
Alexandria, VA 22314  
(703) 309-3076

4. *United States v. Copeland*, No. 21-cr-570 (APM)

This was a criminal case in which I conducted multiple motion hearings to resolve mental competency issues and a motion seeking revocation of pretrial release. After conducting the hearings and receiving reports from a clinical psychologist, I issued a sealed memorandum opinion that denied the United States' motion to schedule a competency hearing and commit Mr. Copeland to the custody of the Attorney General for an evaluation of his competency pursuant to 18 U.S.C. § 4241. The district judge ultimately accepted a guilty plea from Mr. Copeland and sentenced him to 36 months of incarceration.

Counsel for Government:

Michael John Romano  
U.S. Department of Justice  
1331 F Street, Northwest  
Washington, DC 20004  
(202) 307-6691

Counsel for Defendant:

H. Heather Shaner  
Law Offices of H. Heather Shaner  
1702 S Street, Northwest  
Washington, DC 20009  
(202) 265-8210

Ryan Stout,  
132 West Tabernacle Street  
Building B  
Saint George, UT 84770  
(435) 628-4411

5. *Relman Dane & Colfax PLLC v. Fair Housing Council of San Fernando Valley*, No.18-cv-495 (TNM/RMM), 2019 WL 3779901 (D.D.C. Aug. 12, 2019), *R. & R. adopted*, 2019 WL 4737113 (D.D.C. Sept. 27, 2019)

This case involved a contract dispute between a law firm and its former clients. The law firm alleged that its former clients improperly terminated their relationship and that those actions constituted an anticipatory breach of contract. The defendants filed a motion to dismiss, asserting that the court lacked subject matter jurisdiction because the claims were not ripe and that the court lacked personal jurisdiction because the defendants had insufficient contacts with the District of Columbia. The defendants alternatively argued that venue was improper and the case should be transferred to the United States District Court for the Central District of California. One defendant also requested that the court dismiss plaintiff's claims for failure to state a viable claim for anticipatory breach of contract. I issued a report and recommendation recommending that the court partially grant and partially deny the motions to dismiss. I concluded that the claims were ripe and that the court had personal jurisdiction over defendants because the business relationship between the parties established a connection between defendants and DC. I concluded that venue was proper in the United States District Court for the District of Columbia but recommended that the case be transferred to the United States District Court for the Central District of California in furtherance of the interest of justice and for the convenience of the parties and witnesses. I did not rule on the merits of the motion to dismiss for failure to state a claim and recommended that the motion be denied without prejudice so that it could be re-filed and resolved in the Central District of California. The district judge adopted the report and recommendation and transferred the case over the law firm's objections.

Counsel for Plaintiff:

Andrew Soukop  
 Benjamin John Razi  
 Covington & Burling LLP  
 850 Tenth Street, Northwest  
 One City Center  
 Washington, DC 20001  
 (202) 662-5066

Steven John Winkelman  
 U.S. Department of Labor  
 200 Constitution Avenue, Northwest  
 Washington, DC 20210  
 (202) 693-9009

Counsel for Defendant:

Donald R. Warren  
 Phillip E. Benson  
 Warren Benson Law Group  
 620 Newport Center Drive, Suite 1100  
 Newport Beach, CA 92660  
 (949) 721-6636

Dennis J. Whelan, II  
 Dennis J. Whelan, PC.  
 2222 Monument Avenue  
 Richmond, VA 23220  
 (804) 359-4123

Scott P. Moore  
 Mark J. Goldsmith  
 1700 Farnam Street, Suite 1500  
 Omaha, NE 68102  
 (402) 344-0500

Robert Aaron Caplen  
 United States Attorney's Office for the District of Columbia  
 601 D Street, Northwest  
 Washington, DC 20530  
 (202) 252-2523

6. *United States v. Barnes*, No. 18-mj-54 (D.D.C.) 2019 WL 1980991 (D.D.C. May 3, 2019); *United States v. Barnes*, No. 18-mj-54, 2019 WL 5538550 (D.D.C. Oct. 24, 2019), *aff'd*, 481 F. Supp. 3d 15 (D.D.C. 2020), *appeal dismissed*, 2021 WL 2525376 (D.C. Cir. May 17, 2021), 2021 WL 4723992 (D.C. Cir. May 18, 2021)

I was the presiding judge for this criminal misdemeanor case involving defendants who protested outside the United States Supreme Court in an area where demonstrations, speeches, and similar First Amendment activity are not allowed. The parties filed a motion requesting a jury trial, arguing that they had a statutory and constitutional right to a jury trial, and alternatively requesting that I exercise my discretion to allow them to have a jury trial. I denied that motion and concluded that: (1) the charged offense was a petty offense for which no constitutional right to a jury trial existed; (2) even if defendants would have been entitled to a jury trial under local law if the prosecution had elected to file the charges in D.C. Superior Court, that did not give them a right to a jury trial in federal court; and (3) the policy considerations that defendants raised did not warrant the exercise of my discretion to empanel a jury. The defendants also moved to dismiss the charges against them as unconstitutional, asserting that the statute they were accused of violating—40 U.S.C. § 6135—itsself violated the

First Amendment and was unconstitutionally vague and overbroad. In addition, one defendant (Hawkins) alleged that the charges against him should be dismissed because he was subject to selective prosecution. I denied the motions to dismiss in their entirety. I noted that the United States Court of Appeals for the D.C. Circuit had held that the Supreme Court is a nonpublic forum, and I concluded that the statute was a permissible viewpoint neutral restriction that furthered the governmental interest in maintaining order and decorum at the Supreme Court and protecting the integrity of the judicial process. Defendants appealed my ruling, and the Chief Judge of the District Court affirmed my conclusion. The plaintiffs appealed the Chief Judge's ruling to the D.C. Circuit and subsequently dismissed that appeal.

Counsel for the Government:

Lisa N. Walters  
United States Attorney's Office for the District of Columbia  
601 D Street, Northwest  
Washington, DC 20004  
(202) 252-7499

Kelly Smith Brown  
I am unable to locate current business contact information for Ms. Brown.

Counsel for Defendants:

Jason Gregory Downs (Barnes)  
Downs Collins PA (formerly)  
Brownstein Hyatt Farber Schreck  
1155 F Street, Northwest, Suite 1200  
Washington, DC 20004  
(202) 383-4436

Jeffrey D. Robinson (Barnes)  
Lewis Baach Kaufman Middlemiss PLLC  
1101 New York Avenue, Northwest, Suite 1000  
Washington, DC 20005  
(202) 833-8900

Karima Tawfik (Barnes)  
Buchanan Ingersoll & Rooney PC  
1700 K Street, Northwest, Suite 300  
Washington, DC 20006-3807  
(202) 452-7996

David Barry Benowitz (Hagler)  
Price Benowitz LLP

409 Seventh Street, Northwest, Suite 200  
Washington, DC 20004  
(202) 417-6000

Carmen D. Hernandez (Hawkins)  
7166 Mink Hollow Road  
Highland, MD 20777  
(240) 472-3391

Nathan I. Silver, II (Lamar)  
Law Offices of Nathan I. Silver  
6300 Orchid Drive  
Bethesda, MD 20817  
(301) 229-0189

Mark John Carroll (Mallette)  
Mark John Carroll Esq., P.C.  
39641 Tern Road  
Bethany Beach, DE 19930  
(443) 421-3475

Mary Petras  
Ubong Akpan (Sandweiss-Back)  
Federal Public Defender for the District of Columbia  
625 Indiana Avenue, Northwest, Suite 550  
Washington, DC 20004  
(202) 208-7500

Dwight E. Crawley (Stephens)  
Law Office Of Dwight E. Crawley  
1300 I. Street, Northwest, Suite 400e  
Washington, DC 20005  
(202) 580-9794

Ronald S. Sullivan Jr. (Theoharis)  
Harvard Law School  
250 Hartman Road  
Newton, MA 02459  
(617) 496-4777

Shawn Sukumar (Theoharis)  
Price Benowitz LLP  
409 Seventh Street, Northwest, Suite 200  
Washington, DC 20004  
(202) 417-6000



7. *Shaw v. District of Columbia*, No. 17-cv-738 (DLF), 2019 WL 498731 (D.D.C. Feb. 8, 2019), *R. & R. adopted*, 2019 WL 935418 (D.D.C. Feb. 26, 2019)

This was an Individuals with Disabilities Education Act case involving a challenge to the school's provision of an adequate education to a student with intellectual disabilities. The plaintiff (the student's parent) moved for summary judgment and asked that the court reverse the underlying administrative decision in which a hearing officer concluded that the school district had provided the student the free and appropriate public education required by law. The parent challenged four of the hearing officer's conclusions regarding: (1) whether the school district had adequately cured its prior reliance on outdated evaluations of the student; (2) whether the student's individualized education plans (IEPs) adequately addressed her transition from an academic setting to post-school activities; (3) whether the school district improperly excluded the parent from participating in some aspects of the student's educational planning; and (4) whether the school district denied the student a free and appropriate public education by graduating her from high school before she was adequately prepared to graduate and failing to give the parent prior written notice of the graduation. I issued a report and recommendation concluding that the school district violated the student's rights by relying on outdated evaluations and failing to give the parent adequate notice of the plan to graduate the student, and that the record was insufficient to determine whether the student's rights also were violated by the decision to award her a high school diploma when her academic skills were between a third- and fifth-grade level. I recommended that the district court reverse the hearing officer's decision and remand the case for further administrative proceedings. The district judge adopted my recommendation in full.

Counsel for Plaintiff:

Charles Moran  
Moran & Associates  
1100 H Street, Northwest, Suite 260  
Washington, DC 20005  
(202) 450-2864

Carolyn W. Houck  
Law Office of Carolyn Houck  
P.O. Box 252  
St. Michaels, MD 21663  
(301) 951-4278

Counsel for Defendant:

Tasha Monique Hardy

D.C. Office of Attorney General  
 400 6th Street, Northwest, Suite 8100  
 Washington, DC 20001  
 (202) 724-7794

8. *Leichook v. Syrian Arab Republic*, No. 16-01550 (RC), 2019 WL 2191323 (D.D.C. Jan. 31, 2019), *R. & R. adopted*, 2019 WL 2191177 (D.D.C. Mar. 25, 2019)

This case arose under the Foreign Sovereign Immunities Act's terrorism exception, and the plaintiffs were five family members who sued the Syrian Arab Republic (Syria) under theories of wrongful death and intentional infliction of emotional distress. The plaintiffs alleged that Syria's material support of the terrorist organization Hezbollah rendered Syria liable for the extrajudicial killing of their relative during a rocket attack that struck their relative's residence. Plaintiffs moved for default judgment on liability, seeking a ruling that Syria was liable to plaintiffs for wrongful death and intentional infliction of emotional distress. I reviewed plaintiffs' motion for default judgment and supporting legal memoranda and recommended that the court grant the motion for default judgment against Syria regarding liability for the intentional infliction of emotional distress claims brought by four plaintiffs and the wrongful death claim brought by the plaintiff representing the deceased relative's estate. I recommended that the court deny the default judgment motion on the wrongful death claim brought by the four remaining plaintiffs because the controlling statute only allows the decedent's estate to bring such a claim. The district judge adopted my recommendation.

Counsel for Plaintiffs:

Richard D. Heideman  
 Noel Jason Nudelman  
 Tracy Reichman Kalik  
 Heideman Nudelman & Kalik, PC  
 5335 Wisconsin Avenue, Northwest, Suite 440  
 Washington, DC 20015  
 (202) 463-1818

Counsel for Defendant:

None

9. *Larue v. Johnson*, No. 16-cv-504 (EGS), 2018 WL 1967128 (D.D.C. Feb. 22, 2018), *R. & R. adopted*, 2018 WL 2561036 (D.D.C. Apr. 4, 2018)

This was a civil action in which the plaintiff alleged that the defendant had defamed her and intentionally inflicted emotional distress upon her by posting

statements online accusing her of fraudulent activity and sending plaintiff's clients, friends, and business contacts a 73-page document which contained numerous false statements about plaintiff's professional qualifications and personal life and accused her of unprofessional and unethical behavior. The plaintiff moved for default judgment against the defendant based on his failure to respond to the civil complaint, for a permanent injunction barring the defendant from contacting, communicating with, or approaching plaintiff or posting any reviews online regarding plaintiff or her business, and for monetary damages to redress the defamatory and emotionally distressing conduct. The plaintiff also filed a separate motion for permanent injunction alleging that a criminal statute regarding cyber stalking entitled her to an injunction barring the defendant from stalking her, going within 500 feet of plaintiff's residence, place of employment, or places plaintiff regularly frequents, or contacting plaintiff directly or indirectly. I conducted an evidentiary hearing and issued a report and recommendation that recommended that plaintiff's motion for default judgment be granted, that her motion for permanent injunction be denied, that she be awarded \$280,000 in damages, and that the defendant be enjoined from further distributing the defamatory document. The district judge adopted my recommendation.

Counsel for Plaintiff:

Kathleen Balthrop Havener  
The Cullen Law Firm, P.L.L.C.  
1101 30th Street, Northwest, Suite 300  
Washington, DC 20007  
(202) 298-4775

Keith Alan Rosten  
Berliner Corcoran & Rowe, LLP  
1101 17th Street, Northwest, Suite 1100  
Washington, DC 20036  
(202) 293-5555

Counsel for Defendant:

None

10. *United States v. Islam*, 15-cr-67 (RDM), ECF No. 69 (Dec. 4, 2017), *R. & R. adopted orally*, *adoption of R. & R. aff'd*, 932 F.3d 957 (D.C. Cir. 2019)

In this criminal case I conducted numerous hearings regarding alleged violations of supervised release and issued a detailed report and recommendation recommending that the district judge reject Mr. Islam's various legal challenges to the revocation proceedings. The district judge ruled orally at a hearing and adopted all of my recommendations except for my recommendation that Mr. Islam be sentenced to four months of incarceration as a consequence for his release violations; the district judge imposed a longer period of incarceration. On

appeal, the D.C. Circuit concluded that Mr. Islam forfeited his right to appeal the district judge's decision to adopt my report and recommendation. Report and Recommendation supplied.

Counsel for the Government:

Jonathan P. Hooks  
Corbin A. Weiss  
United States Attorney's Office for the District of Columbia  
601 D Street, Northwest  
Washington, DC 20004  
(202) 252-7796

Counsel for Defendant:

Mr. Islam *pro se*

Matthew J. Peed  
Clinton & Peed  
1775 Eye Street, Northwest, Suite 1150  
Washington, DC 20006  
(202) 919-9491

- 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. *Nyarko v. Crothall Healthcare, Inc.*, No. 20-cv-2728 (RMM), 2023 WL 6388950 (D.D.C. Sept. 29, 2023)

Counsel for Plaintiff:

Michael Reiter  
Chasenboscolo Injury Lawyers  
7852 Walker Drive  
Greenbelt, MD 20770  
(301) 220-0050

Counsel for Defendants:

Caitlin Rose Convery  
Shook, Hardy & Bacon  
1800 K Street, Northwest, Suite 1000  
Washington, DC 20006  
(202) 783-8400

2. *707 G Street LLC v. Jemal's Mickelson, LLC*, No. 20-cv-685 (RMM), 2023 WL 2571753 (D.D.C. Mar. 20, 2023)

Counsel for Plaintiff:

A. Wolfgang McGavran  
 Nathan Robert Pittman  
 McGuire Woods LLP  
 888 16th Street, Northwest  
 Black Lives Matter Plaza, Suite 500  
 Washington, DC 20006  
 (202) 857-2471 (McGavran)  
 (202) 857-2469 (Pittman)

Counsel for Defendants:

Andrew Blake Schulwolf  
 Albert & Schulwolf, LLC  
 110 North Washington Street, Suite 300  
 Rockville, MD 20850  
 (301) 519-1919

3. *Wilson v. Federal Communications Commission*, No. 21-cv-895, 2022 WL 4245485 (D.D.C. Sept. 15, 2022)

Counsel for Plaintiff:

Arthur Vasyi Belendiuk  
 Smithwick & Belendiuk, PC  
 5028 Wisconsin Avenue, Northwest, Suite 301  
 Washington, DC 20016  
 (202) 363-4050

Counsel for Defendant:

Dedra Seibel Curteman  
 United States Attorney's Office for the District of Columbia  
 Civil Division  
 601 D Street, Northwest  
 Washington, DC 20004  
 (202) 252-7566

4. *United States v. Barnes*, No. 19-mj-54, 2019 WL 5538550 (D.D.C. Oct. 24, 2019), *aff'd*, 481 F. Supp. 3d 15 (D.D.C. 2020), *appeal dismissed*, 2021 WL 2525376 (D.C. Cir. May 17, 2021), 2021 WL 4723992 (D.C. Cir. May 18,

2021)

Counsel for Plaintiff:

Lisa N. Walters  
United States Attorney's Office for the District of Columbia  
601 D Street, Northwest  
Washington, DC 20004  
(202) 252-7499

Kelly Smith Brown  
I am unable to locate current business contact information for Ms. Brown

Counsel for Defendants:

Jason Gregory Downs (Barnes)  
Downs Collins PA (formerly)  
Brownstein Hyatt Farber Schreck  
1155 F Street, Northwest, Suite 1200  
Washington, DC 20004  
(202) 383-4436

Jeffrey D. Robinson (Barnes)  
Lewis Baach Kaufman Middlemiss PLLC  
1101 New York Avenue, Northwest, Suite 1000  
Washington, DC 20005  
(202) 833-8900

Karima Tawfik (Barnes)  
Buchanan Ingersoll & Rooney PC  
1700 K Street, Northwest, Suite 300  
Washington, DC 20006-3807  
(202) 452-7996

David Barry Benowitz (Hagler)  
Price Benowitz LLP  
409 Seventh Street, Northwest, Suite 200  
Washington, DC 20004  
(202) 417-6000

Carmen D. Hernandez (Hawkins)  
7166 Mink Hollow Road  
Highland, MD 20777  
(240) 472-3391

Nathan I. Silver, II (Lamar)

Law Offices of Nathan I. Silver  
6300 Orchid Drive  
Bethesda, MD 20817  
(301) 229-0189

Mark John Carroll (Mallette)  
Mark John Carroll Esq., P.C.  
39641 Tern Road  
Bethany Beach, DE 19930  
(443) 421-3475

Mary Petras (Sandweiss-Back)  
Ubong Akpan (Sandweiss-Back)  
Federal Public Defender for the District of Columbia  
625 Indiana Avenue, Northwest, Suite 550  
Washington, DC 20004  
(202) 208-7500

Dwight E. Crawley (Stephens)  
Law Office Of Dwight E. Crawley  
1300 I. Street, Northwest, Suite 400e  
Washington, DC 20005  
(202) 580-9794

Ronald S. Sullivan Jr. (Theoharis)  
Harvard Law School  
250 Hartman Road  
Newton, MA 02459  
(617) 496-4777

Shawn Sukumar (Theoharis)  
Price Benowitz LLP  
409 Seventh Street, Northwest, Suite 200  
Washington, DC 20004  
(202) 417-6000

5. *LaRue v. Johnson*, No. 16-cv-504 (EGS), 2018 WL 1967128 (D.D.C. Feb. 22, 2018), *R. & R. adopted*, 2018 WL 2561036 (D.D.C. Apr. 4, 2018)

Counsel for Plaintiff:

Kathleen Balthrop Havener  
The Cullen Law Firm, P.L.L.C.  
1101 30th Street, Northwest, Suite 300  
Washington, DC 20007  
(202) 298-4775

Keith Alan Rosten  
 Berliner Corcoran & Rowe, LLP  
 1101 17th Street, Northwest, Suite 1100  
 Washington, DC 20036  
 (202) 293-5555

Counsel for Defendant:

None

6. *Relman Dane & Colfax PLLC v. Fair Housing Council of San Fernando Valley*, No.18-cv-495 (TNM/RMM), 2019 WL 3779901 (D.D.C. Aug. 12, 2019)

Counsel for Plaintiff:

Andrew Soukop  
 Benjamin John Razi  
 Covington & Burling LLP  
 850 Tenth Street, Northwest  
 One City Center  
 Washington, DC 20001  
 (202) 662-5066

Steven John Winkelman  
 U.S. Department of Labor  
 200 Constitution Avenue, Northwest  
 Washington, DC 20210  
 (202) 693-9009

Counsel for Defendant:

Donald R. Warren  
 Phillip E. Benson  
 Warren Benson Law Group  
 620 Newport Center Drive, Suite 1100  
 Newport Beach, CA 92660  
 (949) 721-6636

Dennis J. Whelan, II  
 Dennis J. Whelan, PC  
 2222 Monument Avenue  
 Richmond, VA 23220  
 (804) 359-4123



Scott P. Moore  
Mark J. Goldsmith  
1700 Farnam Street, Suite 1500  
Omaha, NE 68102  
(402) 344-0500

Robert Aaron Caplen  
United States Attorney's Office for the District of Columbia  
601 D Street, Northwest  
Washington, DC 20530  
(202) 252-2523

7. *Lelchhook v. Syrian Arab Republic*, 2019 WL 2191323 (D.D.C. Jan. 31, 2019),  
*R. & R. adopted*, 2019 WL 2191177 (D.D.C. Mar. 25, 2019)

Counsel for Plaintiffs:

Richard D. Heideman  
Noel Jason Nudelman  
Tracy Reichman Kalik  
Heideman Nudelman & Kalik, PC  
5335 Wisconsin Avenue, Northwest, Suite 440  
Washington, DC 20015  
(202) 463-1818

Counsel for Defendant:

None

8. *Shaw v. District of Columbia*, No. 17-cv-738 (DLF), 2018 WL 5044248  
(D.D.C. Sept. 11, 2018), *R. & R. adopted*, 2019 WL 935418 (D.D.C. Feb. 26,  
2019)

Counsel for Plaintiff:

Charles Moran  
Moran & Associates  
1100 H Street, Northwest, Suite 260  
Washington, DC 20005  
(202) 450-2864

Carolyn W. Houck  
Law Office of Carolyn Houck  
P.O. Box 252  
St. Michaels, MD 21663  
(301) 951-4278

Counsel for Defendant:

Tasha Monique Hardy  
D.C. Office of Attorney General  
400 6th Street, Northwest, Suite 8100  
Washington, DC 20001  
(202) 724-7794

9. *United States v. Islam*, 15-cr-67 (RDM), ECF No. 69 (Dec. 4, 2017), *R. & R. adopted orally*, *adoption of R. & R. aff'd*, 932 F.3d 957 (D.C. Cir. 2019).  
Opinion previously supplied in response to Question 13c.

Counsel for Plaintiff:

Jonathan P. Hooks  
Corbin A. Weiss  
United States Attorney's Office for the District of Columbia  
601 D Street, Northwest  
Washington, DC 20004  
(202) 252-7796

Counsel for Defendant:

Mr. Islam *pro se*

Matthew J. Peed  
Clinton & Peed  
1775 Eye Street, Northwest, Suite 1150  
Washington, DC 20006  
(202) 919-9491

10. *English v. Washington Metropolitan Area Transit Authority*, 293 F. Supp. 3d 13 (D.D.C. 2017)

Counsel for Plaintiff:

Kenneth J. LaDuca  
Price Benowitz LLP  
409 7th Street, Northwest, Suite 200  
Washington, DC 20004  
(202) 599-1786

Peter Grenier  
Grenier Law Group PLLC  
1920 L Street, Northwest, Suite 750

Washington, DC 20036  
(202) 768-9600

Counsel for Defendants:

M. Richard Coel  
Office of General Counsel  
Washington Metropolitan Area Transit Authority  
600 Fifth Street, Northwest  
Washington, DC 20001  
(202) 962-6096

Clifton M. Mount  
The Law Office of Clifton M. Mount, PLLC  
1627 K Street, Northwest, Suite 400  
Washington, DC 20006  
(202) 262-9125

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

To my knowledge, based on a review of my records and 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.

My review of my records has revealed the following rulings that were reversed on appeal. I could not identify or review all of my rulings because they typically are not reported, I have made hundreds of such rulings, and I do not receive electronic notice of the outcome of appeals. Consequently, there may be additional rulings that were reversed that I cannot identify.

*United States v. Allen*, No. 23-cr-17 (D.D.C. Nov. 21, 2023). Copy supplied. In this criminal case in which the defendant was charged with conspiring to distribute narcotics, I conducted a pretrial detention and issued an oral ruling that the defendant be released on home detention with electronic monitoring pending trial. The United States appealed my ruling, and District Judge Colleen Kollar Kotelly reversed. Judge Kollar Kotelly concluded that Mr. Allen should be detained pending trial because release conditions could not adequately ensure the defendant's appearance at future court proceedings or the safety of the community.

*United States v. Johnson*, No. 23-cr-14 (D.D.C. Nov. 21, 2023). In this criminal

case in which defendant was charged with conspiring to distribute narcotics, I conducted a pretrial detention hearing and issued an oral ruling that the defendant be released on home detention with electronic monitoring pending trial. The United States appealed my ruling, and District Judge Colleen Kollar Kotelly reversed. Judge Kollar Kotelly concluded that Mr. Johnson should be detained pending trial because release conditions could not adequately ensure the defendant's appearance at future court proceedings or the safety of the community.

*United States v. Maucha*, No. 21-cr-00322, 2023 WL 4131016 (D.D.C. June 22, 2023). In this criminal case in which a defendant was awaiting trial on conspiracy, fraud, and money laundering charges, I conducted a hearing regarding whether the defendant should be detained pending trial in light of alleged violations of pretrial release violations. I concluded that there was probable cause to believe that Mr. Maucha had violated federal law while on release, but that he should nonetheless remain on pretrial release but subject to more stringent conditions. The United States appealed that ruling, and District Judge Carl Nichols concluded that Mr. Maucha should be detained. Judge Nichols agreed with my findings regarding probable cause that Mr. Maucha had violated federal law, but concluded that stringent release conditions would be insufficient to adequately ensure that Mr. Maucha would not flee.

*United States v. Patel*, No. 23-cr-166, ECF No. 22 (D.D.C. May 31, 2023) (copy supplied). In this criminal case involving fraud charges, I conducted a pretrial detention hearing and concluded that the defendant did not pose a serious risk of flight that warranted pretrial detention. I ruled orally and relied on the fact that the defendant had appeared in court as required when on pretrial release for a prior criminal case. The United States appealed, and District Judge Dabney Friedrich reversed my ruling, concluding that Mr. Patel should be detained because release conditions would not adequately mitigate the risk of flight that he posed.

*United States v. Johnston*, No. 17-mj-00046 (RMM), 2017 WL 4277140 (D.D.C. Sep. 22, 2017), *rev'd*, 2017 WL 4326390 (D.D.C. Sept. 28, 2017). In this criminal case in which the defendant was charged with traveling with the intent to engage in illicit sexual conduct, I ordered that the defendant should be temporarily released from pretrial custody and placed on home incarceration for 21 days, so that he could obtain medical treatment for a cancer in which delayed treatment and diagnosis can be life-threatening. A significant factor in my ruling was that jail officials had repeatedly failed to transport the defendant to medical appointments, and he had a private physician who could promptly conduct testing and treatment. On appeal, then-Chief Judge Beryl A. Howell reversed the decision; the jail had arranged a medical appointment before appearing before Judge Howell, and she concluded that there was no evidence that the defendant would receive inadequate medical care while incarcerated.

Based on a review of my records and legal databases I have identified the following opinion that was affirmed in part. Additional opinions may exist that I was unable to identify.

*Mannina v. District of Columbia*, No. 15-cv-931 (KBJ), ECF Nos. 118, 120, 121 (D.D.C. Mar. 29, 2019, May 6, 2019), *aff'd in part*, ECF No. 153 (D.D.C. Feb. 22, 2021). Copies supplied. This civil case involves tort claims that plaintiff brought against the District of Columbia in connection with plaintiff's relative's suicide while incarcerated at a facility operated by the DC Department of Corrections. Then-District Judge Ketanji Brown Jackson referred all discovery matters to me for resolution. I issued opinions and orders to resolve three discovery disputes regarding a motion to compel production of documents, a motion for protective order, and a motion for sanctions. In a consolidated ruling, Judge Jackson partially affirmed my ruling on the motion to compel production of documents and concluded that DC should release one additional document and three sentences that were redacted from five documents.

To my knowledge, based on a review of my records and legal databases, only two reports and recommendations that I issued were rejected in full.

*Lattisaw v. District of Columbia*, No. 22-cv-510 (TNM), 2023 WL 3902737 (D.D.C. Mar. 3, 2023), *R. & R. rejected*, 2023 WL 3719814 (D.D.C. May 30, 2023). In this case plaintiff alleged that the District of Columbia violated the Individuals with Disabilities Education Act ("IDEA") and sought an order reversing two rulings made by the hearing officer during administrative proceedings. The parties filed cross motion for summary judgment asking the court to resolve all claims in their favor. I recommended that the court reverse the hearing officer's decision that plaintiff's claims regarding an untimely educational evaluation should be dismissed as premature and that the court remand for further proceedings. District Judge Trevor McFadden rejected the recommendation and concluded that the plaintiff did not meet her burden of showing that the school district's delay in evaluating the student violated the IDEA.

*E.B. v. U.S. Dep't of State*, No. 19-cv-2856 (TJK/RMM), 2023 WL 4891521 (D.D.C. Mar. 1, 2023), *R. & R. rejected*, 2023 WL 6141673 (D.D.C. Sept. 20, 2023). This case involved a challenge to the State Department's compliance with the Administrative Procedure Act when promulgating a rule requiring passports for diversity visa applicants, and the plaintiffs' motion for attorney's fees and costs was referred to me for a report and recommendation. I recommended that the court award attorney's fees but reduce the requested award by five hours or \$1,035. District Judge Timothy Kelly rejected the recommendation and concluded that the United States' position was substantially justified, and therefore plaintiffs were not entitled to recover fees.

The following reports and recommendations that I have issued were adopted in part and rejected in part. After reviewing my records and legal databases, I have

not identified any additional reports and recommendations that were rejected in part, but it is possible that additional unpublished decisions exist.

*Thomas v. Moreland*, No. 18-cv-0800 (TIJ/RMM), 2022 WL 2671272 (Mar. 4, 2022), *R. & R. adopted in part*, 2022 WL 21681093 (June 16, 2022). This case involved claims for defamation, and the court ordered plaintiff to pay the expenses and fees that defendant incurred as a result of plaintiff's violation of a court order compelling him to answer deposition questions. The motion for fees and expenses was referred to me for a report and recommendation. I recommended that the court award \$14,829 in attorney's fees and expenses. District Judge Timothy Kelly adopted most of my recommendations but declined to count approximately one hour claimed for participation in a sanction hearing, and reduced the award to \$14,689.

*Herrion v. District of Columbia*, No. 20-cv-3470 (RDM/RMM), 2022 WL 2753461 (Feb. 15, 2022), *adopted in part*, 2023 WL 2643881 (D.D.C. Mar. 27, 2023). In this case plaintiffs alleged that the District of Columbia violated the Individuals with Disabilities Education Act and sought an order reversing certain rulings made by the hearing officer during administrative proceedings. I recommended that the court grant in part and deny in part the parties' cross-motions for summary judgment. District Judge Randolph Moss rejected my ruling on one of the issues addressed in my report and recommendation — whether the District unlawfully failed to fund an independent education evaluation — and remanded the case for further administrative proceedings on that narrow issue.

*Greenwald v. Azar*, No. 17-cv-797-EGS-RMM, 2021 U.S. Dist. LEXIS 258813 (D.D.C. Nov. 8, 2021), *R. & R. adopted in part sub nom. Greenwald v. Becerra*, No. CV 17-797 (EGS/RMM), 2022 WL 2046108 (D.D.C. June 7, 2022). This case involved a challenge to the validity of a Local Coverage Determination ("LCD") that the Social Security Administration ("SSA") cited when denying the plaintiff Medicare coverage for a device prescribed by his physician. Plaintiff alleged that the SSA improperly failed to follow Administrative Procedure Act procedural requirements when issuing the LCD. The SSA moved to dismiss plaintiff's complaint, asserting that the court lacked subject matter jurisdiction and that the plaintiff failed to exhaust administrative remedies. I issued a report and recommendation recommending that the court dismiss the case for lack of subject matter jurisdiction. I concluded that the Social Security Act foreclosed reliance on general federal question jurisdiction, and that the relevant provision of that statute — 42 U.S.C. § 1395ff — did not confer jurisdiction because the plaintiff's case presented factual issues that should have first been addressed through the administrative process. District Judge Emmet Sullivan rejected my interpretation of 42 U.S.C. § 1395ff and concluded that the dispute presented a pure question of law over which the court had subject matter jurisdiction.

*Peck v. Selex Systems Integration, Inc.*, No. 13-cv-00073 (RJL/RMM), 2020 WL

8991721 (D.D.C. Nov. 16, 2020), *R. & R. adopted in part*, 2021 WL 1146298 (D.D.C. Mar. 25, 2021). This case involved claims for payment of employee benefits and compensation under state law and the Employee Retirement Income Security Act ("ERISA"). I issued a report and recommendation on a motion for attorney's fees that was referred to me and recommended that the court grant the motion for attorney's fees and supplemental motion for attorney's fees, and award a total of \$421,905 in fees. District Judge Richard J. Leon partially adopted my report and recommendation and concluded that the fee award should be reduced to \$378,394.

*SNH Medical Office Properties Trust v. A Bloomin' Sandwich Café, Inc.*, No. 19-cv-745 (KBJ), ECF No. 13 (copy supplied), *adopted in part*, 2020 WL 5834858 (D.D.C. Sept. 30, 2020). In this case the plaintiff moved for default judgment against the defendant on breach of contract claims. I recommended that the court grant the motion for default judgment, recommended \$217,497 in damages, and that the court rejected plaintiffs' request for collection fees and costs. Then-District Judge Jackson adopted my report and recommendation in part. She concluded that due to a scrivener's error I had miscalculated the damages, which should be \$217,506, and that the request for collection costs was a placeholder that allowed the parties to return to request those costs later, if necessary, and thus should not be denied as premature.

*Bynum v. District of Columbia*, No. 16-cv-1904 (EGS/RMM), 2018 WL 10394890 (D.D.C. Jan 26, 2018), *adopted in part*, 424 F. Supp. 3d 122 (D.D.C. 2020). In this employment discrimination case, I recommended that the court dismiss one defendant as an improper party and dismiss two counts in the plaintiff's complaint for failure to plead sufficient acts to state a viable claim of retaliation or hostile work environment. District Judge Emmet G. Sullivan partially rejected my recommendation and concluded that the plaintiff had pled sufficient facts to support her claims of retaliation and hostile work environment.

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

I estimate that I have issued more than 1,000 orders, reports and recommendations, opinions, and memoranda explaining my orders. A significant number of those are routine orders or rulings memorializing pretrial detention rulings. Approximately 129 of the decisions that contain substantial legal and factual analysis are published in a reporter, Lexis, and/or Westlaw. The remaining rulings are stored in the electronic case management system maintained by the United States District Court for the District of Columbia.

- 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.

*Barnes v. District of Columbia*, No. 16-01027 (ACR), ECF No. 30 (Nov. 3, 2023), *R. & R. adopted*, ECF No. 33 (Dec. 4, 2023). Copies supplied.

*United States v. Barnes*, No. 18-mj-54, 2019 WL 5538550 (D.D.C. Oct. 24, 2019), *aff'd*, 481 F. Supp. 3d 15 (D.D.C. 2020), *appeal dismissed*, 2021 WL 2525356 (D.C. Cir. May 17, 2021), 2021 WL 4723992 (D.C. Cir. May 18, 2021).

*United States v. Barnes*, No. 18-mj-54, 2019 WL 1980991 (D.D.C. May 3, 2019).

*United States v. Islam*, 15-cr-67 (RDM), ECF No. 69 (D.D.C. Dec. 4, 2017). Opinion 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. To my knowledge, no party, litigant, or attorney has requested that I recuse myself from a case. When I became a magistrate judge I *sua sponte* recused myself from all civil matters being defended by the United States Attorney's Office that were pending during my tenure as a Deputy Chief of the Civil Division because I supervised a significant percentage of civil cases handled by the office and frequently attended lunches when cases that I was not supervising were informally



discussed. I notified the Clerk's office of that recusal policy, and the cases generally were not assigned to me. When cases defended by attorneys from the United States Attorney's Office were assigned to me I immediately checked the docket to determine whether my recusal rule should apply. I do not recall the specific names of the cases that were assigned to me and from which I recused myself pursuant to that blanket policy, and do not have a record of those recusals.

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

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

I have not held any public office other than judicial office. I have not had any 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.

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 1998 to 1999 I served as a law clerk to the Honorable Merrick B. Garland, who at that time was a judge on the United States Court of Appeals for the D.C. Circuit.

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

I have never practiced law alone.

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

1999 – 2007  
 Jenner & Block LLP  
 1099 New York Avenue, Northwest, Suite 900  
 Washington, DC 20001  
 Litigation Associate

2007 – 2017  
 United States Attorney's Office for the District of Columbia  
 Civil Division  
 601 D Street, Northwest  
 Washington, DC 20004  
 Assistant United States Attorney (2007 – 2017)  
 Deputy Chief, Civil Division (2011 – 2017)

- 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 except in my capacity as a United States Magistrate Judge.

b. Describe:

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

From 1999 through 2006, after clerking on the United States Court of Appeals for the D.C. Circuit, I worked at Jenner and Block LLP's Washington, DC office as a litigation associate. My practice at that firm involved complex civil litigation in federal district courts and courts of appeals. The cases that I worked on involved a variety of constitutional, statutory, and regulatory claims. As part of the firm's telecommunications practice group, I represented clients in several regulatory matters pending before state and federal agencies and coordinated federal appeals of state utility commission rulings. I also worked on a variety of pleadings, motions, legal memoranda, and appellate briefs during my time at the firm, and gained more responsibility as my seniority increased. In a *pro bono* matter I briefed and argued an appeal in the U.S. Court of Appeals for the D.C. Circuit.

In 2007 I became an Assistant United States Attorney in the Civil Division of the United States Attorney's Office for the District of Columbia. I became a Deputy Chief of that division in 2011. While practicing as an AUSA, I handled a substantial docket of cases involving civil claims against the United States, federal agencies, and federal officials, such as

suits under the Federal Tort Claims Act, challenges to agency action under the Administrative Procedure Act, employment discrimination claims under federal anti-discrimination statutes, requests for the release or modification of records under the Freedom of Information Act ("FOIA") and Privacy Act, and constitutional tort claims. I was the sole counsel for all but a few of those cases and frequently appeared in the United States District Court for the District of Columbia. I also handled several appellate matters including briefs and oral arguments before the United States Court of Appeals for the D.C. Circuit. As a Deputy Chief, I supervised such cases, and maintained a smaller docket of cases in which I continued to serve as lead counsel.

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

At Jenner and Block, I handled matters involving several clients, including companies, organizations, and individuals. At the United States Attorney's Office, my client was the United States — including federal agencies and officials.

- 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:	99%
2. state courts of record:	1%
3. other courts:	0%
4. administrative agencies:	0%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	99%
2. criminal proceedings:	1%

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

I was co-counsel in one case that went to a jury trial during my tenure at the United States Attorney's Office for the District of Columbia. Additionally, I argued approximately six appeals before the D.C. Circuit.

- i. What percentage of these trials were:

1. jury:	100%
2. non-jury:	0%

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

I have never argued before the Supreme Court of the United States. As an associate at Jenner and Block LLP, I worked on the following amicus briefs:

*Lovitt v. True, cert. denied*, 541 U.S. 1006 (2004) (brief of the National Association of Criminal Defense Lawyers as amicus curiae in support of the petition for certiorari, 2005 WL 673543)

*City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002) (brief of the Liberty Project as amicus curiae in support of respondents, 2001 WL 950922)

*Kyllo v. United States*, 533 U.S. 27 (2001) (brief of the Liberty Project as amicus curiae in support of petitioner, 2000 WL 1706770)

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. *Boardley v. Dep't of Interior*, 605 F. Supp. 2d 8 (D.D.C. 2009) (Robertson), *aff'd in part*, 2009 WL 3571278 (Oct. 19, 2009) (Henderson, Rogers, Tatel), 615 F.3d 508 (D.C. Cir. 2010) (Sentelle, Brown, Kavanaugh), *fees awarded*, 924 F. Supp. 2d 1 (D.D.C. 2013).

This case was brought in the United States District Court for the District of Columbia and involved a First Amendment challenge to National Park Service regulations that required the plaintiff and other individuals to obtain a permit before distributing leaflets and engaging in certain other expressive activities in national parks. From 2007 to 2013 I represented the Department of Interior in this litigation as lead counsel and wrote the briefs, argued the motions, and orally argued the case on appeal. The district court granted the Department of Interior's motion for summary judgment, concluding that the

plaintiff's as-applied First Amendment claim was moot, and that the facial challenge to the regulations failed as a matter of law because the regulations' prohibition of "public expression of views," which was not narrowly tailored to further a government interest, could be severed from the regulations. On appeal, the D.C. Circuit summarily affirmed the district court's ruling regarding the as-applied claim, but reversed the district court's resolution of the facial challenge to the regulations. The D.C. Circuit concluded that the regulations were overbroad and not narrowly tailored to further the government's asserted interests because they provided no exception for individuals or small groups who wished to engage in First Amendment activity. After the D.C. Circuit ruled, plaintiff filed a motion for attorney's fees and costs, which was granted.

Plaintiffs' Counsel:

Jonathan A. Scruggs  
Alliance Defending Freedom  
15100 North 90th Street  
Scottsdale, AZ 85260  
(480) 444-0020

Jordan Woodard Lorence  
Alliance Defending Freedom  
440 First Street, Northwest, Suite 600  
Washington, DC 20001  
(202) 393-8690

Heather Gebelin Hacker  
Alliance Defense Fund  
101 Parkshore Drive, Suite 100  
Folsom, CA 95630  
(916) 932-2850

2. *Johnson v. Peake*, No. 08-cv-1103 (D.D.C.) (Bates).

This was an employment discrimination case that involved Ms. Johnson's sexual harassment allegations against her co-worker. I was co-counsel for the defendant in 2012 and joined the case to assist the lead attorney with trial. The trial began September 12, 2012, and concluded September 21, 2012. The jury entered a verdict in favor of the defendant. As co-counsel for this trial I prepared witnesses, conducted opening statements, examined and cross-examined witnesses, and discussed trial strategy with my co-counsel and agency officials.

Plaintiff's Counsel:

Michael J. Hoare (Deceased)  
Michael J. Hoare, P.C.

Dennis Chong

Carr Maloney, P.C.  
2020 K Street, Northwest, Suite 850  
Washington, DC 20006  
(202) 310-5566

Co-Counsel:

Andrea McBarnette, ALJ  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426  
(202) 502-8500

3. *Friedman v. Sebelius*, 755 F. Supp. 2d 98 (D.D.C. 2010) (Huvelle), *rev'd*, 686 F.3d 813 (D.C. Cir. 2012) (Sentelle, Ginsburg, Williams).

From 2009 to 2012, I represented the defendant, Secretary of the United States Department of Health and Human Services in *Friedman v. Sebelius* and was sole counsel. The case originated in the United States District Court for the District of Columbia and involved a challenge to an order issued by the Secretary of the Department of Health and Human Services that excluded senior corporate officers from a pharmaceutical company from participating in federal health care programs for 12 years. The executives disputed whether their convictions for misdemeanor misbranding of OxyContin constituted "misdemeanors relating to fraud" that would allow them to be excluded, and alternatively argued that the length of the exclusion period was arbitrary and capricious. District Judge Ellen S. Huvelle granted the defendant's motion for summary judgment in full. The D.C. Circuit reversed and held that the length of the executives' exclusion was arbitrary and capricious. Judges Sentelle and Williams separately dissented in part. This case did not go to trial and was resolved on motions.

Plaintiffs' Counsel:

Jonathan Lynwood Abram  
Jonathan L. Disenhaus  
Audrey E. Moog  
Hogan Lovells US LLP  
555 13th Street, Northwest  
Washington, DC 20004  
(202) 637-5600

Carter G. Phillips  
Joseph R. Guerra  
Matthew D. Krueger  
Anand H. Das  
Sidley Austin LLP  
1501 K Street, Northwest  
Washington, DC 20005

(202) 736-80002

4. *Johnson v. District of Columbia*, 780 F. Supp. 2d 62 (D.D.C. 2011) (Collyer), *aff'd* 734 F.3d 1194 (D.C. Cir. 2013) (Rogers, Tatel, Griffith).

From 2007 to 2011 I was co-counsel for defendant Dillard, former United States Marshal for the District of Columbia Superior Court. This case was a class action in which female individuals who were detained in the Superior Court cellblock alleged that they were unconstitutionally subjected to partial strip searches prior to their appearance in court. The arrestees raised claims under the Fourth and Fifth Amendment, asserting that the searches were unreasonable and that they were treated differently than male arrestees. After extensive discovery and the narrowing of the claims through motions practice, the District Court concluded that the former United States Marshal for the Superior Court cellblock was entitled to qualified immunity. The D.C. Circuit affirmed. I worked with my co-counsel to defend dozens of depositions, drafted significant portions of the summary judgment and appellate briefs, and argued the appeal before the D.C. Circuit.

Plaintiff's Counsel:

Louis Allan Kleiman  
Louis A. Kleiman, Attorney At Law  
2055 15th Street North, Suite #333  
Arlington, VA 22201  
(703) 524-3333

William Charles Cole Claiborne, III  
Claiborne Law  
717 D Street, Northwest, Suite 300  
Washington, DC 20004  
(202) 824-0700

Lynn E. Cunningham  
Law Offices of Lynn E. Cunningham  
306 Westview Drive  
Dubois, WY 82513  
(307) 431-4158

Co-Counsel

William Mark Nebeker (retired, former AUSA)  
Oliver McDaniel (retired, former AUSA)

5. *Navab-Safavi v. Glassman*, 650 F. Supp. 2d 40 (D.D.C. 2009) (Huvelle), *aff'd*, 637 F.3d 311 (D.C. Cir. 2011) (Sentelle, Garland, Williams).

From 2008 to 2011 I was lead counsel and represented the defendants, the Broadcasting Board of Governors ("BBG") and agency officials, in this matter. In this case, a former contractor for the BBG alleged that the agency violated her First and Fifth Amendment

rights by terminating her contract based on her production of a war protest video that spoofed a BBG network production. The defendants moved to dismiss, asserting qualified immunity and other defenses. The court denied the motion to dismiss, and the D.C. Circuit affirmed; both courts concluded that Ms. Navab-Safavi's claims were sufficient to survive a Rule 12(b)(6) motion. This case did not proceed to trial because the parties settled after engaging in discovery. As lead counsel I wrote the briefs at the district court and appellate level, handled district court hearings, and argued the appeal before the D.C. Circuit.

Plaintiff's Counsel

Honorable Carolyn N. Lerner  
United States Court of Federal Claims  
717 Madison Place, Northwest  
Washington, DC 20439  
(202) 357-6407

Richard A. Salzman  
Heller, Huron, Chertkof & Salzman, PLLC  
1730 M Street, Northwest, Suite 412  
Washington, DC 20036  
(202) 293-8090

6. *Brown v. Short*, 729 F. Supp. 2d 125 (D.D.C. 2010) (Collyer).

From 2009 to 2012 I served as lead counsel for the United States and a former employee in this constitutional tort case. Plaintiff Brown alleged that she was unlawfully strip searched when she was briefly in the custody of the United States Marshals Service for the District of Columbia Superior Court. The parties settled this case after a motion to dismiss was denied in part. As lead counsel I wrote the motions and briefs, participated in mediation, and handled all hearings.

Plaintiff's Counsel

Jennifer Klar  
John Peter Relman  
Megan Cacace  
Relman Colfax PLLC  
1225 19th Street, Northwest, Suite 600  
Washington, DC 20036  
(202) 728-1888

7. *Camden County Council on Economic Opportunity v. U.S. Dep't of Health and Human Services*, 586 F.3d 992 (D.C. Cir. 2009) (Kavanaugh, Rogers, Williams).



This case involved a challenge to a federal agency decision to terminate plaintiff's Head Start grant based on the county's failure to correct a safety issue. I represented defendant the Department of Health and Human Services ("HHS") in the appellate proceedings before the D.C. Circuit from 2008 through 2009. A different Assistant United States Attorney handled the district court proceedings. The district court concluded that HHS acted lawfully when it terminated plaintiff's grant. The D.C. Circuit affirmed and concluded that HHS's decision was not arbitrary and capricious and gave plaintiff adequate notice of the deficiencies on which the termination was based. I wrote the appellate briefs and argued the appeal.

Plaintiff's Counsel

Robert A. Graham, Jr.  
Offit Kurman, P.A.  
7501 Wisconsin Avenue, Suite 1000w  
Bethesda, MD 20814  
(240) 507-1779

Edward T. Waters  
Feldesman Tucker Leifer Fidell LLP  
1129 20th Street, Northwest, Suite 400  
Washington, DC 20036  
(202) 466-8960

8. *Porter v. U.S. Capitol Police Bd.*, 816 F. Supp. 2d 1 (D.D.C. 2011) (Boasberg).

This was an employment discrimination case in which the plaintiffs, former Library of Congress police officers, alleged that their transfer to the United States Capitol Police constituted unlawful age and race discrimination and violated their equal protection rights. I represented defendant the Capitol Police Board from 2010 to 2011 and served as lead counsel. Chief Judge James E. Boasberg granted defendant's motion to dismiss and for summary judgment and held that some claims were barred by res judicata, other claims were exempted from the Age Discrimination in Employment Act, and that the plaintiff's equal protection rights were not violated. As lead counsel I wrote the briefs and handled all hearings.

Plaintiff's Counsel

Jimmy A. Bell  
Law Offices of Jimmy A. Bell  
P.O. Box 2239  
Upper Marlboro, MD 20702

9. *Roth v. King*, No. 03-cv-1109, 2005 WL 4436163 (Urbina), *rev'd*, 449 F.3d 1272 (D.C. Cir. 2006) (Edwards, Sentelle, Brown).

In this case, several attorneys challenged the District of Columbia Superior Court's adoption of a new panel system for appointing counsel to indigent parties in family court cases, alleging that the new rules unconstitutionally deprived them of their property right to practice law and maintain their specialty caseload, violated their and their clients' due process rights, defamed and libeled them, tortiously interfered with their prospective economic advantage and contractual relations, and violated the Competition in Contracts Act. From approximately 2003 to 2007 I was one of two attorneys who represented the Superior Court Judge defendants. As co-counsel I drafted a significant portion of the briefs at the district court and appellate level. The district court concluded that the judicial defendants were immune from liability for damages but that plaintiffs had pleaded a potentially viable takings claim, and therefore partially granted and partially denied the judicial defendants' motion to dismiss. On appeal, the D.C. Circuit reversed and concluded that the Fifth Amendment claims should have been dismissed, and that judicial immunity shielded defendants from claims seeking both injunctive relief and damages.

Plaintiffs' Counsel

Pamela H. Roth  
Roth Law Firm PLLC  
1050 30th Street, Northwest  
Washington, DC 20007  
(202) 445-4861

David J. Ontell  
5712 Nebraska Avenue, Northwest  
Washington, DC 20015-1222  
(202) 638-1696

David J. Sitomer *pro se*  
Marion Chou, *pro se*  
Glen Angelo Esq., *pro se*  
John McCabe, Jr. Esq., *pro se*  
Michael Hendrickson Esq., *pro se*  
Russell Torelle Esq., *pro se*  
Bruce Denslow Esq., *pro se*  
Annie Alexander Esq., *pro se*

Co-Counsel

Donald B. Verrilli, Jr.  
Munger, Tolles, and Olson LLP  
1155 F Street, Northwest, Seventh Floor  
Washington, DC 20004

Counsel for Co-Defendants

Jonathan Louis Stern  
 Donald T. Stepka  
 Ronald A. Schechter  
 Arnold & Porter Kaye Scholer LLP  
 601 Massachusetts Avenue, Northwest  
 Washington, DC 20001  
 (202) 942-5000

10. *NextWave v. Federal Communications Commission*, 254 F.3d 130 (D.C. Cir. 2001) (Sentelle, Tatel, Garland), *aff'd*, *FCC v. NextWave Personal Communication Inc.*, 123 S. Ct. 832 (2003).

From approximately 2000 through 2003 I was part of a team of attorneys who represented NextWave in a challenge to the Federal Communications Commission's (FCC's) decision to cancel NextWave's personal communication service licenses based on a failure to make installment payments during NextWave's bankruptcy. The D.C. Circuit concluded that the FCC's decision violated the Bankruptcy Code, and the Supreme Court concurred. As an attorney on the case I conducted legal research, assisted with drafting briefs, and discussed case strategy with the partner and other associates.

Opposing Counsel

Daniel M. Armstrong  
 Christopher J. Wright  
 Federal Communications Commission  
 Office of General Counsel  
 1919 M Street, Northwest  
 Washington, DC 20554  
 (202) 418-1700

Co-Counsel

Donald B. Verrilli, Jr.  
 Munger, Tolles, and Olson LLP  
 1155 F Street, Northwest, Seventh Floor  
 Washington, DC 20004

Ian Heath Gershengorn  
 Jenner & Block LLP  
 1099 New York Avenue, Northwest  
 Washington, DC 20004  
 (202) 639-6000

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 litigator, I handled more than 200 cases at various stages of civil litigation in federal courts, from the initial filing of a complaint, to discovery and motion practice in the trial court, and appeals. I briefed and argued dozens of dispositive motions including motions to dismiss and motions for summary judgment. I also argued several cases on appeal in the D.C. Circuit. From 2011 through 2017 I supervised hundreds of cases pending in the United States District Court for the District of Columbia, and in that capacity reviewed and edited the motions prepared by counsel of record.

I also volunteered through Project LEAD for several years when I was an Assistant United States Attorney. In that program I partnered with other attorneys to lead a recurring series of classes and workshops for disadvantaged fifth grade students in Washington, DC public schools. Our Project LEAD curriculum focused on encouraging the students to make responsible decisions and to give them an overview of the law and judicial system.

As a magistrate judge, I also have volunteered to serve as a judge for an annual moot court for high school students organized by the Historical Society for the District of Columbia Circuit. I also have served as a member of the district court's *Pro Se* Litigation Committee, a board member for the Federal Magistrate Judges Association, a member of the Federal Magistrate Judges Association Diversity Committee, and a member of the Administrative Office of U.S. Courts' Magistrate Judges Advisory Group.

I have not performed lobbying activities or registered as a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

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.

My spouse works for a company that competes for contracts with federal government agencies, BDO. Cases involving claims brought by his employer could present potential conflicts of interest. In such cases, I would review and follow the guidance in the Code of Conduct for United States Judges in determining whether recusal is appropriate, as well as complying with 28 U.S.C. § 455 by disqualifying myself in specific circumstances commanded by the statute and in any case where my impartiality might reasonably be questioned. If I determined that recusal was required, I would return the case to the Clerk's Office for reassignment to another judge.

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

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

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

I have not provided pro bono services since I left private practice in 2007, because my employment as a Department of Justice attorney and a magistrate judge prevented me from representing clients in that manner. I regularly worked on pro bono matters while I was an associate at Jenner & Block. I frequently participate in volunteer activities, principally involving in-kind donations to disadvantaged families and children. Through my Jack and Jill chapter I have organized and supported a variety of charitable activities including collecting and donating items to benefit organizations such as the Boys and Girls Club of America (book donations), the Pajama Program (children's pajamas and books), and the Ruby Tucker Family Center (children's books).

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 October 3, 2023 officials from the White House Counsel's Office informed me that I was being considered for a vacancy on the United States Court of Federal Claims and invited me to interview. On October 5, 2023, I interviewed with officials from the White House Counsel's Office. Since October 10, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 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 Robin M. Meriweather**  
**Nominee to be Judge on the United States Court of Federal Claims**

**1. Are you a citizen of the United States?**

Response: Yes.

**2. Are you currently, or have you ever been, a citizen of another country?**

- a. If yes, state countries and dates of citizenship.
- b. If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?
  - i. If not, please explain why.

Response: No, I am not and have never been a citizen of another country.

**3. Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No.

**4. Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No.

**5. Is it ever appropriate to consider foreign law in constitutional interpretation? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: If confirmed, it would only be appropriate for me to consider foreign law when interpreting the Constitution if the Supreme Court or the Federal Circuit has directed lower courts to consider foreign law when interpreting the relevant provision. For example, when interpreting certain constitutional provisions, the Supreme Court has cited the historical laws in England. *See, e.g., District of Columbia v Heller*, 554 U.S. 570 (2008).

**6. Please explain whether you agree or disagree with the following statement: “The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach.”**

Response: I disagree with this statement. I would interpret the Constitution based on its text and controlling precedent from the United States Supreme Court and the Court of Federal Claims. My values and personal beliefs would not factor into that analysis.

7. **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: No. I am not familiar with the circumstances or context in which Judge Stephen Reinhardt made this statement. However, a lower court judge should base opinions on binding precedent.

8. **Do you consider a law student's public endorsement of or praise for an organization listed as a "Foreign Terrorist Organization," such as Hamas or the Popular Front for the Liberation of Palestine, to be disqualifying for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Yes. I would not hire a law student who publicly endorsed any terrorist organization.

9. **In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University's student bar association wrote "Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary." Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Yes. I would not hire a law student who publicly characterized a terrorist attack as necessary resistance or blamed the targeted nation for the victims' deaths.

10. **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: *Students for Fair Admissions, Inc. v. University of North Carolina*, 143 S. Ct. 2141 (2023), involved a challenge to the University of North Carolina's consideration of race as part of its college admissions practices. *Students for Fair Admissions, Inc. v. Presidents & Fellows of Harvard College*, 143 S. Ct. 2141 (2023), involved a challenge to Harvard College's consideration of race as a factor in its college admissions practices.



The Court resolved the cases together and held that both institutions' consideration of race in college admission was unconstitutional and violated the Equal Protection Clause.

**11. 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 Magistrate Judge I hire law clerks and interns and solicit applications for both positions. As Deputy Chief of the Civil Division of the United States Attorney's Office for the District of Columbia, I participated in decisions on whether to hire Assistant United States Attorneys and interviewed candidates for those positions. As an associate at Jenner & Block LLP, I participated in interviews for summer associates and associates.

**12. 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.

**13. Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

Response: No. I have not solicited applications for employment based on applicants' race, ethnicity, religion, or sex. As a magistrate judge, I encourage all qualified applicants to apply for clerkships and internships, regardless of their race, ethnicity, religion, or sex.

**14. 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, to my knowledge none of my prior employers gave preferences to candidates for employment or other benefits based on race, ethnicity, religion, or sex. As a college student, I worked for the University of Michigan, which awarded a variety of scholarships; I do not know whether any of the scholarships that the University of Michigan awarded at that time gave preferences based on 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: Not applicable.

**15. Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.**

Response: *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), involved a challenge to the enforcement of a Colorado anti-discrimination law that would require a graphic designer to create wedding websites that conveyed messages contrary to the designer's religious beliefs about same-sex marriage. The Supreme Court held that the First Amendment prohibits Colorado from enforcing a law that would require the designer to create expressive designs that convey messages contrary to the designer's faith, and that Colorado could not force the designer to create wedding websites for same-sex couples.

**16. 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: *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), has not been reversed and is still binding precedent. It has been cited with approval more recently, such as in *Agency for International Development v. Alliance for Open Society International, Inc.*, 133 S. Ct. 2321, 2332 (2013), where the Supreme Court quoted that statement from *Barnette*, and noted that the Court "cannot improve upon what Justice Jackson wrote for the Court 70 years ago." The Supreme Court also cited *Barnette* favorably in *303 Creative LLC v. Elenis*, 600 U.S. 570, 584–85 and *Janus v. American Fed. of State, County, and Mun. Employees*, 138 S. Ct. 2448, 2463 (2018).

**17. 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 presented with that question as a judge on the Court of Federal Claims, I would apply binding precedent from the Supreme Court and Federal Circuit. A law is "content based" if it "applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2227 (2015). To determine whether a law is "content neutral," courts must first ask whether

the law is facially context neutral, *i.e.*, whether the text of the law limits its application to particular speech based on the topic discussed or the idea or message expressed. *See Reed*, 135 S. Ct. at 2228. If it does not, the court also must determine whether the law can be “justified without reference to the content of the regulated speech” or was adopted by the government because of the message conveyed. *Id.*

**18. What is the standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: “‘True threats’ of violence” are “historically unprotected” by the First Amendment. *Counterman v. Colorado*, 143 S. Ct. 2106, 2114 (2023). A “true threat” is a “serious expression[] conveying that a speaker means to commit an act of unlawful violence.” *Id.* Whether a statement is a threat “depends not on ‘the mental state of the author’ but on ‘what the statement conveys’” to the person to who it is directed. *Id.* Statements understood to be made in jest or as hyperbole, such as “I’ll kill you if you don’t take me to the movies,” are not “true threats.” *See id.* To criminally prosecute a person for communicating a “true threat,” the state must prove that the defendant “consciously disregarded a substantial risk that his communications would be viewed as threatening violence.” *Id.* at 2112; *see also id.* at 2118.

**19. Under Supreme Court and Federal 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 defined a “fact” as “questions of who did what, when or where, how or why.” *U.S. Bank Nat’l Ass’n ex rel. CWC Capital Asset Mgmt. LLC v. Village At Lakeridge LLC*, 583 U.S. 38, 394 (2018). The Supreme Court has noted that “the appropriate methodology for distinguishing questions of fact from questions of law has been . . . elusive,” and the Supreme Court has not yet “arrive[d] at a rule of principle that will unerringly distinguish a factual finding from a legal conclusion.” *Miller v. Fenton*, 474 U.S. 104, 114 (1985). The Federal Circuit typically uses the term “question of law” to refer to issues that present purely legal questions and require the interpretation of a law or regulation without regard to facts. *See Ingalls Shipbuilding, Inc. v. O’Keefe*, 986 F.2d 486, 488 (Fed. Cir. 1993). For example, when reviewing challenges to the application of tariffs to specific merchandise, the Federal Circuit has noted that the meaning of the relevant tariff provision presents a question of law, whereas whether the relevant merchandise falls within the scope of that provision presents a question of fact. *See Marubeni Am. Corp. v. United States*, 35 F.3d 530, 535 (Fed. Cir. 1994).

**20. 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 nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, it is not appropriate for me to comment on whether a Supreme Court decision from the last 50 years is “well reasoned.”

**21. Please identify a Federal 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 a nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, it is not appropriate for me to comment on whether a Federal Circuit decision from the last 50 years is “well reasoned.”

**22. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: 18 U.S.C. § 1507 makes it a class A misdemeanor offense for a 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” to “picket[] or parade[] on 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 to, with such intent, use “any sound-truck or similar device or resort[] to any other demonstration in or near any such building or residence.”

**23. Is 18 U.S.C. § 1507 constitutional?**

Response: To my knowledge, the Supreme Court and federal courts of appeals have not addressed whether 18 U.S.C. § 1507 is constitutional. In *Cox v. Louisiana*, 379 U.S. 559, 562, the Supreme Court upheld the constitutionality of a state statute that was modeled on 18 U.S.C. § 1507. The United States Court of Appeals for the D.C. Circuit, whose precedent is binding for me in my current position as a magistrate judge, has held that a different federal statute, 40 U.S.C. § 6135, which makes it unlawful to “parade, stand, or move in procession or assemblages in the Supreme Court Building or grounds” is a constitutionally permissible viewpoint-neutral “means of vindicating the government’s important interests in the Supreme Court plaza,” and is not unconstitutionally vague. *Hodge v. Talkin*, 799 F.3d 1145, 1170, 1173 (D.C. Cir. 2015). Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts, and I therefore cannot comment on whether the analysis in *Cox* or *Hodge* extends to 18 U.S.C. § 1507, or broadly opine on the constitutionality of 18 U.S.C. § 1507.

**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. As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. However, the question of the legality of segregated schools is sufficiently well settled that it is not likely to come before the courts again. As such, I believe that I can provide my opinion that *Brown v. Board of Education* was correctly decided.

**b. Was *Loving v. Virginia* correctly decided?**

Response: Yes. As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. However, the question of the legality of laws prohibiting interracial marriage is sufficiently well settled that it is not likely to come before the courts again. As such, I believe that I can provide my opinion that *Loving v. Virginia* was correctly decided.

**c. Was *Griswold v. Connecticut* correctly decided?**

**d. Was *Roe v. Wade* correctly decided?**

**e. Was *Planned Parenthood v. Casey* correctly decided?**

**f. Was *Gonzales v. Carhart* correctly decided?**

**g. Was *District of Columbia v. Heller* correctly decided?**

**h. Was *McDonald v. City of Chicago* correctly decided?**

**i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

**j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

**k. Was *Dobbs v. Jackson Women's Health* correctly decided?**

**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: As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States

Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, I cannot provide my personal views on whether the cases listed in questions 24(c) through (m) were “correctly decided.” With respect to question 24(d) and (e), I note that the Supreme Court overturned *Roe v. Wade* and *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

**25. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

Response: The question of whether a regulation or statute infringes on Second Amendment rights is not likely to be presented to me if I were confirmed as a judge on the Court of Federal Claims, given that Court’s limited jurisdiction. However, if presented with the issue, I would look to the text of the Constitution and follow Supreme Court precedent interpreting the scope of Second Amendment rights, such as *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*, 597 U.S. 1 (2022). The Supreme Court has clarified that if the government issues a regulation that is within the scope of the plain text of the Second Amendment, “the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. 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.’” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (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? If so, who?**

Response: No.

- c. Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

Response: Not to my knowledge.

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? If so, who?

Response: No.

- c. Have you ever been in contact with anyone associated with Demand Justice? If so, who?

Response: Not to my knowledge.

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?  
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.

- b. 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.

- c. 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: Not to my knowledge.

**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: Not to my knowledge.

**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? If so, who?**

Response: No.

- c. Have you ever been in contact with anyone associated with Fix the Court? If so, who?**

Response: Not to my knowledge.

**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 October 3, 2023 officials from the White House Counsel's office informed me that I was being considered for a vacancy on the United States Court of Federal Claims and invited me to interview. On October 5, 2023, I interviewed with officials from the White House Counsel's Office. On October 10, 2023, an attorney from the White House Counsel's Office advised me that the White House would like to proceed with the next steps in the vetting process. Since October 10, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 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?**

Response: While preparing my Senate Judiciary Committee Questionnaire attorneys from the Department of Justice's Office of Legal Policy provided advice about whether information was or was not responsive to the Committee's requests.

- a. If yes,**  
**i. Who?**

Response: See my response above.

- ii. What advice did they give?**

Response: See my response above.

- iii. Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

Response: See my response above.

- 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 October 3, 2023 officials from the White House Counsel's Office informed me that I was being considered for a vacancy on the United States Court of Federal Claims and invited me to interview. On October 5, 2023, I interviewed with officials from the White House Counsel's Office. On October 10, 2023, an attorney from the White House Counsel's Office advised me that the White House would like to proceed with the next steps in the vetting process. Since October 10, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me. Since December 19, 2023 I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice regarding the transmission of my nomination and Senate Judiciary Questionnaire to the Senate and the logistics of and preparation for the January 24, 2024 hearing before the Senate Judiciary Committee.

- 39. Please explain, with particularity, the process whereby you answered these questions.**

Response: I read each question, conducted legal research where necessary, reviewed opinions and record materials from cases that were the subject of questions, and drafted answers to the questions. I provided a copy of my draft answers to the Department of Justice, Office of Legal Policy and received oral comments about the draft. I

subsequently proofread and finalized my draft answers before submitting them to the Committee.

Senate Judiciary Committee  
Nominations Hearing  
January 24, 2023  
Questions for the Record  
Senator Amy Klobuchar

For Robin Michelle Meriweather, nominee to be a judge on the U.S. Court of Federal Claims

**On the side of the Court of Federal Claims courthouse is a quote from President Lincoln that says: “It is as much the duty of government to render prompt justice against itself in favor of citizens as it is to administer the same between private individuals.”**

- **Can you discuss the importance of the role of the Court of Federal Claims, and if confirmed how you intend to apply the sentiment expressed by President Lincoln?**

Response: The Court of Federal Claims provides a forum where citizens and companies can seek redress for certain government actions by raising claims for monetary damages, including claims under the Takings Clause, claims involving government contracts and procurement disputes, military and civilian pay claims, trademark and copyright infringement actions against the federal government, tax refund cases, and certain claims filed by Native American tribes. The waiver of sovereign immunity that permits these claims to go forward promotes the rule of law by demonstrating that the United States will, as President Lincoln noted, “render prompt justice against itself” and does not hold itself above the laws that govern disputes between citizens. If confirmed as a Judge on the U.S. Court of Federal Claims, I would act in furtherance of that sentiment by giving each issue presented to me careful consideration by understanding the relevant laws and rules and applying them to the facts and arguments presented, being fair and impartial in my decisions and how I treat every party who appears before me, efficiently and clearly resolving motions and cases presented to me, and holding myself to the highest standards of ethics reflected in the Code of Conduct for United States Judges.

**The Court of Federal Claims was formed to hear claims by people against the federal government, which include takings claims, government contracts, and military pay claims. It has been referred to as “the People’s Court.”**

- **In your view, does the Court of Federal Claims have a special duty to *pro se* litigants who represent themselves before the court, but may be unfamiliar with litigation or court procedure?**

Response: Treating *pro se* litigants more favorably than other litigants would conflict with judges’ obligation to treat all parties fairly and impartially and to apply the law without fear or favor. Nonetheless, the Court of Federal Claims has recognized the complexity and time-consuming nature of representing oneself before the court and has

published “A Guide for Self-Representation” to assist *pro se* plaintiffs in filing their cases and in understanding the Court of Federal Claims’ rules and procedures.

- **What steps will you take to ensure that *pro se* litigants receive a fair hearing in your court?**

Response: If confirmed as a Judge on the U.S. Court of Federal Claims I would inform *pro se* litigants of the Court’s “A Guide for Self-Representation” and other resources available on the Court of Federal Claims’ website. *Pro se* litigants would receive a fair hearing because I would give each issue presented to me careful consideration by understanding the relevant laws and rules and applying them to the facts and arguments presented, be fair and impartial in my decisions and how I treat every party who appears before me, efficiently and clearly resolve motions and cases presented to me, and hold myself to the highest standards of ethics reflected in the Code of Conduct for United States Judges.

Senator Hirono Questions for the Record for the January 24, 2024, Hearing in the Senate Judiciary Committee entitled "Nominations."

**QUESTIONS FOR ROBIN MICHELLE MERIWEATHER**

**Sexual Harassment**

As part of my responsibility as a member of this committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

**QUESTIONS:**

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

Response: No.

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

Response: No.

**Senator Jon Ossoff**  
**Question for the Record for Judge Robin M. Meriweather**  
**January 24, 2024**

- 1. Will you pledge to faithfully apply the law without bias and without regard for your personal policy or political preferences?**

Response: Yes. If confirmed as a Judge for the United States Court of Federal Claims, I would faithfully apply the law without bias and without regard for my personal policy or political preferences.

**Senator Mike Lee**  
**Questions for the Record**

**Robin Michelle Meriweather, Nominee to be a Judge of the United States Court of Federal Claims**

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

Response: As a magistrate judge I believe it's critical to: give each issue presented to me as a judge careful consideration by understanding the relevant laws and rules and applying them to the facts and arguments presented; be fair and impartial in my decisions and how I treat every party who appears before me; efficiently and clearly resolve motions and cases presented to me; and hold myself to the highest standards of ethics reflected in the Code of Conduct for United States Judges. Those four principles serve as my lodestar, and I would continue to follow them if confirmed to be a Judge on the United States Court of Federal Claims.

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

Response: I would begin by determining whether the Supreme Court or the Federal Circuit had interpreted the relevant statutory provision. If either court had, I would follow that binding precedent. If neither court had addressed the issue, I would examine the text of the statute and follow its plain meaning. "[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. . . . When the words of a statute are unambiguous, then, . . . 'judicial inquiry is complete.'" *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). If the statutory text were ambiguous, I would use other recognized tools of statutory construction and consider the structure of the statute, canons of statutory construction, and the limited types of legislative history that the Supreme Court and Federal Circuit have deemed reliable. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) (describing reliable sources of legislative history).

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

Response: I would begin by determining whether the Supreme Court or the Federal Circuit had interpreted the relevant constitutional provision. If either court had, I would follow that binding precedent. If neither court had addressed the interpretation of the constitutional provision, I would apply the method of interpretation that the Supreme Court and Federal Circuit have authorized. For example, in some contexts, the Supreme Court has directed lower federal courts to use interpretive methods that consider the history of the constitutional provision and the Founders' understanding. *See, e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 59 U.S. 1 (2022) (2nd Amendment); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (Confrontation Clause).



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

Response: The text of a constitutional provision is the first thing that courts examine when interpreting the Constitution. The Supreme Court has held that the original meaning of constitutional provisions should be used to interpret the Constitution in several contexts. *See, e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 59 U.S. 1, (2022) (2nd Amendment); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (Confrontation Clause).

**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.

**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: It is “a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute.” *New Prime, Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) (internal quotation marks omitted). Consistent with that precedent, the Federal Circuit has held that “the best evidence of congressional intent is the plain meaning of the statutory language at the time Congress enacted the statute.” *Strategic Housing Fin. Corp. v. United States*, 608 F.3d 1317, 1323–24 (Fed. Cir. 2010). If confirmed as a Judge on the Court of Federal Claims, I would follow that binding precedent and look to the understanding at the time of enactment when examining the “plain meaning” of a statute.

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

Response: Article III standing is the standard a plaintiff must satisfy to bring a case in federal district courts. The plaintiff must show that he suffered a concrete and particularized injury in fact that is fairly traceable to the challenged conduct and is redressable by the court. *See Biden v Nebraska*, 143 S. Ct. 2355, 2365 (2023); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). Although the Court of Federal Claims is an Article I court, it generally applies the Article III standing requirements. *See Weeks Marine, Inc. v. United States*, 575 F.3d 1352, 1359 (Fed. Cir. 2009). Congressional reference cases, however, can be heard in the Court of Federal Claims without regard to traditional standing requirements. *See* 28 U.S.C. § 1492.

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

Response: Article I of the Constitution enumerates Congress's powers. It "confers on Congress . . . only certain enumerated powers. Therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms." *Murphy v. NCAA*, 584 U.S. 453, 471 (2018). The Necessary and Proper Clause empowers Congress to "make all laws which shall be necessary and proper for carrying into execution" the powers vested in it by the Constitution. U.S. Const., art I, §8. Thus it "makes clear that the Constitution's grants of specific federal legislative authority are accompanied by broad power to enact laws that are convenient, or useful or conducive to the authority's beneficial exercise." *United States v. Comstock*, 560 U.S. 126, 133–34 (2010) (internal quotation marks omitted). Although 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 power[s]" beyond those specifically enumerated. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 559 (2012).

**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 held that "[t]he question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *National Fed'n of Independent Businesses v. Sebelius*, 567 U.S. 519, 570 (2012). If I were confirmed as a Judge on the Court of Federal Claims and presented with a challenge to the constitutionality of a law that Congress enacted without specifically referring to a specific enumerated power, I would evaluate the constitutionality of the law by first determining whether the Supreme Court or Federal Circuit has reviewed the constitutionality of the law; if either Court had done so, I would follow that binding precedent. In the absence of binding precedent, I would interpret the statute and relevant constitutional provisions consistent with my responses to Questions 2 and 3.

**10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The Ninth Amendment of the Constitution provides that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const., Am. 9. The Supreme Court has not defined the precise contours of which rights the people retain but has indicated that certain rights are reserved to the people and protected by the constitution. See *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965) (right to marital privacy); *Obergefell v. Hodges*, 576 U.S. 644, 664 (2015) (right to marry); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (right to procreate); *Saenz v. Roe*, 527 U.S. 489, 498 (1999) (right to travel interstate). The Due Process Clause of the Fourteenth Amendment "guarantee[s] some rights that are not mentioned in the Constitution, but any such right must be 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022).

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

Response: The term “substantive due process” refers to the Supreme Court’s interpretation of the Due Process Clause as protecting certain fundamental constitutional rights from government interference. “That provision 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.’” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231 (2022). The Supreme Court has not enumerated a list of rights that are protected under substantive due process. However, the right to marry and the right to engage in private consensual sexual acts have been recognized as fundamental rights protected by substantive due process. See *Obergefell v. Hodges*, 577 U.S. 644 (2015); *Lawrence v. Texas*, 539 U.S. 558 (2003).

**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 do not have any personal opinions on whether substantive due process protects economic rights such as those at stake in *Lochner v. New York*, 198 U.S. 45 (1905), or personal rights such as a right to contraceptives. My understanding of the scope of rights that are protected by substantive due process is based solely on Supreme Court precedent. The Supreme Court has recognized that *Lochner v. New York* was overruled. See *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963) (“The doctrine that prevailed in *Lochner* . . . has long since been discarded”).

**13. What are the limits on Congress’s power under the Commerce Clause?**

Response: The Commerce Clause allows Congress to “regulate Commerce with foreign nations, and among the several States, and with Indian Tribes.” U.S. Const. art. I, § 8. That power, while broad, “is not without effective bounds.” *United States v. Morrison*, 529 U.S. 598, 608 (2000). Congress’s Commerce Clause powers extend to three areas: regulating “the use of the channels of interstate commerce;” regulating and protecting “the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and regulating “those activities having a substantial relation to interstate commerce, . . . i.e., those activities that substantially affect interstate commerce.” *Id.*

**14. What qualifies a particular group as a “suspect class,” such that laws affecting that group must survive strict scrutiny?**

Response: In its Equal Protection Clause jurisprudence, the Supreme Court has defined a “suspect class” as “one ‘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.’” *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976). Race,

alienage, religion, and national origin have been recognized as suspect classes. *See id.*; *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Graham v. Richardson*, 403 U.S. 365, 371–32 (1971).

**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 discussed the role of checks and balances and the separation of powers in *Miller v. French*, 530 U.S. 327, 341 (2000). The Court noted that the separation of powers among three branches of government exemplified in the “‘very structure’ of the Constitution.” *Miller*, 530 U.S. at 341 (quoting *I.N.S. v. Chadha*, 462 U.S. 919, 946 (1983)). The separation of powers reflects the Framers’ desire to “divide the delegated powers of the new federal government into three defined categories, legislative, executive and judicial, to assure, as nearly as possible, that each Branch of government would confine itself to its assigned responsibility.” *Chadha*, 462 U.S. at 946. For example, the President’s executive branch powers do not authorize him to enact laws. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 588–89 (1952).

**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: If presented with a separation of powers case that challenged the constitutionality of the actions of a branch of government, I would first ascertain whether the case was justiciable. I would then look for guidance in Supreme Court and Federal Circuit precedent, which I would faithfully apply. In the absence of binding precedent, I would consider whether the Constitution authorized the branch of government to engage in the challenged conduct, applying the principles of constitutional interpretation discussed in my response to Question 3.

**17. What role should empathy play in a judge’s consideration of a case?**

Response: When considering the merits of the claims and disputed issues in a case, a judge should focus solely on the facts, applicable law, binding precedent; in the absence of binding precedent, a judge may look to persuasive authority from other federal courts. Basing a decision on empathy would be contrary to Canon 3 of the Code of Conduct for United States Judges, which requires that judges perform the duties of office fairly and impartially.

**18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Both are equally undesirable. A judge should faithfully and impartially apply the Constitution and follow binding precedent.

**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 examined the frequency with which the Supreme Court has invalidated federal statutes, and therefore have no opinion on the change described in this question. I do not believe that judicial review should be either “aggressive” or “passive.” Judges should review the cases presented to them, consistent with Article III standing and other jurisdictional requirements and the applicable law and procedural rules.

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

Response: Black’s Law Dictionary (11<sup>th</sup> ed. 2019) defines “judicial supremacy” as “[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states.” Judicial review refers to courts’ review of the cases and controversies presented to them. Statutes and precedent define the prerequisites that a party must meet in order to obtain judicial review of the claims the party wishes to raise.

- 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: Elected federal officials, like judges, take an oath to uphold the Constitution. “No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. . . . ‘If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery.’ *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). How elected officials should balance that oath with their interpretation of judicial decisions and their interest in preserving the rule of law is a question outside the scope of my expertise or experience, and best reserved for policymakers like members of Congress. As a magistrate judge and nominee to be a judge on the Court of Federal Claims, it is my duty and committed purpose to issue decisions that faithfully follow 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: The statement that judges have “neither force nor will, but only judgment” is an important reminder that judges should be impartial arbiters of disputed questions of law and fact who memorialize their rulings in opinions and orders, thereby promoting the rule of law. Judges do not create laws, nor do they have the law enforcement powers that are the province of the executive branch.

23. **As a federal judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a federal 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 federal judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: A lower court judge must follow controlling precedent from the Supreme Court and the relevant circuit. If confirmed as a judge on the Court of Federal Claims, I would faithfully apply Supreme Court and Federal Circuit precedent that is germane to the cases presented to me, irrespective of any personal opinion on the correctness of that binding precedent. If there was no precedent that spoke directly to the issue at hand, I would apply the most analogous precedent from the Supreme Court and Federal Circuit. Any personal views on the correctness of the Supreme Court and Federal Circuit precedent would not impact my assessment of whether that precedent should apply to analogous cases that present a question of first impression.

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. If confirmed as a Judge on the Court of Federal Claims, I would not sentence any individuals because that court’s limited jurisdiction does not encompass criminal cases. A defendant’s group identities should play no role in the judges’ sentencing analysis, which must be guided by the factors set forth in 18 U.S.C. § 3553. As a magistrate judge, when sentencing criminal defendants convicted of misdemeanors, I have faithfully and fully applied the §3553 factors, without regard to the defendant’s group identity.

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 Biden Administration definition of “equity” provided in this question. I have no personal opinion on how “equity” should be defined in this context. Merriam Webster dictionary defines equity as “freedom from bias or favoritism” *Equity*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/equity> (last visited Feb. 1, 2024).

26. **Without citing Black’s Law Dictionary, do you believe there is a difference between “equity” and “equality?” If so, what is it?**

Response: Merriam Webster dictionary defines equity as “freedom from bias or favoritism,” and defines equality as “the quality or state of being equal.” *Equity*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/equity> (last visited Feb. 1, 2024); *Equality*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/equality> (last visited Feb. 1, 2024).

27. **Does the 14<sup>th</sup> Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 25)?**

Response: I am not familiar with the Biden Administration definition of “equity” provided in question 25. The Fourteenth Amendment does not contain the word equity.

28. **Without citing Black’s Law Dictionary, how do you define “systemic racism?”**

Response: Merriam Webster Dictionary defines “systemic racism as “the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems).” *Systemic Racism*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/systemic%20racism> (last visited Feb. 1, 2024). That definition is consistent with my limited understanding of how some scholars have used the term “systemic racism,” although I do not have a personal definition of this term.

29. **Without citing Black’s Law Dictionary, how do you define “critical race theory?”**

Response: Merriam Webster Dictionary defines “critical race theory” as “a group of concepts (such as the idea that race is a sociological rather than biological designation, and that racism pervades society and is fostered and perpetuated by the legal system) used for examining the relationship between race and the laws and legal institution of a country and especially the United States. *Critical Race Theory*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/critical%20race%20theory> (last visited Feb. 1, 2024). That definition is consistent with my limited understanding of how some scholars have used the term “critical race theory,” although I do not have a personal definition of this term.

30. **Do you distinguish “critical race theory” from “systemic racism,” and if so, how?**

Response: Please see my response to Questions 28 and 29.

31. **In the case of *United States v. Johnston*, the defendant had travelled across state lines to meet who he thought was the mother of a minor child with the intent of paying the mother to rape the young girl. Thankfully, this fictitious mother was an undercover law enforcement officer. This same defendant had been caught traveling to meet minors for sexual acts twice before, and had admitted to raping his own underage daughter. Despite the requirements of the Bail Reform Act, you decided to release him into the public awaiting trial so he could pursue cancer treatments.**

**Do you stand by your decision to release this child rapist into the community during the pretrial period? Why or why not?**

Response: In February 2017, the Defendant in *United States v. Johnston* was detained without bond after having been charged with Travel With Intent to Engage in Illicit Sexual Conduct, in violation of 18 U.S.C. § 2423(b). While incarcerated, Mr. Johnston was diagnosed with colon cancer. Three months after his diagnosis, on September 4, 2017, Mr. Johnston filed a motion seeking a temporary transfer to home confinement with electronic monitoring and other conditions for the limited and exclusive purpose of obtaining immediate surgery to remove the cancerous growth. I carefully reviewed the medical records, which provided undisputed evidence that Mr. Johnston had an acute and immediate need for further diagnostic testing and treatment dating back to July 2017 but had not obtained it while in custody. The medical records also indicated, as early as June 2017, that any delay in treatment posed a risk that the cancer would spread locally and metastatically.

During and following a hearing on September 8, 2017, I requested additional information from the government regarding the nature and timing of treatment available to Mr. Johnston while in custody and from the Pretrial Services Agency regarding resources to supervise Mr. Johnston should he be transferred on the limited basis to home confinement. I subsequently continued resolution of Mr. Johnston’s motion three times so the government could offer information about plans for providing Mr. Johnston with the long delayed medical care he sought. I held additional hearings on September 13, 2017 and September 19, 2017 in order to evaluate whether Mr. Johnston could receive his time-sensitive medical care while in custody and whether the Pretrial Services Agency could effectively monitor Mr. Johnston during a temporary transfer to home confinement for medical purposes. On September 21, 2017, I held a hearing to resolve Mr. Johnston’s motion. By that point, he still had not received the medical care he needed. The record showed that although the Department of Corrections had initially moved swiftly towards surgery at the onset of Mr. Johnston’s illness, he had not been scheduled for any appointments in July or August 2017. During an appointment in September 2017, Mr. Johnston was advised that the treatment available to him while in custody would require him to



further delay surgery for an indeterminate period pending additional review of records and diagnostic testing. By contrast, Mr. Johnston identified providers through private medical care who could schedule the time-sensitive surgery within less than a week.

I reviewed Mr. Johnston's motion under the Bail Reform Act, which required me to determine whether he had overcome the rebuttable presumption of detention triggered by the charges he faced and, if so, whether the United States had shown, by clear and convincing evidence, that the court could not craft release conditions that would reasonably assure the safety of the community and others during the proposed temporary period of home incarceration. I concluded, after balancing the four statutory factors — the nature and circumstances of the charged offense, the weight of the evidence, the defendant's history and characteristics, and the nature and seriousness of the potential danger to the community — that Mr. Johnston's need for prompt cancer testing and treatment, paired with a record showing that if he remained in Department of Corrections custody such treatment would be further delayed to a degree that could imperil his life, rebutted the statutory presumption of detention. With respect to the safety of the community, I concluded that, given Mr. Johnston's incentive to comply with release conditions so that he could obtain potentially life-saving medical treatment, I could reasonably ensure the safety of the community for the 21-day period of home incarceration by placing Mr. Johnston on stringent conditions that included: home incarceration confining him to his home (where no children resided) except for medical appointments and court appearances, GPS monitoring that would alert pretrial services if Mr. Johnston left his home, a prohibition against using any electronic device capable of accessing the internet during that home incarceration, a requirement that he allow pretrial services to install software that would monitor computer usage and trigger an alert if any household device was used for illicit purposes, a requirement that all electronic devices not compatible with that computer monitoring software be removed from the home, and placing his spouse under oath to serve as a third-party custodian sworn to ensure that he abided by his conditions and to report any violations to the Court and pretrial services. In so ruling, I cited a case in which another federal court had released a terminally ill defendant facing murder and racketeering charges because prison facilities could not adequately manage his medical condition.

In my ruling, I recognized that the nature and circumstances of the charged offense, which involved serious and deeply disturbing allegations of an attempt to meet with a fictitious child for illicit sexual activity, weighed in favor of pretrial detention, as did the strong evidence that Mr. Johnston engaged in online communications with the undercover agent and traveled to meet with the fictitious child. However, I concluded that Mr. Johnston's acute medical needs, which pertained to his history and characteristics, and the availability of stringent release conditions that could safeguard against him having any electronic or direct contact with minors, outweighed those factors.

If Mr. Johnston had received the time-sensitive cancer testing and treatment before I issued my decision, I would not have placed him on temporary home incarceration

and instead would have determined that he should remain detained. He did not receive that necessary medical care before I issued my ruling, despite the warnings I gave to the government during the detention hearings. I stand by my application of the law to the unique facts presented to me for the reasons described above. It would be inappropriate and contrary to the Code of Conduct for United States Judges for me to question the correctness of the district judge's ruling, on appeal under changed facts. My review of the record of the appeal indicates that Mr. Johnston was provided medical care between my ruling and the hearing on his appeal, and that the United States made additional arguments and factual proffers on appeal that were not presented to me. Mr. Johnston's receipt of treatment before the appeal was resolved rendered moot the reasoning on which I based my ruling.

If confirmed to the Court of Federal Claims, I would not have occasion to resolve similar motions because that court has a specialized, exclusively civil, docket.

32. **In *United States v. Allen*, a case involving a man charged with conspiring to distribute thousands of fentanyl-laced counterfeit pills, you released Allen to the custody of his romantic partner even though you knew he had \$1.2 million at his disposal and had been operating a drug organization spanning the United States. You thought he should return to the community pending trial. Do you stand by your reasoning to grant pre-trial release in *United States v. Allen*? Why or why not?**

Response: I have issued more than 390 pretrial detention rulings, and *United States v. Allen* is one of a handful of such rulings that were reversed. I determined that three of Mr. Allen's co-defendants should be detained pending trial but concluded that the Bail Reform Act factors weighed in favor of releasing Mr. Allen. No evidence that Mr. Allen had \$1.2 million at his disposal, or any significant funds, was presented to me; when I conducted his hearing, I was under the impression that Mr. Allen lacked significant financial means, as a different magistrate judge had recently deemed him eligible for court-appointed counsel.

I reviewed the government's pretrial detention motion under the Bail Reform Act, which required me to determine whether Mr. Allen had overcome the rebuttable presumption of detention triggered by the charges he faced and, if so, whether the United States had shown, by clear and convincing evidence, that the court could not craft release conditions that would reasonably assure the safety of the community and others if Mr. Allen were released pending trial. I concluded, after balancing the four statutory factors (the nature and circumstances of the charged offense, the weight of the evidence, the defendant's history and characteristics, and the nature and seriousness of the potential danger to the community), that stringent release conditions could adequately ensure the safety of the community. In so ruling, I noted that the nature and circumstances of the alleged offense—participation in a fentanyl trafficking conspiracy—was serious and weighed in favor of detention. I expressed

concern, however, regarding the weakness of the evidence in support of the charged drug trafficking offense relative to the evidence presented regarding the alleged co-defendants and in similar drug conspiracy cases, given that the evidence presented to me regarding Mr. Allen consisted solely of vague text messages using coded language to purportedly discuss the potential purchase and sale price of pills containing fentanyl, and records of his frequent travel to California. Unlike one co-defendant, the messages did not include photographs of pills. I concluded that Mr. Allen's history and characteristics weighed in favor of pretrial release because he had almost no criminal history except for a 'failure to holster' offense from 2019 which appeared to be a misdemeanor, had strong family support, and a letter of support from an organization where he mentored and coached youth. In light of his history and characteristics, the relative weakness of the evidence, and the fact that strict conditions such as home detention and GPS monitoring could protect against the charged conduct, I concluded that conditions of release could be fashioned to reasonably assure the safety of the community and his appearance as required.

On appeal, with a more robust factual proffer regarding Mr. Allen's role in the conspiracy, the district judge presiding over the case disagreed with my conclusion and ordered that Mr. Allen be detained. It would be inappropriate and contrary to the Code of Conduct for United States Judges for me to question the correctness of the district judge's ruling. So while I believe that my ruling, made at a time when presented with different evidence than the district judge, faithfully applied the Bail Reform Act factors to the evidence before me, I recognize that my ruling was reversed.

If confirmed to the Court of Federal Claims, I would not have occasion to resolve similar motions because that court has a specialized, exclusively civil, docket.

33. **In *United States v. Patel*, you granted the defendant pretrial release, which was overruled by the district court. The district court rightly found that the defendant's \$24 million dollars in Bitcoin and access to a Canadian passport might present a flight risk. In fact, you did not even require the defendant to surrender his passport as a condition of his pretrial release. Do you stand by your reasoning to grant pre-trial release to the defendant in *United States v. Patel*? Why or why not?**

Response: I have issued more than 390 pretrial detention rulings, and *United States v. Patel* is one of a handful of such rulings that were reversed. I rejected the United States' motion that Mr. Patel be detained as a flight risk pending trial and concluded that the Bail Reform Act factors weighed in favor of concluding that, given Mr. Patel's history of appearing for court proceedings while on release in a prior matter, pretrial detention was not necessary to adequately ensure Mr. Patel's appearance at future hearings in the case pending before me. It was undisputed that, in prior criminal proceedings involving charges similar to the new charges for money

laundering and concealment of cryptocurrency proceeds, Mr. Patel complied with his pretrial release conditions and traveled from his home in Canada to engage with law enforcement and appear for court proceedings, including surrendering himself to serve a prison term that he had since completed. In his prior case in the District Court for the District of Columbia, the presiding district judge reversed a magistrate judge order detaining Mr. Patel and concluded that he should be released pending trial. In the case before me, I determined that this track record provided the best evidence of his likelihood of fleeing and demonstrated that Mr. Patel could reasonably be expected to appear for future proceedings. As such, I held that he did not present a serious risk of flight that warranted pretrial detention. I did not order Mr. Patel to surrender his passport because he resided in Canada.

On appeal, the district judge presiding over the case disagreed with my conclusion and ordered that Mr. Patel be detained. It would be inappropriate and contrary to the Code of Conduct for United States Judges for me to question the correctness of the district judge's ruling. So while I believe that my ruling faithfully applied the Bail Reform Act factors to the evidence before me and was consistent with a prior ruling by a different district judge, I recognize that my ruling was reversed.

If confirmed to the Court of Federal Claims, I would not have occasion to resolve similar motions because that court has a specialized, exclusively civil, docket.

**SENATOR TED CRUZ**  
**U.S. Senate Committee on the Judiciary**

**Questions for the Record for Robin Michelle Meriweather, nominated to be Judge on the United States Court of Federal Claims**

**I. Directions**

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

## II. Questions

### 1. Is racial discrimination wrong?

Response: Yes. Racial discrimination is wrong, and some forms of discrimination violate the Constitution and federal civil rights laws.

### 2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

Response: The Due Process Clause of the Fourteenth Amendment “guarantee[s] some rights that are not mentioned in the Constitution, but any such right must be ‘deeply rooted in this Nation’s history and tradition’ and ‘implicit in the concept of ordered liberty.’” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231 (2022).

### 3. How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice’s philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.

Response: As a Magistrate Judge I believe it’s critical to: give each issue presented to me as a judge careful consideration by understanding the relevant laws and rules and applying them to the facts and arguments presented; be fair and impartial in my decisions and how I treat every party who appears before me; efficiently and clearly resolve motions and cases presented to me; and hold myself to the highest standards of ethics reflected in the Code of Conduct for United States Judges. Those four principles serve as my lodestar, and I would continue to follow them if confirmed to be a Judge on the United States Court of Federal Claims. I am not sufficiently familiar with the philosophies of Justices on the Warren, Burger, Rehnquist, and Roberts Courts to identify whose philosophy is most analogous to my judicial approach.

### 4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an “originalist”?

Response: Under originalism, judges look to the original meaning of the Constitution. No, I do not characterize myself as an adherent to a particular interpretive philosophy. If confronted with a question that required me to interpret a constitutional provision, I would begin by determining whether the Supreme Court or the Federal Circuit had interpreted the relevant constitutional provision. If either court had, I would follow that binding precedent. If neither court had addressed the interpretation of the constitutional provision, I would apply the method of interpretation that the Supreme Court and Federal Circuit have authorized. For example, in some contexts, the Supreme Court has directed lower federal courts to use interpretive methods that consider the history of the constitutional provision and the Founders’ understanding. See, e.g., *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022) (2nd Amendment); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (Confrontation Clause).

5. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a ‘living constitutionalist’?**

Response: Living constitutionalism regards the Constitution as “a being the development of which could not have been foreseen completely by the most gifted of its begetters.” *Missouri v. Holland*, 252 U.S. 416, 433 (1920) (J. Holmes). No, I do not characterize myself as an adherent to a particular interpretive philosophy. If confronted with a question that required me to interpret a constitutional provision, I would begin by determining whether the Supreme Court or the Federal Circuit had interpreted the relevant constitutional provision. If either court had, I would follow that binding precedent. If neither court had addressed the interpretation of the constitutional provision, I would apply the method of interpretation that the Supreme Court and Federal Circuit have authorized. For example, in *Obergefell v. Hodges*, 576 U.S. 644, 664 (2020), the Supreme Court noted that when identifying fundamental rights, “[h]istory and tradition guide and discipline the inquiry but do not set its outer boundaries,” and that the framers “did not presume to know the extent of freedom in all its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning.” In other contexts, as noted in my response to question 4, the Supreme Court has held that the interpretation of the constitution should be grounded in the history and original understanding of its text.

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: Yes, provided that the constitutional issue involved the interpretation of a provision to which the Supreme Court has directed courts to apply the original public meaning of the Constitution. The text of a constitutional provision is the first thing that courts examine when interpreting the Constitution. The Supreme Court has held that the original meaning of constitutional provisions should be used to interpret the Constitution in several contexts. *See, e.g., New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 28–30 (2022) (2nd Amendment); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (Confrontation Clause).

7. **Is the public’s current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: Yes, but rarely. It is relevant if a statute has been so recently enacted that the public’s current understanding is reflective of the public meaning of the text at the time of enactment. *See Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1738 (2020). Otherwise, current public understanding generally is not relevant to the meaning of the Constitution or a previously enacted statute, which is fixed and is interpreted with reference to the plain text, its meaning at the time of ratification or

enactment, or applicable precedent.

**8. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: No. “[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 Ass’n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022).

**9. Is the Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health Organization* settled law?**

Response: Yes, it is settled law and binding Supreme Court precedent.

**a. Was it correctly decided?**

Response: As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, I cannot provide my personal views on whether *Dobbs v. Jackson Women’s Health Organization* was “correctly decided.”

**10. Is the Supreme Court’s ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: Yes, it is settled law and binding Supreme Court precedent.

**a. Was it correctly decided?**

Response: As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, I cannot provide my personal views on whether *New York Rifle & Pistol Ass’n v. Bruen* was “correctly decided.”

**11. Is the Supreme Court’s ruling in *Brown v. Board of Education* settled law?**

Response: Yes, it is settled law and binding Supreme Court precedent.

**a. Was it correctly decided?**

As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. However, the question of the legality of segregated schools is sufficiently well settled



that it is not likely to come before the courts again. As such, I believe that I can provide my opinion that *Brown v. Board of Education* was correctly decided.

**12. Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?**

Response: Yes, it is settled law and binding precedent.

**a. Was it correctly decided?**

Response: As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, I cannot provide my personal views on whether *Students for Fair Admissions v. Harvard* was "correctly decided."

**13. Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?**

Response: Yes, it is settled law and binding precedent.

**a. Was it correctly decided?**

Response: As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, I cannot provide my personal views on whether *Students for Fair Admissions v. Harvard* was "correctly decided."

**14. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: The Bail Reform Act, 18 U.S.C. § 3141, enumerates the offenses that trigger a rebuttable presumption in favor of pretrial detention. As a Magistrate Judge I have evaluated this issue under D.C. Circuit precedent; criminal cases are outside the limited jurisdiction of the Court of Federal Claims and thus I would not make pretrial detention rulings if I were confirmed as a judge on that court. When there is probable cause to believe a defendant committed certain offenses enumerated at 18 U.S.C. § 3142(e)(3), a rebuttable presumption applies "that no condition or combination of conditions will reasonably assure the appearance of the [defendant] as required and the safety of the community." 18 U.S.C. § 3142(e)(3). Those offenses include: offenses arising under certain provisions of the Controlled Substances Act for which the maximum term of imprisonment of ten years or more, offenses involving the use of a firearm in connection with a crime of violence or drug trafficking crime, offenses involving conspiracy to murder, kidnap, or maim persons outside the United States, acts of terrorism transcending national boundaries, certain terrorism offenses for which the maximum term of imprisonment is ten years or more, and certain offenses involving minor

victims. *See id.*

**a. What are the policy rationales underlying such a presumption?**

Response: The Supreme Court has stated that the Bail Reform Act is not intended to punish dangerous individuals, and instead reflects Congress’s perception that pretrial detention was “a potential solution to a pressing societal problem.” *United States v. Salerno*, 481 U.S. 739, 748 (1987). Although the Supreme Court has not opined on the reasons underpinning the presumption of detention, other courts have reasoned that the presumption reflects “Congressional findings that certain offenders, including narcotics violators, as a group are likely to continue to engage in criminal conduct undeterred either by the pendency of charges against them or by the imposition of monetary bond or other release conditions.” *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986).

**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: The government cannot “base laws or regulations on a hostility to a religion or religious viewpoint” held by religious organizations or small businesses operated by observant owners. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 584 U.S. 617, 638 (2018). The Supreme Court has concluded that certain government requirements unconstitutionally infringe upon the First Amendment rights of observant business owners and religious organizations like Little Sisters of the Poor in the following cases: *See, e.g., 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023); *Fulton v. City of Phila.*, 141 S. Ct. 1868 (2021); *Masterpiece Cakeshop, Ltd.*, 584 U.S. 617 (2018); *Zubik v. Burwell*, 578 U.S. 403 (2016).

**16. Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: No, the government may not discriminate against organizations or people on the basis of religion. The Supreme Court has observed that the Free Exercise Clause “protects religious observers against unequal treatment.” *Church of Lukumi Bablu Aye Inc. v. City of Hialeah*, 508 U.S. 520, 542 (1993); *see also Tandon v. Newsom*, 539 U.S. 61 (2021); *Masterpiece Cakeshop, Ltd.*, 584 U.S. 617 (2018). In addition, Title VII of the Civil Rights Act of 1964 prohibits the federal government from discriminating against employees on the basis of their religion. *See* 42 U.S.C. § 2000e *et seq.*

**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 Catholic Diocese of Brooklyn v. Cuomo*, a Roman Catholic diocese sought an injunction to block the enforcement of a COVID-19 related executive order that would restrict attendance at house of worship; in a related case two Jewish synagogues sought the same relief. The religious entity applicants asserted that the attendance limits effectively precluded them from holding in-person worship services. The Supreme Court granted the preliminary injunction in a *per curiam* order. The Court reasoned that the religious entities were likely to succeed on the merits of their First Amendment claims because the regulations, which were subject to strict scrutiny because they “single out houses of worship for especially harsh treatment,” 592 U.S. at 3, were not narrowly tailored to serve the compelling state interest in stemming the spread of COVID-19. *Id.* at 4. The enforcement of the restriction would irreparably harm people who were unable to participate in religious services. Finally, the Court concluded that granting the application would not harm the public, as there was no evidence that attending services caused the spread of COVID-19, or that less restrictive measures would imperil public health. *See id.* at 5. For those reasons, the Court enjoined enforcement of the restrictions on religious services.

**18. Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom*.**

Response: *Tandon v. Newsom*, 593 U.S. 61 (2021), involved a First and Fourteenth Amendment challenge to California's COVID-19 restrictions. The plaintiffs were individuals who wished to gather for at-home religious exercise during the COVID-19 pandemic, and they sought injunctive relief pending disposition of their appeal to the Ninth Circuit Court of Appeals. The Supreme Court granted the request for injunctive relief in a *per curiam* order. The Court identified four principles that guided its analysis. First, government regulations that treat any secular activity more favorably than religious activities must satisfy strict scrutiny. *Id.* at 62. Second, the comparability of secular and religious activities turns on the risks the activities pose, not “the reasons why people gather.” *Id.* Third, to satisfy strict scrutiny, the government must show that less restrictive measures could not address the government's interest in reducing the spread of the COVID-19 virus. *Id.* at 62–63. Fourth, the withdrawal of a challenged regulation does not moot the case if the plaintiffs remain under threat that the restriction would be reinstated. *Id.* at 63. Applying those principles, the Supreme Court found that Plaintiffs were likely to succeed on the merits of a Free Exercise claim, given that California was treating some secular activities more favorably than at-home religious exercise, but the Ninth Circuit did not find that the permissible secular activities “pose[d] a lesser risk of transmission than applicants' proposed religious exercise at home.” *Id.* at 63. The Court also found that Plaintiffs were “irreparably harmed by the loss of free exercise rights,” and the State has not shown that their interest in protecting public health “would be imperiled by employing less restrictive measures.” *Id.* at 64. Thus Plaintiffs were entitled to emergency injunctive relief

pending the resolution of their appeal to the Ninth Circuit.

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

Response: Yes. The Establishment Clause and Free Exercise Clauses of the Constitution do not restrict the right of religious freedom to individuals' homes and houses of worship. In addition, the Religious Freedom Restoration Act "protects the free exercise rights of corporations," and thereby "protects the religious liberty of the people who own and control these companies." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 707 (2014).

**20. Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.**

Response: In *Masterpiece Cakeshop*, the Court held that a Colorado State Commission's enforcement proceeding concerning an anti-discrimination law involving a cakeshop owner who refused to bake a cake for a same-sex couple's wedding reception, because of his religious beliefs, violated the Free Exercise Clause of the First Amendment. *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 584 U.S. 617 (2018). The Court found that the Commission's hostility and disfavor towards the baker's religious beliefs and objections during the proceedings violated the Free Exercise Clause's requirement of religious neutrality. *Id.* at 633–640.

**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: The question of whether an individual's sincerely held religious beliefs are protected if they are not closely tied to the doctrinal teachings of that individual's faith traditions has been and will be litigated in cases involving claims of religious discrimination. As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the courts. As such, I cannot opine on whether an individual's religious beliefs are protected if they are contrary to the teaching of the faith tradition to which the individual belongs. However, I can note that the Supreme Court has held that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)). That is, an individual's religious belief may be recognized as protected under the First Amendment as long as "they are, in [her] own scheme of things, religious." *United States v. Seeger*, 380 U.S. 163, 185 (1965).

**a. Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: The question of the scope of individual's personal interpretations of religious or church doctrine that are protected as sincerely held religious beliefs has been and will be litigated in cases involving claims of religious discrimination. As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the courts. As such, I cannot opine on whether there are "unlimited interpretations" of religious and church doctrine that courts can legally recognize. However, I can note that the Supreme Court has held that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)). That is, an individual's religious belief may be recognized as protected under the First Amendment as long as "they are, in [her] own scheme of things, religious." *United States v. Seeger*, 380 U.S. 163, 185 (1965).

**b. Can courts decide that anything could constitute an acceptable "view" or "interpretation" of religious and/or church doctrine?**

Response: It is not a court's role to adjudicate whether one's religious belief is an "acceptable view or interpretation." The Supreme Court has explicitly held that "religious beliefs need not be *acceptable*, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)) (emphasis added). That is, any interpretation of religious or church doctrine that an individual holds as her religious belief may be recognized as protected under the First Amendment as long as "they are, in [her] own scheme of things, religious." *United States v. Seeger*, 380 U.S. 163, 185 (1965).

**c. Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: I do not know, because I have no personal knowledge of the official position of the Catholic Church regarding abortion. I believe that the clergy and theologians are best suited to opine about the morality and acceptability of abortion under Catholic doctrine.

**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*, the Court reaffirmed that the First Amendment bars a court from hearing an employment discrimination claim brought by any employees

of a religious institution that have a “role in conveying the Church’s message and carrying out its mission,” under the “ministerial exception.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2603 (2020) (quoting *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 192 (2012)). The Court concluded that the First Amendment foreclosed the adjudication of employment discrimination claims brought by two former Catholic School teachers who were “obligated to provide instruction about the Catholic faith . . . [and] expected to guide their students, by word and deed, toward the goal of living their lives in accordance with the faith.” *Our Lady of Guadalupe*, 140 S. Ct. at 2066. The Court specifically rejected a “rigid test” for applying the ministerial exception for many of the proposed factors, such as the employee’s religious training or the significance of their religious role, “would risk judicial entanglement in religious issues.” *Our Lady of Guadalupe*, 140 S. Ct. at 2067-69

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*, the Court held that “[t]he refusal of Philadelphia to contract with CSS [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.” *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1882 (2021). The conflict centered on the contract’s nondiscrimination clause prohibiting the rejection of adoptive or foster parents on the basis of sexual orientation. The Court held that the clause lacked general applicability because it permitted individual exemptions yet was applied in a manner that burdened a Catholic agency’s observance of the religious belief that marriage is a sacred bond between a man and a woman. *See Fulton*, 141 S. Ct. at 1878-1879 (citing *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 884 (1990)). Because it was not generally applicable, the clause had to satisfy strict scrutiny. The Court held that it did not because the City failed to offer a compelling reason why denying an exemption to a Catholic agency, but no others, would serve its interest in the equal treatment of prospective foster parents and children. *See Fulton*, 141 S. Ct. at 1882. The Court also dismissed the City’s claimed interest in maximizing the number of foster parents, though important, because the City failed to show how granting the Catholic agency an exemption would put this interest at risk. The Court also dismissed the City’s interest in avoiding liability for discrimination against same-sex couples as speculative. *Id.* 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: In *Carson*, the Court held that a Maine law granting tuition assistance payments to families that reside in communities without a public school for attendance at

only “nonsectarian” private schools violates the Free Exercise Clause of the First Amendment. The Court reiterated that “a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 778 (2022). That is because a law that in effect disqualifies an entity from a neutral public benefit or program “solely because of their religious character . . . effectively penalizes the free exercise of religion.” *Carson*, 596 U.S. at 780 (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 461 (2017)). The Court specifically rejected the argument that the funding restriction did not offend the Court’s precedent because it was merely “use-based,” *i.e.* prohibiting use in a religious manner by *any* type of school, because it found no meaningful distinction between use and status in a religious school. *Carson*, 596 U.S. at 787-88

25. **Please explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022), involved a constitutional challenge to a school district’s decision to terminate a football coach because he prayed at midfield at football games. The Court concluded that the school district’s decision violated both the Free Speech and Free Exercise Clause of the Constitution. The Court concluded that the prohibition on prayer targeted religious conduct and did not apply a neutral rule, and that the school district did not provide a valid justification for that discriminatory treatment of religious observances that would withstand strict scrutiny or intermediate scrutiny. *See id.* at 542.

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: *Mast* involved a petition for certiorari regarding the question of whether requiring Amish citizens to comply with a regulation requiring residents to have modern septic systems violated the federal Religious Land Use and Institutionalized Persons Act. In his concurrence to the grant of the writ of certiorari, Justice Gorsuch notes that the statute requires the application of strict scrutiny, and concludes that the County and lower court erred by treating the County’s general interest in sanitation regulations as “compelling” without reference to the specific application of those rules to the Swartzentruber Amish community. *Mast v. Fillmore Cnty. Minn.*, 141 S. Ct. 2430, 2432 (2021) (J. Gorsuch, concurring). Justice Gorsuch notes that the Court’s recent decision in *Fulton* explains that strict scrutiny demands “a more precise analysis.” *Id.* (citing *Fulton v. City of Phila. Pa.*, 141 S.Ct. 1868 (2021)). Gorsuch also writes that the lower courts erred in failing to give due weight to exemptions that other groups enjoy in determining whether the County has offered a compelling reason why the same exemptions cannot be extended to the Amish. *Mast*, 141 S. Ct. at 2432.

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: The Court of Federal Claims' limited jurisdiction does not include criminal cases, and it is unlikely that I would be presented with that issue if confirmed to be a judge on that court. However, as a sitting Magistrate Judge for the U.S. District Court for the District of Columbia I handle criminal cases, and the interpretation of 18 U.S.C. § 1507 is an issue that could be presented to me. Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the courts. As such, I cannot opine on how I would interpret 18 U.S.C. § 1507 in the context of protests in front of the homes of U.S. Supreme Court Justices, as that would appear to prejudge an issue and draw my impartiality into question. If presented with that statutory interpretation question, I would apply and follow precedent from the Supreme Court and binding circuit 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: In my experience, judges do not have oversight over the training of court employees beyond the training of law clerks and their chambers staff. If confirmed as a judge to the Court of Federal Claims, I commit that I would not train my law clerks using materials that teach that meritocracy, work ethic, and self-reliance are inherently racist or sexist. I disagree with the premise that meritocracy, work ethic, and self-reliance are inherently racist or sexist.



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. If confirmed as a judge to the Court of Federal Claims, I commit that I would not engage in racial discrimination when selecting and hiring other staff. As a Magistrate Judge I have hired several law clerks and interns and have not engaged in racial discrimination when making those hiring decisions.

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

Response: As a Magistrate Judge, principles of separation of powers and the political question doctrine prevent me from opining on the factors that the executive or legislative branches should consider when making a political appointment. In addition, the constitutionality of consideration of skin color or sex in hiring decisions is an issue that is routinely litigated in courts. Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the courts. As such, I cannot opine on how I would interpret the constitutionality of a political appointment based in part on the consideration of skin color or sex, if such a question were presented to me as a justiciable controversy.

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 recognized the concept of a “disparate impact” claim, observing that “antidiscrimination laws must be construed to encompass disparate impact claims when their text refers to the consequences of actions and not just the mindset of actors.” *Texas Dep’t of Housing & Comm. Affairs v. Inclusive Comms. Project*, 576 U.S. 519, 533 (2015). Disparate impact claims based on a racially disparate outcome can be raised under Title VII of the Civil Rights Act of 1964 and the Fair Housing Act. *See id.* at 533–34.

33. **Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: It is my understanding that legislation that would add seats to the U.S. Supreme Court has been introduced in Congress. As a sitting Magistrate Judge and nominee to be a Judge on the Court of Federal Claims, the Judicial Code of Conduct does not permit me to engage in political activity. Providing a personal opinion on the desirability or undesirability of pending legislation would be improper political activity.

34. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: No. The Supreme Court Justices were nominated by the President and appointed with the consent of the Senate, and no currently sitting Justice has been

impeached.

**35. What do you understand to be the original public meaning of the Second Amendment?**

Response: The Supreme Court has held that the original public meaning of the Second Amendment was to confer upon individuals a right to bear arms in self defense outside the home. *See District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).

**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*, the Supreme Court recognized that the Second Amendment confers an individual right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *McDonald*, the Supreme Court recognized that this right is enforceable against state and local governments, in addition to the federal government. *McDonald v. Chicago*, 561 U.S. 742. In *Bruen*, the Supreme Court held that the Second Amendment protects individuals' right to bear arms outside the home, for self defense, and that any restrictions on that right are only constitutionally permissible if the restriction is consistent with the historical tradition of gun regulation. *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

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

Response: Yes. The Supreme Court has recognized that the Second Amendment confers "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).

**38. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: No. The constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022). Courts should apply all constitutional provisions faithfully and impartially regardless of the specific right that is at issue.

**39. Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: No. The constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022). Courts should apply all constitutional provisions faithfully and impartially regardless of the specific right that is at issue.

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 held that “[t]he Attorney General and United States Attorneys retain ‘broad discretion’ to enforce the Nation’s criminal laws. . . . They have this latitude because they are designated by statute as the President’s delegates to help him discharge his constitutional responsibility to ‘take Care that the Laws be faithfully executed.’” *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (citations omitted). That discretion is, however, “subject to constitutional constraints.” *Id.* The Supreme Court recently observed that “in both Article III cases and Administrative Procedure Act cases, this Court has consistently recognized that federal courts are generally not the proper forum for resolving claims that the Executive Branch should make more arrests or bring more prosecutions.” *United States v. Texas*, 599 U.S. 670, 680 (2023). As a Magistrate Judge and judicial nominee, principles of separation of powers, the political question doctrine, and Canon 3A of the Code of Conduct for United States Judges prevent me from opining on the appropriateness of executive actions.

41. **Explain your understanding of what distinguishes an act of mere ‘prosecutorial discretion’ from that of a substantive administrative rule change.**

Response: In *Department of Homeland Sec. v. Regents of the University of California*, 140 S. Ct. 1891 (2020), the Supreme Court distinguished between an agency’s decision not to institute enforcement proceedings, which is unreviewable under the Administrative Procedure Act, and the agency’s rescission of a program that “conferred affirmative immigration relief.” *Id.* at 1906–07. The contours of that distinction is an issue that is pending or impending in federal court litigation. Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the courts. As such, I cannot opine on how I would interpret the distinction between acts of mere prosecutorial discretion and substantive administrative rule changes, beyond noting that I would apply Supreme Court and Federal Circuit precedent if confronted with a case that presented that issue.

42. **Does the President have the authority to abolish the death penalty?**

Response: No, the legislative branch would have to pass a law to fully abolish the death penalty. The President and his subordinates in the executive branch have discretion to determine whether to seek the death penalty in certain criminal prosecutions.

43. **Explain the U.S. Supreme Court’s holding on the application to vacate stay in *Alabama Association of Realtors v. HHS*.**

Response: The Court held that the CDC exceeded its authority in imposing a

nationwide moratorium on evictions of tenants in response to the COVID-19 pandemic and granted the application to vacate the stay. *Ala. Ass'n of Realtors v. Dep't of Health & Human Services*, 141 S. Ct. 2485 (2021). In analyzing the statute upon which the CDC relied in imposing the moratorium, Public Health Service Act § 361(a), 42 U.S.C. § 264(a), the Court held that the CDC's moratorium related to interstate infection of COVID-19 too indirectly, which is different from the "direct[]" targeting of disease language in the statute. *See id.* at 2488. The Court also found that the CDC's moratorium was an exercise of "expansive authority" under Section 361(a), and that Congress must speak clearly when authorizing an agency to exercise powers of "vast economic and political significance," which it did not do in Section 361(a). *See id.* at 2489 (citing *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000))).

**Senator John Kennedy  
Questions for the Record**

**Robin Meriweather**

**1. Is the U.S. Supreme Court a legitimate institution?**

Response: Yes. The U.S. Supreme Court is the highest court in the land, and its decisions are binding on all lower courts.

**2. Is the current composition of the U.S. Supreme Court legitimate?**

Response: Yes. The Supreme Court Justices were nominated by the President and appointed with the consent of the Senate, and no currently sitting Justice has been impeached.

**3. Please describe your judicial philosophy. Be as specific as possible.**

Response: As a Magistrate Judge I believe it's critical to: give each issue presented to me as a judge careful consideration by understanding the relevant laws and rules and applying them to the facts and arguments presented; be fair and impartial in my decisions and how I treat every party who appears before me; efficiently and clearly resolve motions and cases presented to me; and hold myself to the highest standards of ethics reflected in the judicial code of conduct. Those four principles serve as my lodestar, and I would continue to follow them if confirmed to be a Judge on the United States Court of Federal Claims.

**4. Is originalism a legitimate method of constitutional interpretation?**

Response: Yes. Under originalism, judges look to the original meaning of the Constitution. If confronted with a question that required me to interpret a constitutional provision, I would begin by determining whether the Supreme Court or the Federal Circuit had interpreted the relevant constitutional provision. If either court had, I would follow that binding precedent. If neither court had addressed the interpretation of the constitutional provision, I would apply the method of interpretation that the Supreme Court and Federal Circuit have authorized. For example, in some contexts, the Supreme Court has directed lower federal courts to use interpretive methods that consider the history of the constitutional provision and the Founders' understanding. *See, e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (2nd Amendment); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (Confrontation Clause).

**5. If called on to resolve a constitutional question of first impression with no applicable precedents from either the U.S. Supreme Court or the U.S. Courts of Appeals, to what sources of law would you look for guidance?**

Response: If neither the Supreme Court nor the Federal Circuit had addressed the constitutional question with which I was faced, I would review the text of the constitutional provision and apply the method of interpretation that the Supreme Court and Federal Circuit have authorized in the most analogous context. For example, in some contexts, the Supreme Court has directed lower federal courts to use interpretive methods that consider the history of the constitutional provision and the Founders' understanding. See, e.g., *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 59 U.S. 1 (2022) (2nd Amendment); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (Confrontation Clause).

**6. Is textualism a legitimate method of statutory interpretation?**

Response: Yes. The Supreme Court “has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020).

**7. When is it appropriate for a judge to look beyond textual sources when determining the meaning of a statute or provision?**

Response: “[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. . . . When the words of a statute are unambiguous, then, . . . ‘judicial inquiry is complete.’” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253–54 (1992); see also *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020). If the statutory text were ambiguous, and in the absence of Supreme Court or Federal Circuit precedent interpreting the statute or provision, I would use other recognized tools of statutory construction and consider the structure of the statute, canons of statutory construction, and the limited types of legislative history that the Supreme Court and Federal Circuit have deemed reliable. See *Garcia v. United States*, 469 U.S. 70, 76 (1984) (describing reliable sources of legislative history).

**8. Does the meaning (rather than the applications) of the U.S. Constitution change over time? If yes, please explain the circumstances under which the U.S. Constitution’s meaning changes over time and the relevant constitutional provisions.**

Response: No. “[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 Ass’n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022).

**9. Please summarize Part II(A) of the U.S. Supreme Court’s decision in *Brown v. Davenport*, 596 U.S. 118 (2022).**

Response: In Part II(A) of *Brown v. Davenport*, the Court outlined the history of writs of habeas corpus at common law and various shifts in federal habeas practice in the United States. 596 U.S. 118, 127–31 (2022). The Court began by explaining the origin and early application of the writs starting with the founding era and remarked how the “most notable” “Great Writ” was an “instrument by which due process could be insisted upon.” *Id.* at 128 (citations omitted). The Court explained the writ’s limits in this country, however, and the Court’s jurisprudence policing the writ’s boundaries. *Id.* at 129. The Court next identified a shift in practice where “the traditional distinction between jurisdictional defects and mere errors in adjudication no longer restrained federal habeas courts” and how this shift resulted in an “exploding caseload of habeas petitions from state prisoners.” *Id.* at 130–31.

**10. Please summarize Part IV of the U.S. Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).**

Response: In Part IV of *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, the Court evaluated Harvard and University of North Carolina’s race-based admissions programs and concluded that both programs failed to survive strict scrutiny and comply with the Court’s precedents. 600 U.S. 181, 213–225 (2023). First, the Court found that both Harvard and UNC’s admissions programs did not survive strict scrutiny. *Id.* at 214. It found the schools’ stated goals were “not sufficiently coherent,” and the programs failed to “articulate a meaningful connection between the means they employ and the goals they pursue.” *Id.* at 214–16. Next, the Court found that the admissions programs did not satisfy the Equal Protection Clause’s “twin commands” that race cannot be used as a negative and cannot act as a stereotype. *Id.* at 218. Finally, the Court reasoned that the schools were unable to articulate a “logical end point” to their admission programs. *Id.* at 221 (citations omitted).

**11. Please summarize Part III of the U.S. Supreme Court’s decision in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).**

Response: In Part III of *303 Creative LLC v. Elenis*, the Court held that the wedding website designer’s creations constituted speech and that protected speech under the First Amendment cannot be trumped by state public accommodations law. 600 U.S. 570, 587 (2023). The Court stated that it primarily agreed with the Tenth Circuit’s analysis and its conclusions that the wedding websites are speech and that they are the designer’s speech specifically. *Id.* But it disagreed with the Circuit Court’s conclusion that followed—that Colorado could compel the designer’s speech. *Id.* at 588. The Court stated, citing precedent in support, that public accommodations laws, such as Colorado’s, are not “immune from the demands of the Constitution.” *Id.* at 592.

**12. Please summarize Part II of the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* (2022).**

Response: In Part II of *Dobbs*, the Court addressed “whether the Constitution, properly understood, confers a right to obtain an abortion.” *Dobbs v. Jackson Women’s Health*

*Org.*, U.S. 215, 234 (2022). Because abortion is not mentioned in the text of the Constitution, the Court specifically considered whether abortion is one of the fundamental rights protected by the Due Process Clause of the Fourteenth Amendment, as the opinions of the Court in *Roe* and *Casey* suggested. Fundamental rights are not mentioned in the Constitution but “deeply rooted in [our Nation’s] history and traditions” and essential to our “scheme of ordered liberty.” *Id.* at 237 (quoting *Timbs v. Indiana*, 139 S. Ct. 682, 686 (2019)). Upon review of this Nation’s long history of criminalizing abortion in common law and statute, *see id.* at 245-250, the Court concluded that the right to abortion is not deeply rooted in our Nation’s history and traditions. The Court also distinguished the decisions in *Roe* and *Casey* from the precedent cited therein, various cases granting Constitutional protection on the basis of liberty and privacy interests, specifying that none of those cases “involved the critical moral question posed by abortion.” *Id.* at 257. The Court concluded that, “without support in history or relevant precedent,” the holding in *Roe* is incorrect.

**13. Please summarize Part III of the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022).**

Response: In Part III of *Dobbs*, the Court considered whether, despite the lack of constitutional basis for a right to abortion, *Roe* and *Casey* must continue to be upheld under the doctrine of *stare decisis*. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 263 (2022). *Stare decisis* calls for adherence to prior decisions, unless circumstances call for reconsideration of an erroneous constitutional decision. *Id.* at 264. The Court identified five factors that should be considered in overruling precedent from its prior decisions, all of which weighed in favor of overruling *Roe* and *Casey*: the nature of the court’s error, the quality of their reasoning, the “workability” of the rules imposed, their disruptive effect on other areas of the law, and the absence of concrete reliance in later decisions. *Id.* at 268-290

**14. Please describe the legal rule employed in *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), and explain why the U.S. Supreme Court sided with the Petitioner.**

Response: In *Rivas-Villegas v. Cortesluna*, the Court considered whether Petitioner, Officer Rivas-Villegas, was entitled to qualified immunity in an excessive force lawsuit. The Court recognized that “qualified immunity attaches when an official’s conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021). The Court found that Officer Rivas-Villegas’ conduct was not an “obvious case” of excessive force, where every reasonable official would know that their conduct violates a clearly established right. Rather, it required consideration of the specific facts and circumstances of the event, like the severity of the crime and whether the suspect poses an immediate threat to others. *Id.* at 5-6. The Court therefore reversed the Ninth Circuit’s determination that Officer Rivas-Villegas was not entitled to qualified immunity because



the Circuit and the plaintiff below failed to identify a case that put Officer Rivas-Villegas on notice that his specific conduct was unlawful. *Id.* at 7.

**15. Is there ever a circumstance in which a lower court judge may seek to circumvent a published precedent of the U.S. Court of Appeals under which it sits or the U.S. Supreme Court?**

Response: No. Lower court judges must faithfully apply precedent from the U.S. Court of Appeals under which they sit or the U.S. Supreme Court.

**16. If confirmed, please describe what role U.S. Supreme Court dicta would play in your decisions.**

Response: If confirmed, I would follow Federal Circuit precedent, pursuant to which courts are “obligated to follow the Supreme Court’s explicit and carefully considered statements,” even if those statements are dicta. *DaimlerChrysler Corp. v. United States*, 361 F.3d 1378, 1385 n.3 (Fed. Cir. 2004); *see also Ins. Co. of the West v. United States*, 243 F.3d 1367, 1372 (Fed. Cir. 2001).

**17. When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race and/or sex of the applicants play in your consideration?**

Response: None.

**18. Please list all social-media accounts you have had during the past 10 years with Twitter/X, Facebook, Reddit, Instagram, Threads, TikTok, and LinkedIn and the approximate time periods during which you had the account. If the account has been deleted, please explain why and the approximate date of deletion.**

Response: During the past ten years, I have had an account with Twitter/X (May 2023 to present), Facebook (approximately 2009 to present), Reddit (approximately November 2023 to present), Instagram (October 2022 to present), and LinkedIn (deleted in 2017 after becoming a magistrate judge). I have not had a Threads or TikTok account.

**19. Why should Senator Kennedy support your nomination?**

Response: I believe Senator Kennedy should support my nomination because my combined twenty-four years of experience as a civil litigator and a Magistrate Judge make me highly qualified to be a Judge on the U.S. Court of Federal Claims. First, I spent 17 years litigating complex civil cases involving challenges to decisions made by regulatory agencies and the federal government. Those cases required that I interpret and apply complex statutory regimes and the Constitution and assess the reasonableness of agency decisionmaking in areas including administrative law and employment law. Second, I have judicial experience, as a Magistrate Judge, and have reviewed numerous motions in cases that also require the

interpretation of federal statutes, consideration of employees' wage and hour claims, and assessing the reasonableness of decisions from administrative decisionmakers under the APA and other standards of review. Third, as a Magistrate Judge and litigator I have a track record of quickly familiarizing myself with new legal issues and applying them to the cases before me. For example, despite my civil background, as a Magistrate Judge I quickly learned the relevant rules, statutes, and constitutional requirements applicable to my criminal docket. Collectively, those experiences have prepared me to handle the specialized civil docket at the Court of Federal Claims and to resolve cases impartially, in accordance with the law and binding precedent.

It would be an honor to have Senator Kennedy's support, and I thank him for his consideration of my nomination.

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Kelly Harrison Rankin

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

United States District Judge for the District of Wyoming

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

United States District Court for the District of Wyoming  
J.C. O'Mahoney Federal Building  
2120 Capitol Avenue, Suite 2204  
Cheyenne, Wyoming 82001

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

1967; Sheridan, Wyoming

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

1992 – 1994, University of Wyoming College of Law; J.D., 1994

1991 – 1992, Western Michigan University – Cooley Law School (no degree received)

1986 – 1990, University of Wyoming; B.S., 1990

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

2012 – present

United States District Court for the District of Wyoming

J.C. O'Mahoney Federal Building  
2120 Capitol Avenue, Suite 2204  
Cheyenne, Wyoming 82001  
Chief United States Magistrate Judge

2010 – 2012; 2003 – 2010; 1999 – 2001  
United States Attorney's Office for the District of Wyoming  
J.C. O'Mahoney Federal Building  
2120 Capitol Avenue, Suite 4000  
Cheyenne, Wyoming 82003  
Criminal Chief, Assistant United States Attorney (2010 – 2012)  
United States Attorney (2008 – 2010)  
Assistant United States Attorney (Casper Office) (2003 – 2008)  
Special Assistant United States Attorney (unpaid) (1999 – 2001)

Winter 2010  
Office of the Governor, Dave Freudenthal  
Wyoming State Capitol  
200 West 24th Street  
Cheyenne, Wyoming 82001  
Counsel to the Governor

1999 – 2003  
Park County Attorney's Office  
1002 Sheridan Avenue  
Cody, Wyoming 82414  
Park County Attorney

1998 – 1999  
Rankin Law Office  
1013 Alger Avenue  
Cody, Wyoming 82414  
Sole Practitioner

1998 – 1999  
Park County School District Number 6  
919 Cody Avenue  
Cody, Wyoming 82414  
Substitute Teacher

1995 – 1998  
Park County Attorney's Office  
1002 Sheridan Avenue  
Cody, Wyoming 82414  
Deputy Park County Attorney

1994 – 1995  
 Lincoln County Attorney's Office  
 520 Topaz Street, # 110  
 Kemmerer, Wyoming 83101  
 Deputy Lincoln County Attorney

1993 – 1994  
 Albany County Attorney's Office  
 525 East Grand Avenue  
 Laramie, Wyoming 82070  
 Legal Intern

1992  
 Town of Jackson Hole  
 150 East Pearl Avenue  
 Jackson, Wyoming 83001  
 Western Reenactment Narrator

1992  
 Beauchemin Construction  
 4435 Berry Drive  
 Jackson, Wyoming 83001  
 Laborer

1990 – 1991  
 Cadillac Grille  
 55 North Cache Street  
 Jackson, Wyoming 83001  
 Food Server

1990 – 1991  
 Jackson Hole Radio  
 1085 Highway 22, Unite E  
 Jackson, Wyoming 83001  
 On-Air Personality

Summer 1990  
 Marie Callender's Restaurant  
 220 South Atlantic Boulevard  
 Monterey Park, California 91754  
 Food Server

Summer 1990  
 Black Angus Steakhouse  
 235 Ikea Way  
 Burbank, California 91502

Food Server

Teaching Affiliations

1997 – 2002  
Northwest Community College  
231 West 6th Street  
Powell, Wyoming 82435  
Instructor, Introduction to Criminal Justice

Other Affiliations (uncompensated):

2021 – present  
The Historical Society of the Tenth Judicial Circuit  
1801 California Street #4200  
Denver, Colorado 80202  
Director

2014 – present  
Federal Bar Association, Wyoming Chapter  
Board of Directors

2008 – present  
Ewing T. Kerr Inns of Court  
Cheyenne, Wyoming  
President (2018 – 2019)  
Member (2008 – present)

2014 – 2020  
St. Mark's Episcopal Church Centennial Foundation  
1908 Central Avenue  
Cheyenne, Wyoming 82001  
President

2012 – 2013  
St. Mark's Episcopal Church Vestry  
1908 Central Avenue  
Cheyenne, Wyoming 82001  
Senior Warden

2008 – 2010  
Wyoming Prescription Drug Abuse Stakeholders Committee (RAS)  
401 Hathaway Building  
Cheyenne, Wyoming 82002  
President

2008 – 2010  
Rocky Mountain High-Intensity Drug Trafficking Area (HIDTA)  
Denver, Colorado  
Executive Board

2006 – 2007  
NatuRally, Rally Car Racing  
1225 South Center Street  
Casper, Wyoming 82601  
Board of Directors

2002 – 2003  
Governor's Substance Abuse Advisory Board  
Wyoming State Capitol  
200 West 24th Street  
Cheyenne, Wyoming 82001  
Board Member

2001 – 2003  
Wyoming Department of Family Services  
1510 East Pershing Boulevard  
Cheyenne, Wyoming 82001  
Advisory Board Member

2001 – 2002  
Park County Drug Court Management Committee  
1002 Sheridan Avenue  
Cody, Wyoming 82414  
Member

2000 – 2002  
Wyoming Correctional Industries Advisory Board  
1934 Wyott Drive, No. 100  
Cheyenne, Wyoming 82002  
Chairman

1999 – 2003  
Park County Boy's and Girl's Club  
308 16th Street  
Cody, Wyoming 82414  
Board of Directors

1999 – 2003  
Park County Youth Commission  
1002 Sheridan Avenue  
Cody, Wyoming 82414

Executive Council Member

1999 – 2003  
Park County Health Coalition  
1002 Sheridan Avenue  
Cody, Wyoming 82414  
Executive Council Member

1999 – 2003  
Mountain View Manor Retirement Home  
1001 11th Street  
Cody, Wyoming 82414  
Board of Directors, Secretary

1999 – 2003  
Big Horn Basin Child Support  
1002 Sheridan Avenue, No. 1  
Cody, Wyoming 82414  
Board of Directors

1999 – 2003  
Shoshone Recreation District  
1402 Heart Mountain Street  
Cody, Wyoming 82414  
Board of Directors

1998 – 2003  
Christin Lamb Memorial Foundation  
546 East Adams Street  
Powell, Wyoming 82435  
Board of Directors

1996 – 2003  
Rotary Club of Cody  
1701 Sheridan Avenue  
Cody, Wyoming 82414  
Board of Directors (2000 – 2002)  
Member (1996 – 2003)

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

I did not serve in the military. I timely registered for the selective service.



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

Thomas Gorman Inn of Court Award for Excellence in Professionalism (2019)

Wyoming Rx Abuse Stakeholders Leadership Award (RAS) (2019)

Service to Law Enforcement and U.S. Attorney's Office (2012)

Wyoming Bar Association Recognition (2007)

Department of Justice (DOJ) Organized Crime Drug Enforcement Task Force (OCDETF)  
National Award for Outstanding Investigation (2007)  
OCDETF Regional Meritorious Award (2006)  
OCDETF Regional Meritorious Award (2005)  
OCDETF Regional Meritorious Award (2004)

Wyoming Game and Fish Department Service Award (2003)

D.A.R.E. (Drug Abuse Resistance Education) Appreciation of Service Award (2003)

Park County Drug Court Outstanding Service Award (2003)

Park County Commissioners Service Award (2003)

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 (for some years between 1994 and 2000)

Attorney Admission Fund Committee, District of Wyoming (2012 – present)

Big Horn Basin Child Support  
Board of Directors (1999 – 2003)

Ewing T. Kerr Inns of Court (2012 – present)  
President (2018 – 2020)

FBI's Joint Terrorism Task Force (2008 – 2010)

Federal Bar Association (for some years between 2003 – present)

Federal Magistrate Judges Association (2012 – present)

Governor's Substance Abuse Advisory Board  
Board Member (2002 – 2003)

Laramie County Bar Association (2012 – 2013)

National District Attorneys Association (1994 – 2003)

Park County Bar Association (1995 – 2003)

Park County Drug Court Management Committee  
Board Member (2001 – 2003)

Park County Health Coalition  
Executive Council Member (1999 – 2003)

Park County Youth Commission  
Executive Council Member (1999 – 2003)

Rocky Mountain High-Intensity Drug Trafficking Area (HIDTA)  
Executive Board (2008 – 2010)

Senator Craig Thomas Judicial Selection Committee (2000)

Tenth Circuit Historical Society  
Board of Directors (2021 – present)

United States District Court, District of Wyoming, Local Rules Committee  
Co-Chair (2012 – present)

United States Magistrate Judge Merit Selection Panel (2014, 2015, 2020, 2022)

Wyoming Bar Association Bench-Bar Relations Committee (2015 – 2020)

Wyoming Bar Association Legal Services  
Board of Directors (1996 – 2000)

Wyoming Chapter – Federal Bar Association (2003 – present)  
Board of Directors (2014 – present)

Wyoming Correctional Industries Advisory Board  
Chairman (2000 – 2002)

Wyoming Department of Family Services  
Advisory Board Member (2001 – 2003)

Wyoming Prescription Drug Abuse Stakeholders Committee (RAS)

President (2008 – 2010)

10. **Bar and Court Admission:**

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

Wyoming, 1994

There have been no lapses in membership. I have been an honorary member of the bar since my appointment to the bench in 2012.

- 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 Tenth Circuit, 2003  
United States District Court for the District of Wyoming, 2003

There have been no lapses in membership.

11. **Memberships:**

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

Aircraft Owners and Pilots Association (2015 – present)

Cheyenne Country Club (2008 – present)

Christin Lamb Memorial Foundation  
Board of Directors (1998 – 2003)

Cody Country Club (2000 – 2003)

Mountain View Manor Retirement Home  
Board of Directors, Secretary (1999 – 2003)

NatuRally, Rally Car Racing  
Board of Directors (2006 – 2007)

Park County Boy's and Girl's Club  
Board of Directors (1999 – 2003)

Rotary Club of Cody (1996 – 2003)  
Board of Directors (2000 – 2002)

Rotary Club of Cheyenne (2008 – 2016)

Shoshone Recreation District  
Board of Directors (1999 – 2003)

St. Mark's Episcopal Church Centennial Foundation  
President (2014 – 2020)

St. Mark's Episcopal Church Vestry  
Senior Warden (2012 – 2013)

University of Wyoming Alumni Association (1994 – 2008, 2021 – 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 discriminate on the basis of race, sex, religion, or national origin. It is my understanding that approximately 35 years ago some Rotary Clubs excluded women.

**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.

*A Life Fully Lived*, Brandi Monger and Maggie Botkins, Wyoming Lawyer, December 2014. I supplied a block quote to the authors honoring the late Honorable Clarence A. Brimmer, Wyoming Lawyer. Copy supplied.

*Poachers Photograph Own Crime Scene*, Eastmans' Hunting Journal, December 2001 – January 2002. Vol. 14, Issue 68. 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.

On February 4, 2016, I provided testimony to Chief Justice Roberts' Committee to Review the Criminal Justice Act Program in Portland, Oregon. Video available at <https://www.youtube.com/watch?v=LWdM1HyZRMg> (my remarks begin at 21:52), and the summary I provided to the Committee is supplied.

On March 4, 2010, as Counsel to Governor Dave Freudenthal, I testified before the Wyoming Senate Judiciary Committee in support of two proposed bills that would enhance criminal and civil penalties for any person convicted of killing a pregnant woman. I have no transcript or recording.

On December 7, 1998, I provided testimony to the Wyoming Legislature's Joint Judiciary Committee regarding a proposed bill to update Wyoming's state sex offender registration and notification requirements. As the newly elected Park County Attorney, I was invited to speak following the sexual assault and homicide of a young girl by an offender in Park County who had not previously been required to register. I have no transcript or recording of this testimony.

Also, from 1999 to 2003, as the Park County Attorney, I regularly (typically weekly) appeared before the County Commissioners to advise them about legal matters. I often was asked to provide legal interpretations of writings, documents, contracts, statutes, and other correspondence. I have no transcripts or recordings of these meetings.

- 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 presentations or talks that I have given, based on a review of my records and publicly available information. There may, however, be other presentations or talks that I have been unable to recall or identify, as I may have spoken briefly at events for which I did not retain any record.

Since July 2012, I have presided over Naturalization Ceremonies at the dates and locations below. On occasion, we have also conducted the ceremonies in local schools and other locations in Cheyenne. I delivered remarks and occasionally administered the oath to new citizens. I typically use the same set of remarks at all naturalization ceremonies. Remarks supplied. Videos available at [https://www.youtube.com/watch?v=li0a1Wh\\_7-I](https://www.youtube.com/watch?v=li0a1Wh_7-I); <https://www.youtube.com/watch?v=O5RMjrJnsIY>.

Cheyenne, Wyoming: July 9, 2012; July 8, 2013; November 18, 2013; March 17, 2014; July 14, 2014; March 16, 2015; July 13, 2015; November 16, 2015 (South High School); March 7, 2016 (Central High School); July 18, 2016; November 7, 2016 (Laramie County Community College); March 6, 2017 (East High School); July 17, 2017; November 6, 2017 (Meadowlark Elementary School); March 12, 2018; November 7, 2023 (Prairie Wind Elementary School); July 15, 2018 (Cheyenne Civic Center); December 3, 2018; March 18, 2019 (East High School); May 11, 2020; July 20, 2020, November 15, 2021; March 4, 2022; July 8, 2022 (Wyoming State Capitol); November 18, 2022; and March 15, 2023 (East High School).

Casper, Wyoming: May 13, 2013, and September 12, 2016.

Grand Teton National Park, Wyoming: September 29, 2016; May 26, 2017; June 15, 2018; May 24, 2019; August 6, 2021; August 5, 2022; and August 4, 2023.

October 19, 2023: Moderator, “Experiences from the Courtroom and Practice Tips from Law Clerks,” Federal Bar Association, University of Wyoming College of Law – Law Week, Laramie, Wyoming. Notes supplied.

August 18, 2023: Mock Trial Judge, “Summer Trial Institute,” University of Wyoming College of Law, Laramie, Wyoming. I was a mock trial judge for the third-year law students participating in the program. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

June 23, 2023: Panelist, “We Are Officers of the Court,” Wyoming Trial Lawyers 2023 Convention, Cheyenne, Wyoming. I provided remarks and answered

questions about what it means to be an officer of the court. I have no notes, transcript, or recording. The address for the Wyoming Trial Lawyers Association is 2111 Warren Avenue, Cheyenne, Wyoming 82001.

November 10, 2022: Panelist, “Judges Panel,” Ewing T. Kerr Inns of Court, Cheyenne, Wyoming. The panel answered questions regarding our service as state and federal judges. I have no notes, transcript, or recording. The address for the Ewing T. Kerr Inns of Court is P.O. Box 4284, Cheyenne, Wyoming 82003.

October 21, 2022: Guest Speaker, “Judge Kelly Rankin and his Path to the Bench,” University of Wyoming College of Law, Laramie, Wyoming. I spoke to law students during law week about my path to the bench. I have no notes, transcript, or recording. The address for the University of Wyoming College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

October 7, 2022: Guest Speaker, New Attorney Swearing-In Ceremony, Wyoming Supreme Court, Cheyenne, Wyoming. I have given similar remarks on September 24, 2021; September 28, 2018; September 29, 2017; September 25, 2015; September 19, 2014; and October 1, 2013. Notes supplied.

September 15, 2022: Panelist, “Tales from the Tenth – A History of Our Federal Judges,” Wyoming State Bar Annual Meeting, Casper, Wyoming. Notes supplied.

August 19, 2022: Mock Trial Judge, “Summer Trial Institute,” University of Wyoming College of Law, Laramie, Wyoming. I was a mock trial judge for the third-year law students participating in the program. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

June 17, 2022: Panelist, Investiture Ceremony of Magistrate Judge Stephanie Hambrick, Casper, Wyoming. I gave congratulatory remarks at the investiture ceremony of Magistrate Judge Stephanie Hambrick. I have no notes, transcript, or recording. The Kerr Federal Courthouse Building is located at 111 South Wolcott Street, Casper, Wyoming 82601.

June 16, 2022: Guest Speaker, “Federal Courts in Wyoming,” American Legion’s Wyoming Boys’ State, Laramie, Wyoming. I gave remarks about our court and administered oaths to the Wyoming Boys’ State delegates. I have no notes, transcript, or recording. The address for the Wyoming American Legion is 1320 Hugur Avenue, Cheyenne, Wyoming 82001.

May 13, 2022: Moderator and Panelist, Wyoming Chapter of the Federal Bar Association, Cheyenne, Wyoming. As a board member, I moderated the guest speakers who spoke on federal law and participated on a judges panel about our court. I have no notes, transcript, or recording. The address for the Wyoming

Chapter of the Federal Bar Association is P.O. Box 68, Jackson, Wyoming 83001.

October 29, 2021: Panelist, Retirement Ceremony of Magistrate Judge Mark Carman, Cheyenne, Wyoming. I gave congratulatory remarks at the retirement ceremony of Magistrate Judge Mark Carman. I have no notes, transcript, or recording. The court address is Joseph C. O'Mahoney Federal Building, 2120 Capitol Avenue, Cheyenne, Wyoming 82001.

October 28, 2021: Guest Speaker, Appellate Advocacy, University of Wyoming College of Law, Laramie, Wyoming. I spoke to a group of law students about appellate advocacy. I have no notes, transcript, or recording. The address for the University of Wyoming College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

September 17, 2021: Virtual Panelist, "Mediation 101," Young Lawyers Division for the Wyoming Bar Association's Annual Meeting. PowerPoint supplied.

August 20, 2021: Mock Trial Judge, "Summer Trial Institute," University of Wyoming College of Law, Laramie, Wyoming. I was a mock trial judge for the third-year law students participating in the program. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

August 19, 2021: Panelist, Defense Lawyers Association of Wyoming (DLAW) Annual Conference, Saratoga, Wyoming. I spoke about our local rules and current developments in our court. I have no notes, transcript, or recording. The address for DLAW is 1720 Carey Avenue, Suite 440, Cheyenne, Wyoming 82001.

June 24, 2021: Virtual Panelist, "Mediations," Wyoming Trial Lawyers Association. This was a panel discussion on how to conduct mediations as a practitioner. I have no notes, transcript, or recording. The address for the Wyoming Trial Lawyers Association is 2111 Warren Avenue, Cheyenne, Wyoming 82001.

April 1, 2021: Virtual Panelist, "Mediations in Wyoming," Ewing T. Kerr Inns of Court, Cheyenne, Wyoming. This was a panel discussion on how to conduct mediations as a practitioner. I have no notes, transcript, or recording. The address for the Ewing T. Kerr Inns of Court is P.O. Box 4284, Cheyenne, Wyoming 82003.

January 29, 2021: Panelist, Retirement Ceremony of Mark Klaassen, United States Attorney for the District of Wyoming, Cheyenne, Wyoming. I gave remarks congratulating Mr. Klaassen on his service. I have no notes, transcript, or recording. The address for our court is District Court, Joseph C. O'Mahoney Federal Building, 2120 Capitol Avenue, Cheyenne, Wyoming 82001.



September 15, 2020: Virtual Guest Speaker, "Social Media Search Warrants and Mediations," Wyoming Bar Association Annual Meeting – Judges Conference. PowerPoint supplied.

August 21, 2020: Mock Trial Judge, "Summer Trial Institute," University of Wyoming College of Law, Laramie, Wyoming. I was a mock trial judge for the third-year law students participating in the program. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

May 22, 2020: Virtual Guest Speaker, "Covid-19 and the Courts: Federal Court Response and Procedures," State of Wyoming Judges Meeting. PowerPoint supplied.

September 27, 2019: Guest Speaker, "Supreme Court Update in Environmental Law Impacting Public Lands (*Kisor v. Wilkie & Dep't of Commerce v. New York*)," Tri-State Seminar (Wyoming, Utah, and Idaho chapters of the Federal Bar Association), Sun Valley, Idaho. Notes supplied.

August 23, 2019: Mock Trial Judge, "Summer Trial Institute," University of Wyoming College of Law, Laramie, Wyoming. I was a mock trial judge for the third-year law students participating in the program. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

August 13, 2019: Guest Speaker, Congratulatory Remarks at Investiture for Judge Jason Conder, Ninth Judicial District, State of Wyoming, Lander, Wyoming. Notes supplied.

April 11, 2019: Guest Speaker, Wyoming Law Enforcement Academy Graduation, Douglas, Wyoming. I congratulated the graduates and spoke about the importance of public service in law enforcement. I have no notes, transcript, or recording. The address for the Wyoming Law Enforcement Academy is 1556 Riverbend Drive, Douglas, Wyoming 82633.

September 21, 2018: Panelist, Federal Practice in Our Court, Tri-State Seminar (Wyoming, Utah, and Idaho chapters of the Federal Bar Association), Park City, Utah. I spoke about federal practice and current court operations in our court. I have no notes, transcript, or recording. The address for the Wyoming Chapter of the Federal Bar Association is P.O. Box 68, Jackson, Wyoming 83001.

August 21, 2018: Mock Trial Judge, "Summer Trial Institute," University of Wyoming College of Law, Laramie, Wyoming. I was a mock trial judge for the third-year law students participating in the program. I have no notes, transcript,

or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

June 28, 2018: Panelist, "Challenges Facing the Courts and Legal Practice," Wyoming Chapter of the Federal Bar Association, Casper, Wyoming. Notes supplied.

March 27, 2018: Mock Trial Prosecutor, "Lewis and Clark Mock Trial," University of Wyoming College of Law Annual Historic Trial, Laramie, Wyoming. I was a mock trial prosecutor for the historic trial of Lewis and Clark. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

January 5, 2018: Panelist, Swearing-In Ceremony of United States Attorney Mark Klaassen, Cheyenne, Wyoming. Notes supplied.

October 7, 2017: Panelist, "Judges Panel on Federal Practice," Tri-State Seminar (Wyoming, Utah, and Idaho chapters of the Federal Bar Association), Jackson, Wyoming. I spoke about the current operations of our court and federal practice. I have no notes, transcript, or recording. The address for the Wyoming Chapter of the Federal Bar Association is P.O. Box 68, Jackson, Wyoming 83001.

August 25, 2017: Mock Trial Judge, "Summer Trial Institute," University of Wyoming College of Law, Laramie, Wyoming. I was a mock trial judge for the third-year law students participating in the program. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

April 21, 2017: Panelist, Retirement Ceremony of Kip Crofts, United States Attorney for the District of Wyoming, Cheyenne, Wyoming. Notes supplied.

April 12, 2017: Guest Speaker, "Tips for Writing Briefs and Preparing Clients," University of Wyoming College of Law, Defender Aid Clinic, Laramie, Wyoming. I discussed with the students tips for writing briefs and preparing their clients. I have no notes, transcript, or recording. The address for the University of Wyoming College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

April 12, 2017: Virtual Presenter, "Local and Federal Rules Update," Defense Lawyers Association of Wyoming (DLAW), Cheyenne, Wyoming. I spoke to a group of lawyers about federal and local civil rule changes. I have no notes, transcript, or recording. The address for DLAW is 1720 Carey Avenue, Suite 440, Cheyenne, Wyoming 82001.

April 2017 (specific date unknown): Presenter, "Liberty Day," Wyoming State Bar, Cheyenne, Wyoming. I was a presenter to a class of fifth graders to teach

them about the United States Constitution and Bill of Rights. I have no notes, transcript, or recording. The address for the Wyoming State Bar is P.O. Box 109, Cheyenne, Wyoming 82003.

October 13, 2016: Panelist, "Judges Panel on Federal Practice," Tri-State Seminar (Wyoming, Utah, and Idaho chapters of the Federal Bar Association), Sun Valley, Idaho. I spoke about the current operations of our court and federal practice. I have no notes, transcript, or recording. The address for the Wyoming Chapter of the Federal Bar Association is P.O. Box 68, Jackson, Wyoming 83001.

August 26, 2016: Mock Trial Judge, "Summer Trial Institute," University of Wyoming College of Law, Laramie, Wyoming. I was a mock trial judge for the third-year law students participating in the program. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

April 2016 (specific date unknown): Presenter, "Liberty Day," Wyoming State Bar, Cheyenne, Wyoming. I was a presenter to a class of fifth graders to teach them about the United States Constitution and Bill of Rights. I have no notes, transcript, or recording. The address for the Wyoming State Bar is P.O. Box 109, Cheyenne, Wyoming 82003.

September 23, 2015: Virtual Presenter, "Rules and Trial Practice Tips," Defense Lawyers Association of Wyoming (DLAW), Cheyenne, Wyoming. Notes supplied.

August 28, 2015: Mock Trial Judge, "Summer Trial Institute," University of Wyoming College of Law, Laramie, Wyoming. I was a mock trial judge for the third-year law students participating in the program. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

June 24, 2015: Panelist, "Discovery, Mediations, and Other Updates from the Court," Wyoming Trial Lawyers Association, Cody, Wyoming. I spoke on discovery and mediation trends and updated the audience on the latest court news. I have no notes, transcript, or recording. The address for the Wyoming Trial Lawyers Association is 2111 Warren Avenue, Cheyenne, Wyoming 82001.

April 2015 (specific date unknown): Presenter, "Liberty Day," Wyoming State Bar, Cheyenne, Wyoming. I was a presenter to a class of fifth graders to teach them about the United States Constitution and Bill of Rights. I have no notes, transcript, or recording. The address for the Wyoming State Bar is P.O. Box 109, Cheyenne, Wyoming 82003.

November 14, 2014: Guest Speaker, "Update on Attorney Appointment Process," Annual Meeting of Federal Public Defender's Office and Criminal Justice Panel

Attorneys, Estes Park, Colorado. I provided updates related to the court's process of appointing criminal defense attorneys for indigent persons. I have no notes, transcript, or recording. The address for the Office of the Federal Public Defender is 214 West Lincolnway, Suite 31-A, Cheyenne, Wyoming 82001.

October 11, 2014: Panelist, "Judges Panel on Federal Practice," Tri-State Seminar (Wyoming, Utah, and Idaho chapters of the Federal Bar Association), Jackson, Wyoming. I spoke about the current operations of our court and federal practice. I have no notes, transcript, or recording. The address for the Wyoming Chapter of the Federal Bar Association is P.O. Box 68, Jackson, Wyoming 83001.

August 29, 2014: Mock Trial Judge, "Summer Trial Institute," University of Wyoming College of Law, Laramie, Wyoming. I was a mock trial judge for the third-year law students participating in the program. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

April 16, 2014: Guest Speaker, "Update on Local and Federal Rules," Wyoming Chapter of the Federal Bar Association, Cheyenne, Wyoming. I provided an update on the latest changes to our local and federal rules. I have no notes, transcript, or recording. The address for the Wyoming Chapter of the Federal Bar Association is P.O. Box 68, Jackson, Wyoming 83001.

April 2014 (specific date unknown): Presenter, "Liberty Day," Wyoming State Bar, Cheyenne, Wyoming. I was a presenter to a class of fifth graders to teach them about the United States Constitution and Bill of Rights. I have no notes, transcript, or recording. The address for the Wyoming State Bar is P.O. Box 109, Cheyenne, Wyoming 82003.

November 8, 2013: Virtual Presenter, "The Good, The Bad, The Ugly of Discovery," Wyoming Trial Lawyers Association, Cheyenne, Wyoming. Notes supplied.

October 24, 2013: Guest Speaker, "Court Update," Federal Public Defender's Office and Criminal Justice Panel Attorneys, Annual Meeting, Black Hawk, Colorado. Notes supplied.

October 16, 2013: Panelist, "Rankin – The Options; What All Can You Do with a Law Degree?" Laramie, Wyoming. My brother, sister, and I spoke to law students at the University of Wyoming about our varied career paths. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

October 11, 2013: Guest Speaker, Congratulatory Remarks at the Investiture of Judge Greg Phillips, Circuit Judge for the Tenth Circuit Court of Appeals, Cheyenne, Wyoming. Notes supplied.

September 20, 2013: Panelist, "Judges Panel on Federal Practice," Tri-State Seminar (Wyoming, Utah, and Idaho chapters of the Federal Bar Association), Park City, Utah. I spoke about the current operations of our court and federal practice. I have no notes, transcript, or recording. The address for the Wyoming Chapter of the Federal Bar Association is P.O. Box 68, Jackson, Wyoming 83001.

August 13, 2013: Mock Trial Judge, "Summer Trial Institute," University of Wyoming College of Law, Laramie, Wyoming. I was a mock trial judge for the third-year law students participating in the program. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

April 15, 2013: Panelist, Congratulatory Remarks at Investiture of Magistrate Judge Mark Carman, Casper, Wyoming. I congratulated Judge Carman and welcomed him to the bench. I have no notes, transcript, or recording. The address for the court is District Court, Kerr Federal Courthouse Building, 111 South Wolcott Street, Casper, Wyoming 82601.

April 7, 2013: Guest Speaker, "Civility in the Law; Public Service," Governor Dave Freudenthal's Energy Law Class at the University of Wyoming College of Law, Laramie, Wyoming. Notes supplied.

April 2013 (specific date unknown): Presenter, "Liberty Day," Wyoming State Bar, Cheyenne, Wyoming. I was a presenter to a class of fifth graders to teach them about the United States Constitution and Bill of Rights. I have no notes, transcript, or recording. The address for the Wyoming State Bar is P.O. Box 109, Cheyenne, Wyoming 82003.

November 1, 2012: Virtual Presenter, "Updates from the Court," Wyoming Trial Lawyers Association, Cheyenne, Wyoming. Notes supplied.

October 12, 2012: Panelist, "Judges Panel on Federal Practice," Tri-State Seminar (Wyoming, Utah, and Idaho chapters of the Federal Bar Association), Sun Valley, Idaho. I spoke about the current operations of our court and federal practice. I have no notes, transcript, or recording. The address for the Wyoming Chapter of the Federal Bar Association is P.O. Box 68, Jackson, Wyoming 83001.

August 14, 2012: Mock Trial Judge, "Summer Trial Institute," University of Wyoming College of Law, Laramie, Wyoming. I was a mock trial judge for the third-year law students participating in the program. I have no notes, transcript, or recording. The address for the College of Law is 1000 East University Avenue, Laramie, Wyoming 82070.

July 12, 2012: Presenter, Remarks at my Investiture Ceremony as United States Magistrate Judge for the District of Wyoming, Cheyenne, Wyoming. Notes

supplied.

April 2012 (specific date unknown): Presenter, "Liberty Day," Wyoming State Bar, Cheyenne, Wyoming. I was a presenter to a class of fifth graders to teach them about the United States Constitution and Bill of Rights. I have no notes, transcript, or recording. The address for the Wyoming State Bar is P.O. Box 109, Cheyenne, Wyoming 82003.

September 23, 2011: Guest Speaker, "Update on Criminal Prosecutions in the District of Wyoming," Tri-State Seminar (Wyoming, Utah, and Idaho chapters of the Federal Bar Association), Teton Village, Wyoming. I provided an update on the type and nature of criminal prosecutions in the District of Wyoming. I have no notes, transcript, or recording. The address for the Wyoming Chapter of the Federal Bar Association is P.O. Box 68, Jackson, Wyoming 83001.

June 8, 2011: Presenter, "Prescription Drug Abuse," Law Enforcement Coordinating Committee Conference, Jackson, Wyoming. The presentation was on prescription drug abuse and its challenges to health care providers and law enforcement. I have no notes, transcript, or recording. The address for the United States Attorney's Office is 2120 Capitol Avenue, Cheyenne, Wyoming 82001.

April 2011 (specific date unknown): Presenter, "Liberty Day," Wyoming State Bar, Cheyenne, Wyoming. I was a presenter to a class of fifth graders to teach them about the United States Constitution and Bill of Rights. I have no notes, transcript, or recording. The address for the Wyoming State Bar is P.O. Box 109, Cheyenne, Wyoming 82003.

April 2010 (specific date unknown): Presenter, "Liberty Day," Wyoming State Bar, Cheyenne, Wyoming. I was a presenter to a class of fifth graders to teach them about the United States Constitution and Bill of Rights. I have no notes, transcript, or recording. The address for the Wyoming State Bar is P.O. Box 109, Cheyenne, Wyoming 82003.

October 2009 (specific date unknown): Virtual Presenter, Moderator for Virtual Wyoming Prescription Drug Abuse Conference, Buffalo, Wyoming. I moderated the virtual conference in my capacity as chairman of the Wyoming Rx Abuse Stakeholders (RAS). I have no notes, transcript, or recording. The address for Wyoming RAS is United States Attorney's Office, 2120 Capitol Avenue, Cheyenne, Wyoming 82001.

August 4, 2009: Guest Speaker, Wind River Native American Conference on Health and Safety, Lander, Wyoming. As the United States Attorney, I gave the opening and closing remarks and introduced some of the speakers. I have no notes, transcript, or recording. The address for the United States Attorney's Office is 2120 Capitol Avenue, Cheyenne, Wyoming 82001.

June 9, 2009: Guest Speaker, Law Enforcement Coordinating Committee Conference, Jackson, Wyoming. As the United States Attorney, I gave opening and closing remarks and introduced some of the speakers. I have no notes, transcript, or recording. The address for the United States Attorney's Office is 2120 Capitol Avenue, Cheyenne, Wyoming 82001.

April 28, 2009: Guest Speaker, "The Quilt Project," Laramie County Victim Services, Cheyenne, Wyoming. In my capacity as the United States Attorney, I gave remarks about the rights of crime victims. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Laramie County Victim Services is 2120 Capitol Avenue, Room 4002, Cheyenne, Wyoming 82001.

April 2009 (specific date unknown): Guest Speaker, University of Wyoming Prescription Drug Abuse Conference, Laramie, Wyoming. In my capacity as chairman of the Wyoming RAS, I gave opening and closing remarks. I have no notes, transcript, or recording. The address for the University of Wyoming is 1000 East University Avenue, Laramie, Wyoming 82071.

April 2009 (specific date unknown): Presenter, "Liberty Day," Wyoming State Bar, Cheyenne, Wyoming. I was a presenter to a class of fifth graders to teach them about the United States Constitution and Bill of Rights. I have no notes, transcript, or recording. The address for the Wyoming State Bar is P.O. Box 109, Cheyenne, Wyoming 82003.

March 31, 2009: Guest Speaker, Human Trafficking Conference Sponsored by the United States Attorney's Office, Cheyenne, Wyoming. Notes supplied.

September 3, 2008: Presenter, Formal Investiture Ceremony to become United States Attorney, Cheyenne, Wyoming. The speech was to thank my family, friends, and colleagues for their support. I have no notes, transcript, or recording. The address for the United States Attorney's Office is 2120 Capitol Avenue, Cheyenne, Wyoming 82001.

August 21, 2008: Guest Speaker, Wind River Native American Conference on Health and Safety, Lander, Wyoming. As the United States Attorney, I gave opening and closing remarks and introduced some of the speakers. I have no notes, transcript, or recording. The address for the United States Attorney's Office is 2120 Capitol Avenue, Cheyenne, Wyoming 82001.

June 3, 2008: Guest Speaker, Law Enforcement Coordinating Committee Conference, Jackson, Wyoming. As the United States Attorney, I gave opening and closing remarks and introduced some of the speakers. I have no notes, transcript, or recording. The address for the United States Attorney's Office is 2120 Capitol Avenue, Cheyenne, Wyoming 82001.

May 3, 2008: Presenter, Informal Investiture Ceremony to become United States Attorney, Casper, Wyoming. The speech was to thank my family, friends, and colleagues for their support. I have no notes, transcript, or recording. The address for the United States Attorney's Office is 2120 Capitol Avenue, Cheyenne, Wyoming 82001.

February 2008 (specific date unknown): Presenter, "The People's Law School," Wyoming Trial Lawyers Association, Casper, Wyoming. My presentation provided an overview of criminal law and criminal procedure to the students. I have no notes, transcript, or recording. The address for the Wyoming Trial Lawyers Association is 2111 Warren Avenue, Cheyenne, Wyoming 82001.

January 31, 2007: Presenter, "The People's Law School," Wyoming Trial Lawyers Association, Casper, Wyoming. My presentation provided an overview of criminal law and criminal procedure to the students. I have no notes, transcript, or recording. The address for the Wyoming Trial Lawyers Association is 2111 Warren Avenue, Cheyenne, Wyoming 82001.

September 2006 (specific date unknown): Presenter, "Criminal Law Update," Wyoming State Bar Annual Meeting, Laramie, Wyoming. My presentation provided the latest criminal law update for state and federal practitioners. I have no notes, transcript, or recording. The address for the Wyoming State Bar Association is P.O. Box 109, Cheyenne, Wyoming 82003.

September 2006 (specific date unknown): Presenter, Tri-State Seminar (Wyoming, Utah, and Idaho chapters of the Federal Bar Association), Sun Valley, Idaho. I presented on the topics of federal criminal law and sentencing. I have no notes, transcript, or recording. The address for the Wyoming Chapter of the Federal Bar Association is P.O. Box 68, Jackson, Wyoming 83001.

August 10, 2006: Presenter, "Methamphetamine Prosecutions in Wyoming and the Wind River Indian Reservation," Wind River Native American Conference sponsored by the United States Attorney's Office, Lander, Wyoming. PowerPoint supplied.

September 8, 2005: Presenter, "Bridging the Gap – Criminal Law," Wyoming State Bar Annual Meeting, Casper, Wyoming. PowerPoint supplied.

September 28, 2005: Presenter, "The People's Law School," Wyoming Trial Lawyers Association, Casper, Wyoming. My presentation provided an overview of criminal law and criminal procedure to the students. I have no notes, transcript, or recording. The address for the Wyoming Trial Lawyers Association is 2111 Warren Avenue, Cheyenne, Wyoming 82001.

January 26, 2005: Presenter, "The People's Law School," Wyoming Trial Lawyers Association, Casper, Wyoming. Notes supplied.



May 2002 (specific date unknown): Presenter, "Law Day," Fifth Judicial District Court. I was a presenter on legally related topics and participated in mock trials for students and members of the public. I have no notes, transcript, or recording. The address for the court is 1002 Sheridan Avenue, Cody, Wyoming 82414.

May 2001 (specific date unknown): Presenter, "Law Day," Fifth Judicial District Court. I was a presenter on legally related topics and participated in mock trials for students and members of the public. I have no notes, transcript, or recording. The address for the court is 1002 Sheridan Avenue, Cody, Wyoming 82414.

June 2000 (specific date unknown): Presenter, "Girls State," American Legion Auxiliary, Powell, Wyoming. I was a presenter on legally related topics and participated in mock trials for the Girls State participants. I have no notes, transcript, or recording. The address for the American Legion Auxiliary is P.O. Box 186, Buffalo, Wyoming 82834.

May 2000 (specific date unknown): Presenter, "Law Day," Fifth Judicial District Court. I was a presenter on legally related topics and participated in mock trials for students and members of the public. I have no notes, transcript, or recording. The address for the court is 1002 Sheridan Avenue, Cody, Wyoming 82414.

June 1999 (specific date unknown): Presenter, "Girls State," American Legion Auxiliary, Powell, Wyoming. I was a presenter on legally related topics and participated in mock trials for the Girls State participants. I have no notes, transcript, or recording. The address for the American Legion Auxiliary is P.O. Box 186, Buffalo, Wyoming 82834.

May 1999 (specific date unknown): Presenter, "Law Day," Fifth Judicial District Court. I was a presenter on legally related topics and participated in mock trials for students and members of the public. I have no notes, transcript, or recording. The address for the court is 1002 Sheridan Avenue, Cody, Wyoming 82414.

June 1998 (specific date unknown): Presenter, "Girls State," American Legion Auxiliary, Powell, Wyoming. I was a presenter on legally related topics and participated in mock trials for the Girls State participants. I have no notes, transcript, or recording. The address for the American Legion Auxiliary is P.O. Box 186, Buffalo, Wyoming 82834.

May 1998 (specific date unknown): Presenter, "Law Day," Fifth Judicial District Court. I was a presenter on legally related topics and participated in mock trials for students and members of the public. I have no notes, transcript, or recording. The address for the court is 1002 Sheridan Avenue, Cody, Wyoming 82414.

June 1997 (specific date unknown): Presenter, "Girls State," American Legion Auxiliary, Powell, Wyoming. I was a presenter on legally related topics and

participated in mock trials for the Girls State participants. I have no notes, transcript, or recording. The address for the American Legion Auxiliary is P.O. Box 186, Buffalo, Wyoming 82834.

May 1997 (specific date unknown): Presenter, "Law Day," Fifth Judicial District Court. I was a presenter on legally related topics and participated in mock trials for students and members of the public. I have no notes, transcript, or recording. The address for the court is 1002 Sheridan Avenue, Cody, Wyoming 82414.

June 1996 (specific date unknown): Presenter, "Girls State," American Legion Auxiliary, Powell, Wyoming. I was a presenter on legally related topics and participated in mock trials for the Girls State participants. I have no notes, transcript, or recording. The address for the American Legion Auxiliary is P.O. Box 186, Buffalo, Wyoming 82834.

May 1996 (specific date unknown): Presenter, "Law Day," Fifth Judicial District Court. I was a presenter on legally related topics and participated in mock trials for students and members of the public. I have no notes, transcript, or recording. The address for the court is 1002 Sheridan Avenue, Cody, Wyoming 82414.

In addition to the above, during my time in the United States Attorney's Office between 2003 and 2012, in Casper and Cheyenne, I was occasionally invited to make brief remarks and move for the admission of the new citizens at Naturalization Ceremonies held in the courthouse. I do not have specific dates for these ceremonies. I have no notes, transcript, or recordings. The address for the federal courthouse in Casper is District Court, 111 South Wolcott Street, Casper, Wyoming 82601. The address for the federal courthouse in Cheyenne is District Court, 2120 Capitol Avenue, Cheyenne, Wyoming 82001.

I also participated at candidate forums in my two county attorney races, where I provided brief comments and took questions. I believe that the League of Women Voters sponsored each of these forums, which took place soon before the primary and general elections in August and November of 1998 and 2002. The forums included candidates for state and local offices. As I recall, each candidate got a brief time for introductory comments and then answered any questions from the audience. I have no notes, transcript, or recording. The address for The League of Women Voters is 1233 20th Street, Northwest, Suite 500, Washington, DC 20036.

In addition, in 1998 and 2002, in the weeks and months leading up to my candidacy for county attorney, I gave various political speeches regarding my candidacy. I was invited to speak either individually or as part of a panel discussion during these speeches and talks. I do not know any dates of these speeches, and I have no notes, transcripts, or recordings.

During my tenure as the elected Park County Attorney, I occasionally met with

groups of constituents, government officials, school officials, service clubs, and other community organizations to discuss matters impacting the community and the county attorney's office. This also occasionally included speaking with students about risky behaviors, for example through the D.A.R.E. program. I have no record of the dates of these meetings or talks, and I have no notes, transcripts, or recordings.

Some of these speeches and talks were reported by the media. However, I have been unable to locate printed or recorded accounts of these additional media stories.

Finally, from 1998 to 2000, I was elected by the Park County Republican Party to serve as a state precinct committeeman. In this capacity I attended county and state party meetings at which we openly discussed the election of candidates, rules and procedure, and party issues and platforms. I did not lead the meetings, nor do I recall making any speeches or formal remarks. However, I did participate along with the other members. The state precinct meetings occurred quarterly in Casper, Wyoming, during those two years, but I have been unable to obtain exact dates or meeting minutes. The county meetings occurred approximately four times per year in Cody, Wyoming. I have been unable to confirm exact dates or obtain meeting minutes for those county meetings.

- 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.

The following list reflects my best effort to identify the interviews in which I have participated, based on a review of my records and publicly available information.

Ashli Tomisich, *Judicial Clerkships and the UW College of Law*, University of Wyoming College of Law website (June 27, 2019). Copy supplied.

Joan Barron, *Former Wyoming Attorney General Greg Phillips Born to be a Judge, Boss Says*, Casper Star-Trib. (July 21, 2013). Copy supplied.

Bill McCarthy, *Concealed Weapons Reciprocity Bill Advances*, Wyoming Tribune Eagle (February 23, 2010). Copy supplied.

Ben Neary, *Wyo. Committee Advances Homicide Pregnancy Bill*, Associated Press (February 18, 2010). Copy supplied.

Joan Barron, *Dentist Gets Prison in Drug Case*, Casper Star-Trib. (October 1, 2009). Copy supplied.

Staff, *Used Motor Vehicle Dealers Indicted by Federal Grand Jury in Casper*,

*Wyoming For Odometer Tampering*, Government Press Releases (July 24, 2009). Copy supplied.

Staff, *Wyoming Coroners Concerned About Rx Drug Abuse*, Associated Press (July 12, 2009). Copy supplied.

Staff, *Officials Don't Know Rx Drug Death Toll in Wyoming*, Associated Press (July 12, 2009). Copy supplied.

Ruffin Prevost, *Utility to Pay for Bird Deaths*, Billings Gazette (July 11, 2009). Copy supplied.

Staff, *Authorities Target Drug Ring*, Casper Star-Trib. (May 30, 2009). Copy supplied.

Staff, *Fremont County Dentists Face Federal Drug Charges*, Associated Press (May 21, 2009). Copy supplied.

Staff, *PacifiCorp Settles in Bird Electrocutions*, Associated Press (April 11, 2009). Copy supplied.

Tom Morton, *States May Not Know of Older Federal Child Porn Cases*, Casper Star-Trib. (January 19, 2009). Copy supplied.

Staff, *Federal Prosecutor John Barksdale Dies at Age 62*, Associated Press (December 31, 2008). Copy supplied.

Staff, *Judge Sentences Man to Life in Meth Case*, Associated Press (July 25, 2008). Copy supplied.

Joan Barron, *Senate Confirms Wyo U.S. Attorney*, Casper Star-Trib. (June 28, 2008). Copy supplied.

In May 2008, I recall giving an interview to a local television station in Casper, Wyoming after I was sworn in as United States Attorney. That television station no longer exists in Casper. I have no transcript or recording.

Staff, *Rankin Picked for U.S. Attorney*, Gazette Services (April 17, 2008). Copy supplied.

Staff, *Bush Nominates Kelly Rankin as U.S. Attorney for Wyoming*, Associated Press (April 17, 2008). Copy supplied.

Joan Barron, *Bush Taps U.S. Attorney for Wyo*, Casper Star-Trib. (April 18, 2008). Copy supplied.

Leslie Stratmoen, *Riverton Man Busted for Meth Dealing*, Wind River News (January 24, 2008). Copy supplied.

Walter Cook, *Federal Judge Blasts Tribal Gaming at Meth Sentencing*, Wind River News (July 5, 2007). Copy supplied.

Joan Barron, *Enzi Offers Three for Attorney Post*, Casper Star-Trib. (June 30, 2007). Copy supplied.

Staff, *U.S. Attorney Candidates Line Up*, Billings Gazette (June 29, 2007). Copy supplied.

Brodie Farquhar, *Crystal Meth Pushers Get Life*, Casper Star-Trib. (June 6, 2007). Copy supplied.

Staff, *How Meth Came to an Indian Reservation and Took Hold*, Associated Press (April 29, 2007). Copy supplied.

Staff, *Inside a Wyoming Jury*, Wyoming Public Television (2007 specific date unknown). I am unable to locate a recording.

Staff, *Drug Conspirators Sentenced*, Associated Press (April 12, 2006). Copy supplied.

Staff, *Nephew of Tribal Judge Sentenced*, Billings Gazette (March 10, 2006). Copy supplied.

Walter Cook, *Man Sentenced for Role in Drug Trafficking Organization*, Wind River News (March 9, 2006). Copy supplied.

Staff, *Tribal Judge Expected to Enter Plea*, Gazette News Services (January 31, 2006). Copy supplied.

Staff, *Woman Gets 11 Years in Casper Drug Case*, Associated Press (January 18, 2006). Copy supplied.

Staff, *Accused Drug Ring Head Pleads Guilty*, Wind River News (January 5, 2006). Copy supplied.

Anthony Lane, *Drug Leader Gets 25-year Sentence*, Casper Star-Trib. (May 7, 2005). Copy supplied.

Hector Gutierrez, *Fugitive Ran for Four Years – Massive Federal Effort Brings Down Alleged Meth Trafficker*, Rocky Mountain News (April 15, 2005). Copy supplied.

Anthony Lane, *Woman Pleads Guilty in Drug Conspiracy*, Casper Star-Trib. (March 30, 2005). Copy supplied.

Tom Morton, *No. 2 Drug Ring Leader Pleads Guilty*, Casper Star-Trib. (January 27, 2005). Copy supplied.

Tom Morton, *More Drug Ring Defendants Plead Guilty*, Casper Star-Trib. (January 13, 2005). Copy supplied.

Tom Morton, *Two Enter Pleas in Drug-Trafficking Case*, Casper Star-Trib. (May 7, 2004). Copy supplied.

Staff, *Meth Investigation Nets 70 Prosecutions*, Associated Press (December 2, 2003). Copy supplied.

Staff, *Wyoming Meth Ring Cracked*, Billings Gazette (December 1, 2003). Copy supplied.

Staff, *Prosecutors Held to Higher Standard, Lawyers Agree*, Associated Press (August 17, 2003). Copy supplied.

Staff, *Park County Attorney to Resign*, Associated Press (December 10, 2002). Copy supplied.

Mike Stark, *Park County Attorney Gets New Job*, Billings Gazette (December 9, 2002). Copy supplied.

Mike Stark, *Jail Jam*, Rapid City Journal (October 20, 2002). Copy supplied.

Staff, *Gonzales Convicted in Double Slaying*, Associated Press (May 31, 2002). Copy supplied.

Staff, *Commissioners OK Lawsuit to Recoup Tax Interest from Amoco*, Associated Press (May 11, 2002). Copy supplied.

Staff, *Kenyon Convicted of Murder*, Associated Press (May 1, 2002). Copy supplied.

Staff, *Man Convicted in Poaching Case Plans Appeal*, Associated Press (December 4, 2001). Copy supplied.

Staff, *Chiapuzio Pleads Guilty to Promoting Obscenity*, Associated Press (November 28, 2001). Copy supplied.

Staff, *Former Deputy County Attorney Charged with Promoting Obscenity*, Associated Press (November 20, 2001). Copy supplied.

Staff, *Men Sentenced for Poaching Big Horns*, Associated Press (October 16, 2001). Copy supplied.

Staff, *Meeteetse Museums Dispute Nears Conclusion*, Billings Gazette (September 21, 2001). Copy supplied.

Jeff Tollefson, *Powell Man Charged with Possession of Child Porn*, Billings Gazette (August 17, 2001). Copy supplied.

Staff, *Suspect in Powell Double Homicide Remains in Colorado Prison*, Associated Press (April 12, 2001). Copy supplied.

Staff, *Suspect in 1996 Double Murder Found in Colorado Prison*, Associated Press (March 16, 2001). Copy supplied.

Staff, *LDS Officials Glad About Church-Crash Plea*, Associated Press (February 27, 2001). Copy supplied.

Staff, *2 Deny Guilt in Slaying of Rams*, Billings Gazette (January 19, 2001). Copy supplied.

Staff, *Pickup Truck Seized for Alleged Sheep Poaching*, Associated Press (January 9, 2001). Copy supplied.

Staff, *Prosecutor Abandons KTVQ Contempt Charges*, Associated Press (January 5, 2001). Copy supplied.

Staff, *Park County Considers Internet Use Policy for Workers*, Associated Press (November 11, 2000). Copy supplied.

Staff, *Poacher Law Wins Legal Test*, Associated Press (September 25, 2000). Copy supplied.

Staff, *Wife Buys Helicopter Forfeited by Cody Man*, Associated Press (September 19, 2000). Copy supplied.

Staff, *Woman Pleads Guilty in Death of Man Who Fell From Car*, Associated Press (September 12, 2000). Copy supplied.

Staff, *County Attorney Flooded with E-mail About Animal Abuse*, Associated Press (August 16, 2000). Copy supplied.

Staff, *Park Commissioners Want Access to Mountaintop*, Associated Press (August 7, 2000). Copy supplied.

Staff, *Landowner Bars Maintenance on Radio Towers*, Billings Gazette (August 1, 2000). Copy supplied.

Staff, *Poacher Agrees to Forfeit Chopper*, Associated Press (July 8, 2000). Copy supplied.

Jana Jacobs, *Rankin Heads Prison Work Board*, Cody Enter. (July 5, 2000). Copy supplied.

Joan Barron, *Kelly Rankin Will Lead Prison Advisory Board*, Casper Star-Trib. (June 29, 2000). Copy supplied.

Staff, *Sex Offender Web Site Needs More Funding, Officials Say*, Associated Press (June 21, 2000). Copy supplied.

Staff, *Man Enters No Contest Plea to Hunting From Helicopter*, Associated Press (April 24, 2000). Copy supplied.

Michael Milstein, *Destruction Tied to Rage with Church*, Billings Gazette (April 14, 2000). Copy supplied.

Staff, *Involuntary Commitments Put County Attorney Over Budget*, Associated Press (March 31, 2000). Copy supplied.

Staff, *Wyoming State Penitentiary Inmate and Montana Native Killed*, Associated Press (March 24, 2000). Copy supplied.

Staff, *State Penitentiary Inmate Killed*, Associated Press (March 23, 2000). Copy supplied.

Staff, *Woman Charged with Causing Death of Man*, Associated Press (March 17, 2000). Copy supplied.

Staff, *Cody Man Opts for Trial in Poaching Case*, Associated Press (March 4, 2000). Copy supplied.

Staff, *Residents Demand Stiff Punishment in Poaching Case*, Associated Press (February 12, 2000). Copy supplied.

Staff, *Park Commissioners Cancel Agreement for Jail Site*, Associated Press (February 2, 2000). Copy supplied.

Staff, *State's Right to Seize Helicopter Won't Be Contested*, Associated Press (November 11, 1999). Copy supplied.

Staff, *Powell Man Enters Plea on Selling Beer to Underaged Teens Killed in*



*Wreck*, Associated Press (October 6, 1999). Copy supplied.

Staff, *Hairdresser Questioned by Wyoming Authorities on License Complaint*, Associated Press (September 30, 1999). Copy supplied.

Staff, *Cody Man Accused of Bank Fraud*, Associated Press (September 26, 1999). Copy supplied.

Staff, *Trial Delayed in Six-Person Fatal*, Associated Press (August 26, 1999). Copy supplied.

Staff, *Request to Expand Ranch Airstrip Raises Debate*, Associated Press (July 18, 1999). Copy supplied.

Staff, *Trial Set for Man Who Sold Beer to Drivers in Fatal Crash*, Associated Press (May 26, 1999). Copy supplied.

Staff, *Park County Court Having Tape Problems*, Associated Press (May 14, 1999). Copy supplied.

Michael Milstein, *Winner in County Attorney Contest Shocked at Outcome*, Billings Gazette (August 20, 1998). Copy supplied.

Staff, *Rankin Hopes for Peaceful Transition*, Cody Ent. (August 19, 1998). Copy supplied.

I gave additional statements to media as a candidate for Park County Attorney, and as a state and federal prosecutor on civil and criminal matters that I handled. I have been unable to locate printed or recorded accounts of these additional media stories.

Press Releases:

Press Release, *Activity in the United States Attorney's Office-Sentence of Ricardo Louise Trosper*, United States Attorney for the District of Wyoming (December 21, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences, United States Attorney for the District of Wyoming* (December 17, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (December 10, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (November 19, 2009). Copy

supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (November 5, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (October 30, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (October 22, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (October 15, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (October 8, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (October 1, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (September 17, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Steven Padilla Sentence*, United States Attorney for the District of Wyoming (September 3, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (August 27, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (August 20, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (August 6, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Annual Wind River Native American Conference*, United States Attorney for the District of Wyoming (July 27, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (July 23, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Daniel Eugene Hack Sentence*, United States Attorney for the District of Wyoming (July 21, 2009).

Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (July 16, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office- Brent Glen Bills, DMD, Enters into Pretrial Diversion Agreement for Unlawfully Distributing and Dispensing Hydrocodone*, United States Attorney for the District of Wyoming (July 15, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-PacifiCorp Sentence*, United States Attorney for the District of Wyoming (July 10, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (July 9, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (July 2, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Felipe Joseph Helms Sentence*, United States Attorney for the District of Wyoming (June 18, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (June 11, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (June 4, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (May 28, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Daniel Eugene Hack and Brent Glen Bills Arrest*, United States Attorney for the District of Wyoming (May 18, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (May 14, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (May 7, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (April 30, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Dallas T. Bennett and Matthew C. Lee Sentencing*, United States Attorney for the District of Wyoming (April 28, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (April 10, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (March 6, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (February 26, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (February 19, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (February 12, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (February 5, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (January 22, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (January 15, 2009). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Wyoming Couple Sentenced on Tax Fraud Charges*, United States Attorney for the District of Wyoming (December 19, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (December 18, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (December 11, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (December 4, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Casey Ballieu Sentence*, United States Attorney for the District of Wyoming (November 20, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Verdict in Nathaniel Solon Trial and Jesus Navarro-Ramirez Sentence*, United States Attorney for the District of Wyoming (November 13, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Rene Rodriquez-Ruelas Sentence*, United States Attorney for the District of Wyoming (October 30, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Jorge Arturo Fernandez-Guzman Sentence*, United States Attorney for the District of Wyoming (October 23, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Joseph Baumstarck Jr. Guilty Plea*, United States Attorney for the District of Wyoming (October 22, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Press Release by United States Attorney Relating to November 2008 Elections*, United States Attorney for the District of Wyoming (October 16, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Travis J. McGill Sentence*, United States Attorney for the District of Wyoming (October 16, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (October 9, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Harlan J. Hale Sentence*, United States Attorney for the District of Wyoming (October 2, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (September 25, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-James Michael Sentence*, United States Attorney for the District of Wyoming (August 7, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Clarence Rex Burnell Sentence*, United States Attorney for the District of Wyoming (July 25, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (July 24, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Cody J. Robinson Sentence*, United States Attorney for the District of Wyoming (June 26, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Sentences*, United States Attorney for the District of Wyoming (June 20, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office- Sentences*, United States Attorney for the District of Wyoming (June 5, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-XTO Energy Sentence*, United States Attorney for the District of Wyoming (May 22, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Arrest of Dr. Joseph Baumtrack, Jr.*, United States Attorney for the District of Wyoming (May 22, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office- Sentences*, United States Attorney for the District of Wyoming (May 15, 2008). Copy supplied.

Press Release, *Activity in the United States Attorney's Office-Kelly H. Rankin Appointed United States Attorney for the District of Wyoming*, United States Attorney for the District of Wyoming (May 6, 2008). Copy supplied.

Press Release, *Newly Formed Correctional Industries Advisory Board Set Plans in Motion*, Wyo. Dep't of Corrections (June 28, 2000). Copy supplied.

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

Since June 7, 2012, I have served as the Chief United States Magistrate Judge appointed by the United States District Court for the District of Wyoming. My authority is defined by 28 U.S.C. § 636. As a magistrate judge, I preside over a wide variety of federal civil and criminal matters. Regarding civil matters, the District of Wyoming randomly assigns cases to either a district judge or a magistrate judge. If a case is assigned to the magistrate judge, the parties then have the option to consent to my jurisdiction in which case I am authorized to preside over the trial, issue opinions on dispositive motions, issue orders on all pre-trial matters, and enter final judgment. The parties may also consent to a magistrate judge anytime 60 days before trial. In non-consent cases, I am referred matters by the designated district court judge to resolve non-dispositive motions and conduct mediations. Regarding felony criminal cases, I review and issue search and seizure warrants, conduct initial appearance, detention and preliminary hearings, arraignments, and conduct change of plea hearings upon consent of the parties. I handle

all aspects of the proceedings of misdemeanor cases, including guilty pleas and sentencings. I am also authorized to conduct a trial in a misdemeanor case. Finally, I assist with grand jury proceedings to include returns and jury selection, and participate in the governance of the court with the district judges.

During my tenure I have also been asked to periodically assist with cases in the Districts of Colorado and New Mexico. This is pursuant to 28 U.S.C. § 636(f) as agreed upon by the chief judges for each district. In both districts I have served as a referral judge and on civil matters in which the parties have consented to my authority. My duties have included mediations, civil trials, discovery disputes, and criminal matters, among others.

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

As a magistrate judge, I have presided over 30 trials: 9 civil jury trials, 3 civil bench trials, and 18 criminal bench trials.

- i. Of these cases, approximately what percent were:

jury trials:	30%
bench trials:	70%

- ii. Of these cases, approximately what percent were:

civil proceedings:	40%
criminal proceedings:	60%

- 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. *Applehunt v. Walgreen Co. Inc.*, No. 22-cv-138-KHR (D. Wyo.).

Plaintiff's three-month old daughter was prescribed Zantac for acid reflux. Defendant admitted its pharmacy mistakenly filled the prescription ten times higher than the pediatrician's prescribed dosage. The infant ingested the medication for three weeks, twice a day, before the mistake was discovered. Plaintiff sued defendant alleging permanent injuries to include chronic constipation. After a trial over which I presided, the jury found plaintiff failed to

prove the overdose caused damages to the child. No appeal was taken by either party.

Counsel for Plaintiff:

Diana Rhodes  
Rhodes Law Firm  
2015 Warren Avenue  
Cheyenne, WY 82001  
(307) 634-4444

Erin Vorhees  
Vorhees Law  
P.O. Box 3604  
Bentonville, AR 72712  
(479) 388-0789

Counsel for Defendant:

James Worthen  
Briana Smith  
Hall & Evans LLC  
152 North Durbin Street, Suite 404  
Casper, WY 82601  
(307) 333-6701

2. *Schultz v. Town of Jackson et al.*, No. 21-cv-158-KHR (D. Wyo.).

Plaintiff, a former lieutenant with the local police department, sued defendants for wrongful termination. Prior to his departure plaintiff wrote a blog, attempting to be humorous, informing the public about a closed investigation involving a minor. The blog received substantial criticism from some town officials and members of the public. This scrutiny resulted in his departure from the police department. Plaintiff claimed that defendants failed to properly follow procedures afforded to him by the Town of Jackson prior to forcing him to leave his position. Specifically, he accused defendants of violating his procedural and substantive due process rights under the Wyoming and United States Constitutions. After a jury trial over which I presided, defendants were held liable for constructive discharge and plaintiff was awarded \$235,000 in damages. No appeal was taken by any party.

Counsel for Plaintiff:

Kevin Gregory  
James Lubing  
Lubing, Gregory & Rectanus LLC



P.O. Box 3894  
Jackson, WY 83001  
(307) 733-7242

Counsel for Defendants:

John Bowers  
Bowers Law Firm PC  
P.O. Box 1550  
Afton, WY 83110  
(307) 885-1000

3. *Standish v. Jackson Hole Mountain Resort Corp.*, No. 19-cv-4-KHR, ECF No. 45 (D. Wyo. 2020), *aff'd*, 997 F.3d 1095 (10th Cir. 2021).

Mr. Standish and his fiancée were avid skiers. He was injured after striking an unmarked tree stump on a ski trail owned/operated by defendant Jackson Hole Mountain Resort. Plaintiffs' claims were for negligence and loss of consortium. On a motion for summary judgment, after the parties consented to my jurisdiction, I ruled in a diversity action that the Wyoming Recreational Safety Act precluded recovery. I held the Act, as a matter of law, dictates that the ski corporation owes no duty of care when involved with the inherent risks of skiing as applied to these facts. Opinion supplied. Plaintiffs appealed and the Tenth Circuit affirmed.

Counsel for Plaintiffs:

Gary L. Shockey  
Gary L. Shockey PC  
951 Werner Court, Suite 340  
Casper, WY 82601  
(307) 733-5974

Counsel for Defendant:

James K. Lubing  
Lubing Gregory & Rectanus LLC  
P.O. Box 3894  
Jackson, WY 83001  
(307) 733-7242

4. *Vidal v. AHC of Aurora*, No. 17-cv-746-KHR, 2018 WL 10948348 (D. Col. June 25, 2018).

This was a consent jurisdiction case from the District of Colorado. Plaintiff sued her former employer for past overtime compensation and retaliation under the Fair Labor Standards Act. She also sued under Colorado law for retaliation and

violation of a state minimum wage order. A jury ruled in favor of defendant on each claim. The parties filed post-trial motions to include plaintiff's motion for a new trial based in part on an inconsistent jury verdict. Defendant sought attorney's fees, asserting plaintiff's claims were substantially groundless. I denied each of their motions and held that neither party had met its burden for the relief sought. Neither party appealed.

Counsel for Plaintiff:

Andrew T. Brake  
Andrew T. Brake, P.C.  
3615 South Tamarac Drive  
Denver, CO 80237  
(303) 806-9000

Counsel for Defendant:

Jamie N. Cotter  
Jacob Foster Hollars  
Spencer Fane LLP – Denver  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203  
(303) 839-3800

5. *Bank of Jackson Hole v. Cook GS Inv. Partners, LP*, No. 14-CV-234-KHR, 2016 WL 9450458 (D. Wyo. May 11, 2016), 2017 WL 3449603 (D. Wyo. Jan. 30, 2017).

The parties consented to my jurisdiction. The initial dispute was whether related actions should be consolidated. I ruled in favor of consolidating the two cases, both of which related to an alleged breach of a guaranty agreement by the defendant and malfeasance on the part of the plaintiff. I later granted a motion for summary judgment in favor of the bank, holding the guarantor violated the statute of limitations by failing to diligently pursue their claims. The case ultimately settled without an appeal.

Counsel for Plaintiff:

Patrick J. Murphy  
Scott P. Klosterman  
Williams Porter Day & Neville  
159 North Wolcott, Suite 400  
Casper, WY 82602  
(307) 265-0700

Counsel for Defendant:

David F. Evans  
Robert John Walker  
Hickey & Evans  
1800 Carey Avenue, Suite 700  
Cheyenne, WY 82003  
(307) 634-1525

Taylor S. Carroll  
Williams Anderson Ryan & Carroll LLP  
10245 Siegan Lane, Suite C  
Baton Rouge, LA 70810  
(225) 412-7121

6. *Hedquist v. Patterson*, No. 14-CV-45-ABJ, 2016 WL 8453415 (D. Wyo. July 1, 2016), 215 F. Supp. 3d 1237 (D. Wyo. 2016).

In an action under 42 U.S.C. § 1983, a city councilman sued the city manager and city for retaliation after plaintiff criticized the city manager and was later denied construction contracts. The city manager also opened an investigation against plaintiff for alleged workplace violence. Several outside attorneys participated in the investigation. The primary issue before me was whether some of the statements from the investigation were privileged, as argued by defendants. I ruled that the statements were protected by the attorney-client privilege and that no waiver of the privilege had occurred under the common-interest doctrine. Plaintiff appealed and the district judge upheld my ruling. Ultimately, the case was appealed to the Tenth Circuit Court of Appeals where the court upheld the district judge's affirmation of my privilege and lack of waiver rulings. The court also affirmed the district judge's dismissal of the case because plaintiffs failed to present sufficient evidence to demonstrate a violation of a constitutional right.

Counsel for Plaintiffs:

Frank R. Chapman  
Chapman Valdez & Lansing  
125 West 2nd Street  
Casper, WY 82602  
(307) 237-1983

John H. Robinson  
Marci Anne Crank Bramlet  
Robinson Bramlet LLC  
172 Center Street, Suite 202  
P.O. Box 3189  
Jackson, WY 83001  
(307) 733-7703

Counsel for Defendants:

Bruce A. Salzburg  
5021 King Arthur Way  
Cheyenne, WY 82009  
(307) 634-0623

John A. Masterson  
Welborn Sullivan Meck & Tooley  
159 North Wolcott Street, Suite 220  
Casper, WY 82601  
(307) 234-6907

Alaina Marie Stedillie  
Crowley Fleck, PLLPP  
111 West 2nd Street, Suite 220  
Casper, WY 82601  
(307) 265-2279

Kay Lynn Bestol  
Sundahl Powers Kapp & Martin LLC  
P.O. Box 328  
Cheyenne, WY 82003  
(307) 632-6421

7. *Cleary v. Wind Quarry LLC et al.*, No. 15-cv-189-KHR (D. Wyo.).

In a breach of contract dispute plaintiff sued for a profits interest after helping defendants develop a wind farm business. The parties consented to my jurisdiction. Prior to trial, I ruled that communications addressing plaintiff's compensation were not protected by the attorney-client privilege. An advisory jury determined that a contract was agreed upon by the parties and ruled in favor of plaintiff. Following the trial, I ordered the parties to mediate on the issue of damages. They resolved the case in its entirety at the mediation. No party appealed.

Counsel for Plaintiff:

Lucas E. Buckley  
Sean M. Larson  
Hathaway & Kunz  
2515 Warren Avenue, Suite 500  
Cheyenne, WY 82001  
(307) 634-7723

Counsel for Defendants:

Jeffrey S. Pope  
 Holland & Hart  
 2515 Warren Avenue, Suite 450  
 P.O. Box 1347  
 Cheyenne, WY 82003  
 (307) 778-4223

Steven T. Collis  
 University of Texas School of Law  
 727 East Dean Keeton Street  
 Austin, TX 78705  
 (512) 475-9090

8. *Black Card LLC v. Visa USA Inc.*, No. 15-cv-27-SWS, 2015 WL 11090695 (D. Wyo. Aug. 3, 2015), 2015 WL 11108642 (D. Wyo. Aug. 7, 2015), 2020 WL 9812009 (D. Wyo. Dec. 2, 2020).

As the referral judge, I was tasked early in the case with deciding a motion to recuse defense counsel over a purported conflict of interest. The litigation was over the legitimacy and scope of a promotional and marketing agreement between the parties and whether defendant was unjustly enriched. Plaintiff claimed defendant owed millions of dollars from the breach of contract. Plaintiff asserted that counsel for defendant should be recused because of a prior attorney-client relationship with plaintiff. Following an evidentiary hearing, I ruled in favor of plaintiff and ordered defense counsel disqualified. My decision was appealed to the district judge and affirmed. Because the evidentiary hearing included privileged communications the orders were placed under seal. In addition to the motion to recuse, I ruled on numerous discovery and pre-trial disputes. The parties ultimately settled the case.

Counsel for Plaintiff:

Jason Anthony Neville  
 The Spence Law Firm LLC  
 252 East Second Street, Suite 101  
 Casper, WY 82601  
 (307) 337-3833

Billie Addleman  
 Hirst Applegate LLP  
 1720 Carey Avenue, Suite 400  
 Cheyenne, WY 82003  
 (307) 632-0541

James J. Kovacs  
Constantine Cannon LLP  
1001 Pennsylvania Avenue, Northwest  
Washington, DC 20004  
(202) 204-3500

Adam Owen Glist  
Constantine Cannon LLP  
335 Madison Avenue  
9th Floor  
New York, NY 10017  
(212) 350-2776

Counsel for Defendant:

John A. Masterson  
Welborn Sullivan Meck & Tooley  
159 North Wolcott Street, Suite 220  
Casper, WY 82601  
(307) 234-6907

Michael J. McCue  
Meng Zhong  
Lewis Roca Rothgerber Christie LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
(702) 949-8200

Mistee Lyn Elliott  
Crowley Fleck PLLP  
P.O. Box 6550  
Sheridan, WY 82801  
(307) 673-3019

9. *Davenport v. Menard Inc. et al.*, No. 14-cv-222-KHR (D. Wyo.).

The parties consented to my jurisdiction in this negligence action, which stemmed from plaintiff falling in a rock-filled island in the store's parking lot. Prior to trial, I granted in part and denied in part challenges to each side's experts. I also denied a motion for summary judgment by defendant landscaper. After a five-day trial, the jury found in favor of both defendants. I denied plaintiff's motion for a new trial. Opinion supplied. No appeal was filed.

Counsel for Plaintiff:

Arnold A. Vickery

Vickery & Shepherd LLP  
10000 Memorial Drive, Suite 750  
Houston, TX 77024  
(713) 526-1100

Frederick J. Harrison  
Frederick J. Harrison PC  
1813 Carey Avenue  
Cheyenne, WY 82001  
(307) 324-6639

Counsel for Defendants:

Loyd E. Smith  
Coal Creek Law LLC  
1800 Carey Avenue, Suite 700  
Cheyenne, WY 82003  
(307) 634-1525

Rebecca A. Lewis  
1818 Hunters Court  
Steamboat Springs, CO 80487  
(307) 760-5391

10. *Willoughby v. Hanson et al.*, No. 12-cv-210-SWS (D. Wyo.).

Plaintiff claimed his civil rights were violated when he was wrongfully convicted of murder in state court after law enforcement officials withheld exculpatory evidence during his criminal trial. The parties requested that I mediate the dispute. The case settled after mediation. There was no appeal.

Counsel for Plaintiff:

Ian Sandefer  
Sandefer & Woolsey, Trial Attorneys LLC  
143 North Park Street  
Casper, WY 82601  
(307) 232-1977

Robert G. Pahlke  
Robert Pahlke Law Group PC LLO  
2425 Circle Drive, Suite 200  
Scottsbluff, NE 69361  
(308) 633-4444

Counsel for Defendants:

Thomas A. Thompson  
MacPherson Kelly & Thompson  
616 West Buffalo Street  
Rawlins, WY 82301  
(307) 324-2713

Hon. Melissa E. Westby  
Second Judicial District Court  
P.O. Box 1106  
Laramie, WY 82073  
(307) 777-7822

Thomas W. Rumpke  
Williams, Porter, Day & Neville P.C.  
702 Randall Avenue  
Cheyenne, WY 82001  
(307) 637-5575

- 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. *Peter D. Holdings LLC v. Wold Oil Properties, LLC*, No. 17-CV-212-KHR, 2020 WL 5406238 (D. Wyo. Aug. 12, 2020), *aff'd*, 2022 WL 351164 (10th Cir. Feb. 7, 2022).

Counsel for Plaintiff:

J David Jorgenson  
Mark A. Waller  
Waller Jorgenson Warzynski PLLC  
401 South Boston Avenue  
Suite 500  
Tulsa, OK 74103  
(918) 993-4288

Tyler Thomas Dugger  
Tolliver Law Firm PC  
P.O. Box 1913  
Billings, MT 59103  
(406) 256-9600

Counsel for Defendants:



Scott P. Klosterman  
 Thomas F. Reese  
 Williams Porter Day & Neville  
 159 North Wolcott, Suite 400  
 P.O. Box 10700  
 Casper, WY 82602  
 (307) 265-0700

2. *Standish v. Jackson Hole Mountain Resort Corp.*, No. 19-cv-4-KHR, ECF No. 45 (D. Wyo. 2020), *aff'd*, 997 F.3d 1095 (10th Cir. 2021). Opinion previously supplied in response to Question 13c.

Counsel for Plaintiffs:

Gary L. Shockey  
 Gary L. Shockey PC  
 951 Werner Court, Suite 340  
 Casper, WY 82601  
 (307) 690-8060

Counsel for Defendant:

James K. Lubing  
 Lubing Gregory & Rectanus, LLC  
 P.O. Box 3894  
 Jackson, WY 83001  
 (307) 733-7242

3. *Buckham v. Rife*, No. 18-cv-139-KHR, ECF No. 169 (D. Wyo. Feb. 9, 2021). Opinion supplied.

Counsel for Plaintiff:

Terry J. Harris  
 Harris, Harris & Quinn PC  
 P.O. Box 368  
 Cheyenne, WY 82003  
 (307) 638-6431

Counsel for Defendants:

Maddisen L. Gorman  
 Trihydro Corporation  
 1252 Commerce Drive  
 Laramie, WY 82070  
 (307) 633-9502

Adrian K. Kowalski  
Sublette County Attorney's Office  
43 East Pine Street  
Pinedale, WY 82941  
(307) 367-2300

4. *Nautica Ent., LLC v. Allied Debt Collection of Virginia, LLC*, No. 19-CV-174-KHR, ECF No. 115 (D. Wyo. July 30, 2021). Opinion supplied.

Counsel for Plaintiff:

Brent R. Cohen  
Lewis Roca Rothgerber Christie LLP  
1630 Welton Street, Suite 200A  
Denver, CO 80202  
(303) 623-9000

Dennis R. Rose  
Eric B. Levasseur  
Hahn Loeser & Parks LLP  
200 Public Square, Suite 2800  
Cleveland, OH 44114  
(216) 274-2357

Counsel for Defendant:

Jason Tangeman  
Nicholas & Tangeman LLC  
170 North 5th Street  
P.O. Box 928  
Laramie, WY 82073  
(307) 742-7140

5. *Roberts v. Jackson Hole Mountain Resort Corp.*, No. 16-CV-24-KHR, 2017 WL 5247912 (D. Wyo. Jan. 19, 2017), *aff'd*, 884 F.3d 967 (10th Cir. 2018).

Counsel for Plaintiffs:

Robert E. Schroth, Sr.  
Schroth & Schroth  
610 West Broadway, Suite 201  
P.O. Box 8827  
Jackson, WY 83001  
(307) 733-5610

Counsel for Defendant:

James K. Lubing  
Lubing Gregory & Rectanus, LLC  
P.O. Box 3894  
Jackson, WY 83001  
(307) 733-7242

6. *Tonjes v. Park Cty. Sheriff's Off.*, No. 17-cv-487-KHR, 300 F. Supp. 3d 1308 (D. Colo. 2018).

Counsel for Plaintiff:

Adam William Ray  
Williams & Ray-Denver  
44 Cook Street  
Suite 100  
Denver, CO 80206  
(303) 218-6625

John A. Culver  
Benezra & Culver P.C.  
633 17th Street  
Colorado Plaza Tower One, Suite 1450  
Denver, CO 80202  
(303) 716-0254

Counsel for Defendants:

Timothy Peter Schimberg  
Eden R. Rolland  
Fowler Schimberg Flanagan & McLetchie, P.C.  
22736 Meadowview Road  
Morrison, CO 80465  
(303) 697-0574

7. *Benson v. Berryhill*, No. 1:17-CV-00726-KHR, 2018 WL 1470192 (D. Colo. Mar. 26, 2018).

Counsel for Plaintiff:

Barbara Schuman Heckler  
Joseph Anthony Whitcomb  
Whitcomb Selinsky McAuliffe PC  
2000 South Colorado Boulevard, Tower 1, Suite 9500  
Denver, CO 80222

(303) 534-1958

Counsel for Defendant:

Kirsten Anna Westerland  
Social Security Administration-Denver  
Office of the General Counsel, Region VIII  
1961 Stout Street, Suite 4169  
Denver, CO 80294  
(303) 844-1949

8. *Bendinelli v. Metro. Prop. & Cas. Ins. Co.*, No. 1:17-CV-00978-KHR, 2018 WL 11025412 (D. Colo. July 23, 2018).

Counsel for Plaintiff:

Marc Frank Bendinelli  
Bendinelli Law Firm PC-Westminster  
9035 Wadsworth Parkway, Suite 4000  
Westminster, CO 80021  
(303) 940-9900

Counsel for Defendants:

Justin Hans Zouski  
Tucker Holmes PC  
7400 East Caley Avenue  
Quebec Centre II, Suite 300  
Centennial, CO 80111  
(303) 694-9300

Meloney Cargil Perry  
Perry Law P.C.  
10440 North Central Expressway, Suite 600  
Dallas, TX 75231  
(214) 265-6201

9. *Starrett v. City of Lander*, No. 15-CV-200-KHR, 2016 WL 9649876 (D. Wyo. Oct. 24, 2016), *aff'd*, 699 F. App'x 805 (10th Cir. 2017).

Counsel for Plaintiff:

Dion J. Custis  
400 East 20th Street  
Cheyenne, WY 82003  
(307) 638-2442

Counsel for Defendants:

Richard Rideout (Deceased)

Justin Ashkhan Daraie  
Long Reimer Winegar Beppler LLP  
270 West Pearl, Suite 103  
P.O. Box 3070  
Jackson, WY 83001  
(307) 734-1908

10. *Schneider v. United States*, No. 15-cv-204-KHR, ECF No. 27. (D. Wyo. Dec. 1, 2016). Opinion supplied.

Counsel for Plaintiff:

James E. Fitzgerald  
Fitzgerald Law Offices  
2108 Warren Avenue  
Cheyenne, WY 82001  
(307) 634-4000

Rhonda Sigrist Woodard  
717 Rodeo Avenue  
Cheyenne, WY 82009  
(307) 631-8051

Robert W. Tiedeken  
7324 Tumbleweed Drive  
Cheyenne, WY 82009  
(307) 630-0416

Counsel for Defendant:

C. Levi Martin  
Nicholas Vassallo  
United States Attorney's Office  
P.O. Box 668  
Cheyenne, WY 82003  
(307) 772-2124

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

*Safeway Stores 46 Inc. v. WY Plaza LC*, No. 19-CV-143-R, 2020 WL 6688606 (D. Wyo. Oct. 20, 2020), *vacated and remanded*, 65 F.4th 474 (10th Cir. 2023),

*cert. denied*, No. 23-204, 2023 WL 7287147 (U.S. Nov. 6, 2023).

Based on a search of legal databases and my records, certiorari has not been requested or granted in any of my other 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.

*Safeway Stores 46 Inc. v. WY Plaza LC*, No. 19-CV-143-R, 2020 WL 6688606 (D. Wyo. Oct. 20, 2020), *vacated and remanded*, 65 F.4th 474 (10th Cir. 2023), *cert. denied*, No. 23-204, 2023 WL 7287147 (U.S. Nov. 6, 2023). Plaintiff sued for restitution and declaratory judgment after making commercial lease overpayments to defendant for 12 years. The lease permitted plaintiff to deduct construction costs from the payments, but plaintiff failed to make these deductions and defendant refused plaintiff's later demand for repayment. On cross motions for summary judgment, I denied plaintiff's restitution claim because the parties' obligations had been set out in a written contract. I also found plaintiff's delay in filing suit prevented recovery under the doctrine of laches and ruled in favor of defendant. The Tenth Circuit reversed and remanded for further proceedings. On the restitution claim the court held, after predicting how the Wyoming Supreme Court would rule, plaintiff could rely on the contract under these facts and granted restitution in favor of plaintiff. On the declaratory judgment claim, the court held plaintiff was not given adequate notice and opportunity to respond when I largely granted summary judgment on laches. The court also found defendant lacked sufficient evidence on their assertion of prejudice, which entitled plaintiff to summary judgment. The case is currently before me on remand.

*Blackburn v. United States*, No. 20-8005, 2021 WL 3027979 (10th Cir. July 19, 2021). This was a Federal Tort Claim Act (FTCA) case involving a sexual assault by a gynecologist upon his patient. His nurse was also sued for not being attentive. At summary judgment, I dismissed with prejudice all eight claims on the ground that the government retained its sovereign immunity arising out of an intentional assault or battery. Opinion supplied. The appellate court found the claim against the nurse may fall within the FTCA's exception to the exception by covering an assault or battery arising from her inattention. On that claim, the court reversed and remanded for further proceedings. On remand, I dismissed the remaining claim on the government's motion. No appeal was taken.

*Miller v. Johnson*, No. 14-CV-231-R, 2015 WL 12916333 (D. Wyo. July 22, 2015), *rev'd*, 639 F. App'x 558 (10th Cir. 2016). I dismissed plaintiff's complaint for insufficient service of defendant under Wyoming's nonresident motorist statute. I determined that because defendant was a resident of Wyoming, this

statute did not apply. The appellate court reversed, finding I construed the statute too narrowly and that it applies to any person who cannot personally be served within the state.

*United States of America v. One Cessna Airplane et al.*, No. 14-cv-151-ABJ (D. Wyo. Dec. 23, 2015). Copy supplied. In this asset forfeiture action, I found under the supplemental rules for asset forfeiture the government's request for interrogatories to claimant was proper to determine his relationship with the subject property. This was done without first determining whether the claimant had standing; a potentially dispositive determination. The district judge reversed and determined that standing was a prerequisite to issue the interrogatories. In its order, the court affirmatively determined the claimant had standing and thus concluded the interrogatories should not have issued. The parties later settled the case without a further appeal.

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

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

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

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

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

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

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

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

- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

As a United States Magistrate Judge, I follow the federal recusal statutes and Code of Conduct for United States Judges. I assess recusal concerns in accordance with 28 U.S.C. § 455. Whether specifically addressed by the Code of Conduct for United States Judges, the recusal statutes, or solely based on my interest in maintaining impartiality or the appearance of impartiality, I would disclose any potential conflicts and recuse myself as appropriate. I automatically recuse myself in cases in which my sister and brother-in-law's law firm has an appearance or in matters in which I was a government lawyer or supervisor. Our court also has an automatic recusal system through CM/ECF for this particular law firm, government cases, and any other conflicts that may arise. I personally, along with our entire chambers staff, closely watch to ensure the automatic recusal system through CM/ECF catches all conflicts.

No litigant or party has ever requested that I recuse myself due to an asserted conflict of interest.

**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 1998, I was elected to the position of Park County and Prosecuting Attorney in Park County, Wyoming.

From 1998 to 2003, I was elected to a county precinct committeeman position in Park County, Wyoming, on behalf of the Republican Party. In this capacity I attended county and state party meetings at which we discussed the election of candidates, rules and procedure, and party issues and platforms.

In 2002, I was re-elected as Park County and Prosecuting Attorney in Park County, Wyoming. I served in that position until 2003 when I was appointed to the position of Assistant United States Attorney in the United States Attorney's Office for the District of Wyoming.

In 2007, I was nominated by President George W. Bush to serve as the United



States Attorney for the District of Wyoming. In 2008, I was confirmed by the United States Senate. I remained in that position until 2010.

In 2010, I served as Counsel to the Governor for the Governor of Wyoming. I was appointed by Governor Dave Freudenthal. I served in that position until later in 2010 when I returned to the United States Attorney's Office as Criminal Chief.

I have not had any unsuccessful candidacies for elected 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.

From 1998 to 2000, I was elected by the Park County Republican Party to serve as a state precinct committeeman. In this capacity I attended county and state party meetings at which we discussed the election of candidates, rules and procedure, and party issues and platforms. I was not compensated for this position.

In 1999, I was appointed to serve as treasurer for U.S. Senator Craig Thomas' 2000 Senate Campaign. In this capacity I was responsible for reviewing and signing all documents to comply with federal election laws. This position was largely honorary. I was not compensated.

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

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

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

I did not serve as a clerk to a judge.

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

From May 1998 to January 1999, I had a part-time solo law practice. This occurred after I resigned from my position as Deputy Park County Attorney to run against the incumbent County Attorney. Most of this time period was devoted to the campaign. However, after winning the election and prior to taking office, I accepted some cases that were accomplished in short order prior to beginning my new position. My office was located at 1013 Alger Avenue, Cody, Wyoming 82414.

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

1994 – 1995  
 Lincoln County Attorney's Office  
 925 Sage Avenue  
 Kemmerer, Wyoming 83101  
 Deputy County Attorney

1995 – 1998  
 Park County Attorney's Office  
 1002 Sheridan Avenue  
 Cody, Wyoming 82414  
 Deputy County Attorney

1999 – 2003  
 Park County Attorney's Office  
 1002 Sheridan Avenue  
 Cody, Wyoming 82414  
 County Attorney

2003 – 2010; 2010 – 2012  
 United States Attorney's Office for the District of Wyoming  
 100 East "B" Street, Suite 2211  
 Casper, Wyoming 82601  
 Assistant United States Attorney (2003 – 2008)  
 United States Attorney (2008 – 2010)  
 Criminal Chief, Assistant United States Attorney (2010 – 2012)

2010  
 Office of the Governor, State of Wyoming  
 200 West 24th Street  
 Cheyenne, Wyoming 82002  
 Counsel to the Governor

- 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.

Other than as a magistrate judge, I have not served as a mediator or arbitrator.

- b. Describe:

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

Since law school, almost exclusively, I have been in the courtroom. I began as a state prosecutor in 1994 in the Lincoln County Attorney's Office and then transferred to the Park County Attorney's Office where I served as a deputy county attorney until 1998. In both locations I handled misdemeanor and felony criminal matters and gained extensive experience in the courtroom. I also was assigned to handle some civil matters on behalf of the county.

In 1998, I was elected to the position of Park County Attorney. I continued to work on misdemeanor and felony criminal matters along with all civil matters on behalf of the county. Prior to my election, and during my election campaign, I was a sole practitioner working on various civil cases.

In 2003, I was appointed to serve as an Assistant United States Attorney for the District of Wyoming. I was appointed as the lead attorney for the Organized Drug Enforcement Task Force (OCDEF) program. The cases I prosecuted were typically multi-defendant, complex, drug, and gun related cases. I also served as a Special Assistant United States Attorney in 2000 and again in 2002 to work on bank fraud cases that arose in Park County.

In 2008, I was appointed to serve as the United States Attorney for the District of Wyoming. I served in this capacity until 2010. During my tenure I oversaw the civil and criminal divisions within the office. I took an active role in the cases in both divisions and continued to appear in court.

Next, in 2010, I served as Counsel to Governor Dave Freudenthal. In this capacity I was the Governor's principal advisor by providing advice on agency rule making, legislation, tribal affairs, pardons, judicial appointments, and natural resource matters, among others.

Following my tenure in the Governor's Office, in 2010, I returned to the United States Attorney's Office to serve as the newly appointed United States Attorney's criminal chief. For more than two years, I oversaw the federal prosecution of all matters for the district.

In 2012, I was appointed to my current role as Chief Magistrate Judge for the District of Wyoming. In this capacity, I fully adjudicate civil matters with the consent of the parties to include conducting jury and bench trials. I also provide support to the district judges by handling their pretrial case management and conduct mediations. For criminal matters, I preside over

felony change of plea hearings, review and sign arrest and search and seizure warrants, conduct pretrial hearings such as preliminary exams, arraignments, and detention hearings, among others. I also conduct naturalization ceremonies, assist with grand jury proceedings, and assist in other districts to include New Mexico and Colorado.

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

As a state prosecutor, I handled all criminal matters from basic traffic violations to first degree homicides. I represented the people of each respective county. I also handled civil matters on behalf of Park County to include road disputes, personnel matters, and taxation. As a federal prosecutor, my area of specialty was in large complex drug investigations (OCDETF). I also handled other criminal matters to include white collar, firearm, immigration, and other offenses. In that role, I represented the people of the United States.

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

I regularly appeared in court throughout my legal career. The only exception was from mid-1998 to early 1999 when I was in private practice part-time while running for Park County Attorney and in 2010 when serving as Counsel to the Governor. From 2003 until 2012 as a federal prosecutor, I appeared in federal court 100 percent of the time. From 1994 until early 2003, I practiced almost exclusively in state court.

- i. Indicate the percentage of your practice in:

1. federal courts:	70%
2. state courts of record:	30%
3. other courts:	0%
4. administrative agencies:	0%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	35%
2. criminal proceedings:	65%

- 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 approximately 35 jury trials in state and federal court. I was sole counsel in all but approximately five. I was chief trial counsel in all matters except one in

which I was associate counsel.

I tried approximately 120 bench trials in state courts in Wyoming. I was sole counsel in all these cases.

i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 23% |
| 2. non-jury: | 77% |

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 United States Supreme Court.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

1. *United States v. Poteet*, No. 11-cr-164-F (D. Wyo.).

This was a federal prosecution of a woman who sought to hire someone to kill her ex-husband. The couple has four children together and the husband was a deputy county sheriff at the time. Defendant was angry at her husband over a child support dispute. In 2011, defendant discussed her plans with her boyfriend by telephone. Unbeknownst to her, the calls were being recorded as were subsequent meetings between them. During these encounters defendant revealed she had reached out to a motorcycle gang to see if they would murder her ex-husband. Later, an undercover agent, disguised as a member of this motorcycle gang, met with defendant in person. Defendant told the undercover agent she would be willing to pay him \$5,000 for the murder. She also provided the agent photographs, maps, and details about the best time and manner for the killing to occur. She was later arrested and prosecuted. She pled guilty to use of interstate commerce facilities in the commission of a murder-for-hire plot, for which she was sentenced to ten years in prison. As the Criminal Chief in the United States Attorney's

Office, I prosecuted this matter in 2011. My role entailed investigating and presenting the case to the grand jury and making argument to the court at the plea and sentencing hearings.

Judge:

Honorable Nancy Freudenthal  
United States District Court, District of Wyoming

Opposing Counsel:

David Weiss  
Federal Public Defender's Office  
214 West Lincolnway, Suite 31-A  
Cheyenne, WY 82001  
(307) 772-2788

2. *United States v. Cortez, Sr.*, No. 01-cr-16-B (D. Wyo.), *aff'd*, 252 F. App'x 887 (10th Cir. 2007), *cert. denied*, *Cortez v. United States*, 552 U.S. 1274 (2008).

This was a federal prosecution of a methamphetamine drug trafficker who left the country for four years and then returned using a false identity. He and his family were responsible for distributing multiple pounds of methamphetamine in central Wyoming over a two-year period. Defendant was an organizer and leader of the organization often conducting his drug business by telephone from the Republic of Mexico. Defendant was found guilty at trial of all four counts and was sentenced to 195 months in federal prison. The case was later appealed and affirmed by the Tenth Circuit Court of Appeals. I handled this matter from 2005 to 2007 as an Assistant United States Attorney. As the prosecutor, I investigated the case, presented it to the grand jury, tried it before a jury, and argued on behalf of the government at the sentencing hearing. I also prepared the brief and argued the case on appeal.

Judge:

Honorable Clarence A. Brimmer (Deceased)  
United States District Court, District of Wyoming

Opposing Counsel:

Daniel G. Blythe (retired)  
[Former Federal Public Defender, District of Wyoming]

3. *United States v. Hermosillo et al.*, No. 06-cr-139-D (D. Wyo.); *United States vs. Legarda et al.*, No. 05-cr-104-D (D. Wyo.); *United States v. Duran et al.*, No. 06-cr-140-D (D. Wyo.); *United States v. Hermosillo et al.*, No. 06-cr-161-D (D. Wyo.); *United States v. Gonzalez-Gutierrez*, 252 F. App'x 207 (10th Cir. 2007); *United States v. Holguin*, 258 F. App'x 177 (10th Cir. 2007); *United States v. Duran-Nevarez*, 287 F. App'x 688 (10th Cir. 2008); *United States v. Pappan*, 315 F. App'x 677 (10th Cir. 2009).

This was a federal prosecution of several related drug trafficking organizations operating predominantly in central Wyoming to include the Wind River Reservation. Foreign national drug traffickers transported multiple-pound quantities of methamphetamine to the area approximately every two weeks. In turn, they laundered money back to their home country. The investigating agents and I prepared and obtained several court-authorized intercept orders, which revealed the details of these organizations and how they operated together. One trafficker used his status as a significant source of supply to sexually abuse at least one minor female in exchange for methamphetamine. He was aided and abetted by several tribal members who also received methamphetamine from this source. Members of these related drug organizations were indicted on various federal violations to include drug, firearm, money laundering, and immigration offenses. More than 50 defendants were convicted and sentenced to various terms of imprisonment ranging from 33 months to 30 years. I prosecuted these matters from approximately 2006 until 2008 in my capacity as an Assistant United States Attorney. My role was as the chief prosecutor. I assisted with the investigation, presented each case to the grand jury, negotiated the plea agreements, and appeared in court for the plea and sentencing hearings.

Judge:

Honorable William F. Downes, Chief Judge (Retired)  
United States District Court, District of Wyoming

Opposing Counsel:

*United States v. Hermosillo, et al.*, No. 06-cr-139-D (D. Wyo.):

Peter Craig Silva  
Williams, Porter, Day & Neville  
159 North Wolcott, Suite 400  
P.O. Box 10700  
Casper, WY 82602  
(307) 265-0700

Michael David Lindsey  
7887 East Belleview Avenue, Suite 1100  
Englewood, CO 80111  
(303) 228-2270

Summer D. Bishop  
P.O. Box 42401  
Olympia, WA 98504  
(360) 753-6823

Keith Coleman  
Keith Coleman, Attorney at Law  
1015 37th Avenue Court

Greeley, CO 80634  
(970) 356-1990

Keith R. Nachbar  
Keith R. Nachbar, P.C.  
123 West 1st Street, Suite 205  
Casper, WY 82601  
(307) 473-8977

Donald Lee Tolin  
Tolin Law Offices, a Professional Corporation  
P.O. Box 50007  
Casper, WY 82605  
(307) 234-0864

Ronald G. Pretty  
Ronald G. Pretty, Attorney at Law  
1615 House Avenue  
Cheyenne, WY 82001  
(307) 634-0586

David L. Serelson  
1420 Sherri Mar Street  
Longmont, CO 80501  
(307) 630-7194

Daniel G. Blythe  
1760 I-25 Service Road  
Cheyenne, WY 82001  
(307) 632-9391

Lynn Pierce  
Butler, Landrum & Pierce  
720 Kipling Street, Suite 201  
Lakewood, CO 80215  
(303) 232-3888

John H. Robinson  
Robinson & Bramlet, LLC  
172 Center Street, Suite 202  
P.O. Box 3189  
Jackson, WY 83001  
(307) 733-7703

Peter David Menges  
Law Office of Peter D. Menges, PC



140 East 19th Avenue, Suite 300  
Denver, CO 80203  
(303) 333-8433

John S. Tatum  
Law Office of John S. Tatum  
12351 East Cornell Avenue  
Aurora, CO 80014  
(303) 750-6888

Patrick D. Butler  
Boulder District Court  
1777 6th Street  
Boulder, CO 80302  
(303) 441-3748

Corinne A. Burke Miller  
Campbell County Attorney's Office  
500 South Gillette Avenue, Suite B200  
Gillette, WY 82716  
(307) 682-4310

Ronald Gainor  
3250 Mary Street, Suite 405  
Miami, FL 33133  
(305) 537-2000

Timothy Charles Kingston  
Law Office of Tim Kingston, LLC  
11861 Bay Road West  
Foley, AL 36535  
(307) 638-8885

Robert Todd Ingram  
Metier Law Firm  
4828 South College Avenue  
Fort Collins, CO 80525  
(307) 237-3800

*United States vs. Legarda, et al.*, No. 05-cr-104-D (D. Wyo.):

Steven Jay Rozan  
Steven Jay Rozan and Associates  
5051 Westheimer Road  
Houston, TX 77056  
(713) 627-3608

Sean Hays Barrett  
214 West Lincolnway, Room 32  
P.O. Box 3018  
Cheyenne, WY 82001  
(307) 777-6229

Marc E. Milavitz  
1733 Canyon Boulevard  
Boulder, CO 80302  
(303) 442-2166

Daniel G. Blythe  
1760 I-25 Service Road  
Cheyenne, WY 82001  
(307) 632-9391

Michael H. Reese  
Michael Reese, LLC  
P.O. Box 4188  
Cheyenne, WY 82003  
(304) 630-5013

Christopher Grant Humphrey  
Christopher G. Humphrey, PC  
416 West 24th Street  
Cheyenne, WY 82001  
(307) 222-4946

*United States v. Duran, et al.*, No. 06-cr-140-D (D. Wyo.):

Daniel G. Blythe  
1760 I-25 Service Road  
Cheyenne, WY 82001  
(307) 632-9391

Richard Robert Jamieson  
Jamieson Law, LLC  
P.O. Box 163  
Alcova, WY 82620  
(307) 235-3575

Clifford J. Barnard  
4450 Arapahoe Avenue, Suite 100  
Boulder, CO 80303  
(303) 546-7947

Peter Craig Silva  
 Williams, Porter, Day & Neville  
 159 North Wolcott, Suite 400  
 P.O. Box 10700  
 Casper, WY 82602  
 (307) 265-0700

Keith Coleman  
 Keith Coleman, Attorney at Law  
 1015 37th Avenue Court Unit 201-A  
 Greeley, CO 80634  
 (970) 356-1990

Ronald G. Pretty  
 Ronald G. Pretty, Attorney at Law  
 1615 House Avenue  
 Cheyenne, WY 82001  
 (307) 634-0586

David L. Serelson  
 1420 Sherri Mar Street  
 Longmont, CO 80501  
 (307) 630-7194

Mark C. Anzman  
 10848 North Dragonis Drive  
 Citrus Springs, FL 34433  
 (307) 287-9975

Rick L. Koehmstedt  
 Schwartz, Bon, Walker & Studer, LLC  
 141 South Center Street, Suite 500  
 Casper, WY 82601  
 (307) 235-6681

Martha H. Eskesen  
 7887 East Belleview Avenue, Suite 1100  
 Denver, CO 80111  
 (303) 228-1668

Joelle Viola Hadley-Day  
 Botten Law Office  
 219 Coffeen Avenue  
 Sheridan, WY 82801  
 (307) 673-6610

Terry J. Harris  
Harris, Harris & Quinn, PC  
P.O. Box 368  
Cheyenne, WY 82003  
(307) 638-6431

Kerry Hada  
6426 South Quebec Street  
Centennial, CO 80111  
(303) 771-3030

Kirkland L. Brush  
Law Office of Kirk Brush  
155 East Boardwalk Drive, Suite 400  
Fort Collins, CO 80525  
(970) 224-9281

Marci Anne Crank Bramlet  
Robinson & Bramlet, LLC  
400 East 1st Street, Suite 202  
Casper, WY 82601  
(307) 235-8777

Thomas R. Smith  
Chapman Valdez & Lansing  
P.O. Box 2710  
Casper, WY 82602  
(307) 237-1983

Richard J. Szekely (Deceased)

Sky D. Phifer  
Phifer Law Office  
P.O. Box 1333  
Lander, WY 82520  
(307) 349-2198

Jeffrey Douglas Stanbury  
Stanbury & Strike, PC  
107 South Broadway, Suite 217  
Riverton, WY 82501  
(307) 463-0900

Wallace Edmond Trembath, III  
Casper City Attorney's Office

200 North David Street  
Casper, WY 82601  
(307) 235-7504

Neal R. Stelting  
Stelting & Gross, LLC  
P.O. Box 3159  
Jackson, WY 83001  
(307) 201-5330

John D. Bowers  
Bowers Law Firm  
685 South Washington  
P.O. Box 1550  
Afton, WY 83110  
(307) 885-1000

Thomas Edward Goodreid  
Goodreid Grant & Walta LLC  
7761 Shaffer Parkway Suite 105  
Littleton, CO 80127  
(303) 296-2048

Robert Todd Ingram  
Metier Law Firm  
4828 South College Avenue  
Fort Collins, CO 80525  
(307) 237-3800

Eric Joseph Palen  
Palen Law Offices, LLP  
539 Cassa Road  
P.O. Box 156  
Glendo, WY 82213  
(307) 735-4022

Sean Hays Barrett  
214 West Lincolnway, Room 32  
P.O. Box 3018  
Cheyenne, WY 82001  
(307) 777-6229

Megan Overmann Goetz  
Pence & MacMillan  
501 East Garfield Street  
P.O. Box 1285

Laramie, WY 82073  
(307) 745-3626

*United States v. Hermosillo, et al.*, No. 06-cr-161-D (D. Wyo.):

Peter Craig Silva  
Williams, Porter, Day & Neville  
159 North Wolcott, Suite 400  
P.O. Box 10700  
Casper, WY 82602  
(307) 265-0700

Michael David Lindsey  
7887 East Belleview Avenue, Suite 1100  
Englewood, CO 80111  
(303) 228-2270

Mitchell Baker  
Baker Law Group  
1543 Champa Street, Suite 400  
Denver, CO 80202  
(303) 592-7353

Ryan Patrick Healy  
Healy Law Firm  
49 South Main Street  
P.O. Box 605  
Sheridan, WY 82801  
(307) 672-7437

Richard Bruce Lipka (Deceased)

4. *United States v. Goodman et al.*, No. 05-cr-132-D (D. Wyo.); *United States v. Goodman et al.*, No. 05-cr-133-D (D. Wyo.); *United States v. Goodman*, 145 F. App'x 282 (10th Cir. 2005); *United States v. Goodman*, 337 F. App'x 756 (10th Cir. 2009); *United States v. Griebel*, 312 F. App'x 93 (10th Cir. 2008).

This was a federal prosecution of a drug trafficking organization that conducted the illicit distribution of methamphetamine, marijuana, and prescription drugs on the Wind River Reservation in central Wyoming. The Goodman drug trafficking operation was comprised predominately of family members to include the grandparents, parents, and children – more than 20 family members were involved. The investigation included the use of several court-authorized intercepts. The investigation revealed the Goodmans served 20 to 50 drug customers per day from one residence located on the Reservation. The principal source of the drugs was a man who transported the drugs from Mexico to the Reservation. All defendants were convicted and sentenced. Of significance was the

involvement of a family member who served as a tribal court judge at the time of her arrest. As an aider and abettor, she received a sentence of 63 months. Other sentences ranged from one year to 30 years. I prosecuted these matters from approximately 2005 until 2007 in my capacity as an Assistant United States Attorney. My role involved investigating the case, preparing and presenting the court-authorized intercept orders to the court, negotiating plea agreements, trying a two-week trial before a jury, and appearing at the plea and sentencing hearings.

Judge:

Honorable William F. Downes, Chief Judge (Retired)  
United States District Court, District of Wyoming

Opposing Counsel:

*United States v. Goodman et al.*, No. 05-cr-132-D (D. Wyo.):

Vincent J. Horn, Jr (Deceased)

Daniel G. Blythe  
1760 I-25 Service Road  
Cheyenne, WY 82001  
(307) 632-9391

Peter Craig Silva  
Williams, Porter, Day & Neville  
159 North Wolcott, Suite 400  
P.O. Box 10700  
Casper, WY 82602  
(307) 265-0700

Melville I. Dunn (Deceased)

Corinne A. Burke Miller  
Campbell County Attorney's Office  
500 South Gillette Avenue, Suite B200  
Gillette, WY 82716  
(307) 682-4310

Scott M. Powers  
315 West Lincolnway, Suite A1  
Cheyenne, WY 82001  
(307) 638-4486

Michael H. Reese  
Michael Reese, LLC  
The Colony Building

P.O. Box 4188  
Cheyenne, WY 82003  
(307) 630-5013

*United States v. Goodman et al.*, No. 05-cr-133-D (D. Wyo.):

Vincent J. Horn, Jr (Deceased)

James H. Barrett (Deceased)

Daniel G. Blythe  
1760 I-25 Service Road  
Cheyenne, WY 82001  
(307) 632-9391

Jamie Marie Woolsey  
Sandefer & Woolsey, Trial Lawyers, LLC  
143 North Park Street  
Casper, WY 82601  
(307) 232-1977

Sean Hays Barrett  
214 West Lincolnway, Room 32  
P.O. Box 3018  
Cheyenne, WY 82001  
(307) 777-6229

Rick L. Koehmstedt  
Schwartz, Bon, Walker & Studer, LLC  
141 South Center Street, Suite 500  
Casper, WY 82601  
(307) 235-6681

Michael H. Reese  
Michael Reese, LLC  
P.O. Box 4188  
Cheyenne, WY 82003  
(304) 630-5013

Richard Robert Jamieson  
Jamieson Law, LLC  
P.O. Box 163  
Alcova, WY 82620  
(307) 235-3575

Ronald L. Brown (Deceased)



Loretta Howieson Kallas  
 Uinta County Attorney's Office  
 225 9th Street  
 P.O. Box 580  
 Evanston, WY 82931  
 (307) 783-0550

Donald Eugene Miller  
 Miller Law Firm  
 P.O. Box 4191  
 Cheyenne, WY 82003  
 (307) 630-4211

David M. Gosar  
 785 Powderhorn Lane  
 P.O. Box 4801  
 Jackson, WY 83001  
 (307) 732-1000

Thomas B. Jubin  
 Jubin & Zerga  
 2614 Pioneer Avenue  
 P.O. Box 943  
 Cheyenne, WY 82003  
 (307) 637-4965

Wendy J. Curtis Palen  
 Palen Law Offices, LLP  
 P.O. Box 156  
 Glendo, WY 82213  
 (307) 735-4022

Ronald G. Pretty  
 Ronald G. Pretty, Attorney at Law  
 1615 House Avenue  
 Cheyenne, WY 82001  
 (307) 634-0586

Honorable Thomas L Lee  
 Laramie County Circuit Court, 1st Judicial District of Wyoming  
 309 West 20th Street, Room 2300  
 Cheyenne, WY 82001  
 (307) 633-4298

Mary Maury Dunn

100 North Center Street, 7th Floor  
Casper, WY 82602  
(307) 266-0751

Christopher S. Leigh  
310 East Broadway  
P.O. Box 1094  
Jackson, WY 83001  
(307) 733-7735

Thomas R. Smith  
Chapman Valdez & Lansing  
125 West 2nd Street  
P.O. Box 2710  
Casper, WY 82602  
(307) 237-1983

Ericka S. Smith  
Ericka S. Smith LLC  
409 East 17th Street  
Cheyenne, WY 82001  
(307) 421-8357

W. Keith Goody  
Law Office of W. Keith Goody  
26605 NW 96th Street  
Battleground, WA 98604  
(307) 690-5562

5. *United States v. Jimenez et al.*, No. 04-cr-107-D (D. Wyo.); *United States v. Cano-Varela*, 497 F.3d 1122 (10th Cir. 2007); *United States v. Parra*, 366 F. App'x 954 (10th Cir. 2010); *United States v. Parra*, 414 F. App'x 167 (10th Cir. 2011).

This was a federal prosecution of a drug trafficking organization that conducted the illicit distribution of methamphetamine and marijuana in central Wyoming and western Nebraska. Thirty-four defendants were charged in one indictment – the largest ever in Wyoming, on various drug, money laundering, and firearm related violations. The investigation included the District of Wyoming's first use of federal court-authorized intercepts. The recorded phone calls revealed that this organization transported more than 100 pounds of methamphetamine and more than 1,000 pounds of marijuana to the District of Wyoming. From there, the drugs were redistributed to numerous people in Wyoming and Nebraska. All 32 defendants apprehended were convicted and sentenced from one year to 30 years. I prosecuted this matter from 2005 to 2006 in my capacity as an Assistant United States Attorney. As the lead prosecutor, I was involved in the investigation, preparing and presenting the court-authorized intercept applications to the court, negotiating plea agreements, and appearing in court for the plea and sentencing

hearings.

Judge:

Honorable William F. Downes, Chief Judge (Retired)  
United States District Court, District of Wyoming

Opposing Counsel:

Donald L. Fuller  
Fuller & Semerad LLC  
242 South Grant  
Casper, WY 82601  
(307) 265-3455

Vincent J. Horn, Jr (Deceased)

Christopher Grant Humphrey  
Christopher G. Humphrey, PC  
416 West 24th Street  
Cheyenne, WY 82001  
(307) 222-4946

Eric Joseph Palen  
Palen Law Offices, LLP  
539 Cassa Road  
P.O. Box 156  
Glendo, WY 82213  
(307) 735-4022

Honorable Thomas L. Lee  
Laramie County Circuit Court, 1st Judicial District of Wyoming  
309 West 20th Street, Room 2300  
Cheyenne, WY 82001  
(307) 633-4298

Leonard A. Kaumo (Deceased)

Nadine McLeod  
P.O. Box 50863  
Casper, WY 82605  
(307) 265-5412

Sean Hays Barrett  
214 West Lincolnway, Room 32  
P.O. Box 3018  
Cheyenne, WY 82001

(307) 777-6229

John D. Bowers  
Bowers Law Firm  
685 South Washington  
P.O. Box 1550  
Afton, WY 83110  
(307) 885-1000

Terry J. Harris  
Harris, Harris & Quinn, PC  
2618 Warren Avenue  
Cheyenne, WY 82001  
(307) 638-6431

Gay Vanderpoel Woodhouse  
Woodhouse, Roden, Nethercott, LLP  
1912 Capitol Avenue, Suite 500  
P.O. Box 1888  
Cheyenne, WY 82003  
(307) 432-9399

Lisa M. Barrett-Oliver  
563 Manorwood Lane  
Louisville, CO 80027  
(303) 927-9852

Peter Craig Silva  
Williams, Porter, Day & Neville  
159 North Wolcott, Suite 400  
P.O. Box 10700  
Casper, WY 82602  
(307) 265-0700

David L. Serelson  
1420 Sherri Mar Street  
Longmont, CO 80501  
(307) 630-7194

Frank R. Chapman  
Chapman Valdez & Lansing  
125 West 2nd Street  
P.O. Box 2710  
Casper, WY 82602  
(307) 237-8383

Thomas B. Jubin  
Jubin & Zerga  
2614 Pioneer Avenue  
P.O. Box 943  
Cheyenne, WY 82003  
(307) 637-4965

W Thomas Sedar  
898 Southeast Walters Terrace  
Port St. Lucie, FL 34983  
(772) 333-0082

Ronald G. Pretty  
Ronald G. Pretty, Attorney at Law  
1615 House Avenue  
Cheyenne, WY 82001  
(307) 634-0586

Donald Eugene Miller  
Miller Law Firm  
P.O. Box 4191  
Cheyenne, WY 82003  
(307) 630-4211

John H. Robinson  
Robinson & Bramlet, LLC  
P.O. Box 3189  
Jackson, WY 83001  
(307) 733-7703

Daniel G. Blythe  
1760 I-25 Service Road  
Cheyenne, WY 82001  
(307) 632-9391

Robert R. Rose, III  
328 Carriage Drive  
Cheyenne, WY 82009  
(307) 421-8124

Michael D. Zwickl (Deceased)

W. Keith Goody  
Law Office of W. Keith Goody  
26605 Northwest 96th Street  
Battleground, WA 98604

(307) 690-5562

Stephanie Hewitt Bowen  
Stephanie Bowen, PC  
415 Mason Court #2  
Fort Collins, CO 80524  
(970) 416-7312

Jason M. Tangeman  
Nicholas & Tangeman, LLC  
170 North 5th Street  
P.O. Box 928  
Laramie, WY 82073  
(307) 742-7140

Kenneth Bert DeCock  
Plains Law Offices, LLP  
3838 Road 209  
Cheyenne, WY 82007  
(307) 675-1221

Loretta H. Kallas  
Uinta County Attorney's Office  
225 9th Street  
P.O. Box 580  
Evanston, WY 82931  
(307) 783-0550

Donald Lee Tolin  
Tolin Law Offices  
340 West B Street, Suite 203  
P.O. Box 50007  
Casper, WY 82605  
(307) 234-0864

David M. Gosar  
785 Powderhorn Lane  
P.O. Box 4801  
Jackson, WY 83001  
(307) 732-1000

6. *United States v. Magallanez*, No. 02-CR-125-D (D. Wyo.), *aff'd*, 408 F.3d 672 (10th Cir. 2005).

This was a federal prosecution of a methamphetamine drug trafficker in northwestern Wyoming. Several of his associates cooperated with the government. Following a trial,

the jury convicted him of the lone offense for which he was charged. In a special interrogatory, the jury found his foreseeable drug quantity was less than that with which he was charged. At sentencing, the court found that his relevant conduct under the United States Sentencing Guidelines was in line with his initial charge. This conflict was the principal issue raised on appeal. Defendant was sentenced to 120 months based on the higher quantity rather than a range of 63 to 78 months on the lower quantity. On appeal, the Court of Appeals for the Tenth Circuit held the trial court's determination of his relevant conduct was proper despite the finding of the jury. In the wake of the Supreme Court's sentencing guidelines decision in *Booker v. United States*, 543 U.S. 220 (2005), this case was often cited by the Tenth Circuit on the issue of the required standard of proof at sentencing for matters not required to be determined by a jury. I prosecuted this case in 2003 in my role as Assistant United States Attorney. This included investigating the case, presenting it to a grand jury, trying it before a jury, arguing for an appropriate sentence, and writing the brief and arguing the case before the Tenth Circuit Court of Appeals.

Judge:

Honorable William F. Downes, Chief Judge (Retired)  
United States District Court, District of Wyoming

Opposing Counsel:

Hardy Tate (Retired)

7. *State v. Kenyon*, No. 4321-COD (Fifth Judicial District, District Court, 2001), *aff'd*, 96 P.3d 1016 (Wyo. 2004).

This was a state prosecution of a first-degree murder case. Other charges included kidnapping, aggravated burglary, and battery (domestic violence). Defendant traveled from Nevada to Cody, Wyoming, and killed his estranged girlfriend's brother because he refused to reveal his sister's whereabouts. Prior to the killing, defendant attempted to duct tape the victim to a chair while pistol whipping the victim in the presence of the victim's fiancée and their two-year-old daughter. Approximately one week earlier, defendant held the girlfriend in an apartment for two days while he repeatedly assaulted her. After the homicide, defendant fled the area and was found approximately one month later in Las Vegas, Nevada. Following a two-week jury trial, defendant was convicted of all four counts, including first-degree murder. Under a new state law, he was the first defendant in Wyoming to be sentenced to life imprisonment without the possibility of parole. The matter was later appealed and affirmed by the Wyoming Supreme Court. I was the principal prosecutor and prosecuted this case from May 2001 until April 2002 in my capacity as Park County Attorney.

Judge:

Honorable Hunter Patrick, District Judge (Retired)  
Fifth Judicial District Court, State of Wyoming

Co-counsel:

Thayne Peterson  
 Peterson Legal Services  
 P.O. Box 1123  
 Lyman, WY 82937  
 (307) 786-2529  
 [Former Deputy County Attorney]

Opposing Counsel:  
 Wyatt Skaggs (Retired)  
 [Formerly Lead Death Penalty Counsel for State of Wyoming Public Defender's Office]

8. *State v. Pena*, No. 4312 -COD (Fifth Judicial District, District Court, 1996), *aff'd*, 98 P.3d 857 (Wyo. 2004).

This was a state prosecution of a first-degree murder case. Defendant killed his wife with multiple gun shots to her back. He then shot his wife's brother multiple times as he ran to his sister's aid. Defendant then fled the country for five years. While on the run defendant underwent plastic surgery to his face and fingers. Five years later a tip from a family member revealed his presence in a Colorado prison while he assumed a false identity. Following a one-week jury trial, defendant was convicted of first-degree murder for the death of his wife and second-degree murder for the death of her brother. He was sentenced to life imprisonment without the possibility of parole. The case was later appealed and affirmed by the Wyoming Supreme Court. I was the principal prosecutor and was involved in the case beginning in 1996 until defendant was apprehended and sentenced in 2002.

Judge:  
 Honorable John Perry, District Judge  
 Fifth Judicial District Court, State of Wyoming

Co-counsel:  
 Thayne Peterson  
 Peterson Legal Services  
 P.O. Box 1123  
 Lyman, WY 82937  
 (307) 786-2529  
 [Former Deputy County Attorney]

Opposing Counsel:  
 Wyatt Skaggs (Retired)  
 [Formerly Lead Death Penalty Counsel for State of Wyoming Public Defender's Office]

9. *State v. Vorhies*, No. Cr-0101-5-COD (Fifth Judicial District, Circuit Court, 2001);  
*State v. Cannady*, No. Cr-0101-4-COD (Fifth Judicial District, Circuit Court, 2001).

This was a state prosecution of two big horn sheep poachers. In December 2001, the two



defendants shot and killed two trophy sized rams. The hunting season was closed and neither man possessed a license. Prior to their demise, the sheep were well known to locals and tourists visiting the area just outside Yellowstone National Park. On the day of their crimes, the Wyoming Game and Fish Department investigators caught the two men with the decapitated heads of the animals concealed in their truck. The carcasses had been left for waste. Both men had a history of prior game and fish violations. Defendants were convicted by a jury of all charges to include wanton destruction of trophy game animals. They were each sentenced to one year in jail and ordered to pay \$16,000 in restitution. I was the lead prosecutor and prosecuted this case in 2001 and 2002 in my capacity as Park County Attorney.

Judge:

Honorable Bruce Waters, Circuit Court Judge  
Fifth Judicial Circuit Court, State of Wyoming

Co-counsel:

Dale D. Chiapuzio  
117 Charleston Lane  
Fate, TX 75189  
(214) 477-1926  
[Former Deputy County Attorney]

Opposing Counsel:

Wendy Press Sweeny  
P.O. Box 6545  
Sheridan, WY 82801  
(307) 347-2979

Honorable Edward H. Luhm  
Circuit Court, Fifth Judicial District  
P.O. Box 927  
Worland, WY 82401  
(307) 347-2702

10. *State v. Sanchez*, No. 4194-COD (Fifth Judicial District, District Court, 1999), *aff'd*, 41 P.3d 531 (Wyo. 2002).

This was a state prosecution of a second-degree murder case. A neighborhood argument escalated. Defendant went inside a residence and came out with a wooden club that he used to strike the victim in the head. The victim fell to the ground and was ultimately escorted to his residence by friends where he died in his sleep from blunt force trauma. After two weeks of trial, a jury took 30 minutes to find defendant guilty. He was then sentenced to life imprisonment. The case was later appealed and affirmed by the Wyoming Supreme Court. I was the principal prosecutor and participated in all aspects of the case in 1999 and 2000 as the Park County Attorney.

Judge:

Honorable Hunter Patrick, District Judge (Retired)  
Fifth Judicial District Court, State of Wyoming

Co-counsel:

Dale D. Chiapuzio [Former Deputy County Attorney]  
117 Charleston Lane  
Fate, TX 75189  
(214) 477-1926

Opposing Counsel:

Wyatt Skaggs (Retired)  
[Formerly Lead Death Penalty Counsel for State of Wyoming Public Defender's Office]

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 am responsible for a broad range of duties so it requires I find ways to efficiently process the cases before me. There are three activities that I have used to improve the operation of the court. First, in the early months of my tenure I adopted a new procedure for handling civil discovery disputes. The procedure entails requiring counsel to first confer about the dispute and then to call my office in an effort to work through the dispute informally. Over the years this approach has worked in approximately 80 percent of all discovery disputes. It saves the parties considerable time and money and it allows me to get to know the cases better by having informal conversations with the attorneys about their cases. The other activity I have pursued is encouraging case resolution at the earliest possible point in the litigation. This is a service I spend considerable time on by offering court involved mediations. By offering mediations to the parties, I am helping to provide certainty, cost control, closure, and client control over the outcome of their cases. The final activity I have pursued, through the willingness of the district judges, is my participation in the random assignment of civil cases. With the consent of the parties, I have helped reduce the workload of the district judges and provided trial date certainty for the parties. My consent cases have continued to grow since I took the bench in 2012.

I also take an active role in the administration of our court. The district judges include me in our regular administrative meetings. I am also tasked with overseeing the appointments of the Criminal Justice Act panel attorneys in all criminal matters. From time to time, I sit in on interviews involving the hiring of key court personnel. I also co-chair our local civil and criminal rules committee with our Chief Judge. Finally, I chair the Magistrate Judge Merit Selection Panel when considering the reappointment of our

part-time magistrate judges.

When I was initially hired as a prosecutor in the United States Attorney's Office, I was appointed to be the lead attorney for the Organized Crime and Drug Enforcement Task Force (OCDETF). As an OCDETF prosecutor, one of the most significant legal activities I was involved in was a multi-defendant prosecution on and around the Wind River Reservation. I received a DOJ national award for an outstanding investigation and prosecution of individuals bringing large quantities of drugs to our tribal communities. These outsiders preyed on tribal members with preexisting addictions. More than 80 defendants were prosecuted, including a tribal court judge. Beyond the courtroom, when serving as the U.S. Attorney, I utilized our Law Enforcement Coordinating Committee to conduct regular training for state and federal law enforcement and prosecutors. I also supported and encouraged our trainings for the people living on or near the Wind River Reservation. This opened the door for frequent conversations with tribal and community leaders. While in the U.S. Attorney's Office I also supported and facilitated an active externship program to mentor and encourage students interested in the law.

Finally, as lawyers and judges, whether inside or outside the courtroom, we have a unique and special opportunity to make a difference in the lives of others. Throughout my legal career, I have focused on improving our system of justice and improving the wellbeing of people. For instance, I helped establish a drug court in Park County, Wyoming, and initiated and served on Wyoming's prescription drug abuse task force, and most recently I have been participating in the development of our court's re-entry program for Native Americans.

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.

From 1997 to 2002, I served as a part-time instructor at Northwest Community College in Powell, Wyoming. The course I taught provided a general background into the American criminal justice systems to include criminal procedure, investigative techniques, crime statistics, various crimes and defenses, and juvenile law. 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.

If confirmed, I do not have any plans, commitments, or agreements to pursue outside employment.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

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.

As a United States Magistrate Judge, I follow the federal recusal statutes and Code of Conduct for United States Judges. I assess recusal concerns in accordance with 28 U.S.C. § 455 and will continue to do so if confirmed to be a district court judge. Cases most likely to present conflict issues would be those related to my sister and brother-in-law and their law firm, and when I practiced as a government lawyer approximately ten years ago. If confirmed, I would recuse myself in any matter in which I was a government lawyer or supervising government lawyer. If confirmed to be a district court judge, I will carefully review and address any real or potential conflicts in accordance with the Code of Conduct for United States Judges and all laws, rules, and practices governing such circumstances.

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

If confirmed as a district court judge, I would continue to resolve any potential conflict of interest by adhering to the Code of Conduct for United States Judges, 28 U.S.C. § 455, and 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.

Because nearly all my legal career has been in public service, I have been unable to provide direct pro bono representation to disadvantaged persons. However, I have placed an emphasis on and found other meaningful ways in which to serve the public.

During my eight years in Park County, Wyoming, I participated in Law Day activities to include mock trials, arguments, and legally related topics. These events were open to the public. In addition, I regularly assisted with the judicial component of the Wyoming Girl's State program. This included assisting with mock trials and basic trial skills. Further, I served four years on the Legal Services Committee for the Wyoming Bar Association. This committee sought ways in which lawyers could improve how legal services are provided to the needy. I also donated my time to numerous boards and commissions within the community.

When I lived in Casper, Wyoming, I was a regular volunteer speaker at the People's Law School where members of the public were invited to listen about different areas of the law. My teaching focused on criminal law and procedure. In addition, I frequently spoke to school-aged children about what it means to be a lawyer.

In 2007, I spent two days filming a public television program entitled *Inside a Wyoming Jury*. This program was organized and produced by the Wyoming Bar Association and Wyoming Public Television. The one-hour program utilized a real Wyoming murder case to help educate the public on the importance of jury service in our country. I played the role of the prosecutor. The program is periodically rebroadcast on Wyoming Public Television.

Since living in Cheyenne, Wyoming, beginning in 2008, I have actively participated in various legal related activities. I have annually participated in the Liberty Day presentations in fifth grade classrooms where I taught the students about the Constitution. I also donate my time by assisting local high school students compete in the "We the People" competition. I served on the Bench-Bar Relations Committee from 2015 to 2020. And I spend considerable time during the academic year volunteering at the University of Wyoming College of Law helping students with trial and appellate advocacy.

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 June 11, 2021, I communicated with Governor Dave Freudenthal and Governor Mike Sullivan regarding an opening on the United States District Court in our district. On June 14, 2021, I sent a letter expressing my interest for the position to Senator John Barrasso and Senator Cynthia Lummis. Over the course of the next several months I maintained communications with both Governors and the offices of both Senators regarding the position. On October 25, 2021, I was contacted by the White House Counsel's Office to set up an interview with attorneys from that office. The interview occurred on October 26, 2021. Since November 2, 2021, I have been in contact with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On December 19, 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 Kelly Harrison Rankin  
Nominee to be United States District Judge for the District of Wyoming

**1. Are you a citizen of the United States?**

Response: Yes.

**2. Are you currently, or have you ever been, a citizen of another country?**

- a. If yes, state countries and dates of citizenship.
- b. If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?
  - i. If not, please explain why.

Response: At no time have I been a citizen of another country.

**3. Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: The Supreme Court has explained that “an immutable characteristic [is] determined solely by the accident of birth.” *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (quoting *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973)). Webster’s dictionary defines “immutable” as not capable of or susceptible to change. *Immutable*, Merriam-Webster’s Dictionary (11th ed. 2019). Under this framework, I do not believe it is appropriate for a judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument.

**4. Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No. Please see my response to Question 3.

**5. 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 Supreme Court has, on rare occasions, considered foreign law in its analysis of constitutional interpretation. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 316, (2002). If confirmed, I would follow the binding precedent from the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

**6. Please explain whether you agree or disagree with the following statement: “The judgments about the Constitution are value judgments. Judges exercise their own**

**independent value judgments. You reach the answer that essentially your values tell you to reach.”**

Response: I disagree with the statement. A judge’s value judgment, personal preferences, or beliefs are not an acceptable basis on which to resolve constitutional issues. A judge should apply the law to the facts in a fair and impartial manner and follow binding precedent when answering constitutional questions. If confirmed, I would faithfully follow all binding Supreme Court and Tenth Circuit precedent.

- 7. 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 that statement or the context in which it was made. To the extent the statement suggests it is appropriate for a judge not to follow binding precedent, I disagree. As a magistrate judge I faithfully follow all Supreme Court and Tenth Circuit precedent. If confirmed as a district court judge, I would continue to faithfully follow all binding precedent.

- 8. Do you consider a law student’s public endorsement of or praise for an organization listed as a “Foreign Terrorist Organization,” such as Hamas or the Popular Front for the Liberation of Palestine, to be a disqualification for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a “no.”**

Response: Yes.

- 9. In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University’s student bar association wrote “Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary.” Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a “no.”**

Response: Yes.

- 10. 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 subject to a federal criminal judgment may seek relief from the judgment and sentence under the following: direct appeal of the federal judgment (28 U.S.C. § 1291); petition for writ of habeas corpus (28 U.S.C. § 2241); a motion to vacate, set aside, or correct a sentence (28 U.S.C. § 2255); and a compassionate release motion for modification of a term of imprisonment (18 U.S.C. § 3582(c)).

**11. 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: The University of North Carolina and Harvard College both considered the applicants' race in offering admission to prospective students. The Supreme Court held that both schools' race-based admissions policies and processes failed strict scrutiny and violated the Equal Protection Clause of the Fourteenth Amendment.

**12. 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: I participated in hiring decisions in my role as Park County Attorney, United States Attorney, Criminal Chief in the United States Attorney's Office, and in my current role as Chief Magistrate Judge for the District of Wyoming.

**13. 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.

**14. Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

Response: No.

**15. 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.

**16. Under current Supreme Court and Tenth Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?**

Response: Yes. *See, e.g., Students for Fair Admissions v. Harvard College*, 143 S. Ct. 2141, 2162 (2023); *Price-Cornelison v. Brooks*, 524 F.3d 1103, 1109 (10th Cir. 2008).

**17. Please explain the holding of the Supreme Court’s decision in *303 Creative LLC v. Elenis*.**

Response: The Supreme Court held that a Colorado law violated the First Amendment free speech rights of a website designer who refused to provide their design services to same-sex couples. Doing so violates the website designer’s free speech rights if it goes against their values as it requires the designer to create designs with which the designer disagrees.

**18. 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: *Barnette* is good law and binding precedent. The Supreme Court cited part of this quotation in *303 Creative LLC v. Elenis*, 600 U.S. 570, 585 (2023).

**19. 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: A law regulating speech under the First Amendment 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); *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 596 U.S. 61 (2022). To answer the question, 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. If the law being analyzed “imposes content- based restrictions on speech, those provisions can stand only if they survive strict scrutiny.” *Id.* at 171

**20. What is the standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: Speech that threatens violence is not protected by the First Amendment. See *Virginia v. Black*, 538 U.S. 343, 359 (2003); *United States v. Heineman*, 767 F.3d 970, 976 (10th Cir. 2014). Whether the threat violates the law depends on “what the statement conveys” to the person being threatened. The person making the threat must have “had some understanding of his statements’ threatening character,” and the prosecution need only prove “a recklessness standard” of *mens rea*. *Counterman v. Colorado*, 143 S. Ct. 2106, 2113 (2023).

**21. Under Supreme Court and Tenth 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 defined facts as “questions of who did what, when or where, how or why.” *E.g., U.S. Bank Nat. Ass’n ex rel. CWC Capital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018). Black’s Law Dictionary defines “question of law” as “[a]n issue to be decided by the judge, concerning the application or interpretation of the law.” Black’s Law Dictionary (11th ed. 2019).

**22. Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?**

Response: The Supreme Court held in *Gall* that the court should consider all seven factors under 18 U.S.C. § 3553(a) before imposing a sentence. *Gall v. United States*, 552 U.S. 38, 49-50 (2007). Further, under § 3553(a) a judge must make an individualized decision to formulate a sentence that is “sufficient, but not greater than necessary” to achieve the four statutory sentencing purposes. The statute does not rank or give any greater weight of importance to any one factor. If confirmed, I would follow 18 U.S.C. § 3553(a) and apply binding precedent from the Supreme Court and the Tenth Circuit interpreting those factors.

**23. 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 judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit me from commenting on the quality of the

reasoning of Supreme Court precedents. If confirmed, my duty would be to follow the binding precedent from the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

**24. Please identify a Tenth 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 judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit me from commenting on the quality of the reasoning of Tenth Court precedents. If confirmed, my duty would be to follow the binding precedent from the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

**25. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: 18 U.S.C. § 507 provides that, “[w]hoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both.”

**26. Is 18 U.S.C. § 1507 constitutional?**

Response: I am not aware of any precedent of the Supreme Court or the Tenth Circuit holding that has addressed the constitutionality of 18 U.S.C. § 1507. I am aware that the Supreme Court rejected a constitutional challenge to a similar state statute in *Cox v. Louisiana*, 379 U.S. 559 (1965). As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit me from offering personal opinions about the constitutionality of a federal statute because that issue could come before me, and I do not want to prejudge any issue. If confirmed, my duty would be to follow the binding precedent from the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

**27. 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 constitutionality of racial segregation in schools is not likely to come before the courts again. I therefore believe it is permissible as a judicial nominee to state my opinion that the case was correctly decided.

b. **Was *Loving v. Virginia* correctly decided?**

Response: Yes. The constitutionality of interracial marriage is not likely to come before the courts again. I therefore believe it is permissible as a judicial nominee to state my opinion that the case was correctly decided.

c. **Was *Griswold v. Connecticut* correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

d. **Was *Roe v. Wade* correctly decided?**

Response: The Supreme Court 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 faithfully and to the best of my ability.

e. **Was *Planned Parenthood v. Casey* correctly decided?**

Response: The Supreme Court 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 faithfully and to the best of my ability.

f. **Was *Gonzales v. Carhart* correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

g. **Was *District of Columbia v. Heller* correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

h. **Was *McDonald v. City of Chicago* correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

- i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

- j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

- k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

- 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: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

- m. **Was *303 Creative LLC v. Elenis* correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

**28. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

Response: I would apply the standard set forth in binding precedent of the Supreme Court and Tenth Circuit. In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held: “[w]hen 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. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. 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.* at 2126.

**29. Demand Justice is a progressive organization dedicated to “restor[ing] ideological balance and legitimacy to our nation’s courts.”**

- n. 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?
- o. Are you currently in contact with anyone associated with Demand Justice? If so, who?
- p. Have you ever been in contact with anyone associated with Demand Justice? If so, who?

Response to all subparts: No.

**30. The Alliance for Justice is a “national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society.”**

- q. 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?
- r. Are you currently in contact with anyone associated with the Alliance for Justice? If so, who?
- s. Have you ever been in contact with anyone associated with the Alliance for Justice? If so, who?

Response to all subparts: No.

**31. Arabella Advisors is a progressive organization founded “to provide strategic guidance for effective philanthropy” that has evolved into a “mission-driven, Certified B Corporation” to “increase their philanthropic impact.”**

- t. **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?**
- u. **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.**
- v. **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.**
- w. **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 to all subparts: No.

**32. The Open Society Foundations is a progressive organization that “work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens.”**

- x. **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?**
- y. **Are you currently in contact with anyone associated with the Open Society Foundations? If so, who?**
- z. **Have you ever been in contact with anyone associated with the Open Society Foundations? If so, who?**

Response to all subparts: No.

**33. Fix the Court is a “non-partisan, 501(C)(3) organization that advocates for non- ideological ‘fixes’ that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people.”**

- aa. **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?**



- bb. **Are you currently in contact with anyone associated with Fix the Court?**  
**If so, who?**
- cc. **Have you ever been in contact with anyone associated with Fix the Court?**  
**If so, who?**

Response to all subparts: No.

- 34. Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: On June 11, 2021, I communicated with Governor Dave Freudenthal and Governor Mike Sullivan regarding an opening on the United States District Court for the District of Wyoming. On June 14, 2021, I sent a letter expressing my interest for the position to Senator John Barrasso and Senator Cynthia Lummis. Over the course of the next several months I maintained communications with both Governors and the offices of both Senators regarding the position. On October 25, 2021, I was contacted by the White House Counsel's Office to set up an interview with attorneys from that office. The interview occurred on October 26, 2021. Since November 2, 2021, I have been in contact with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me.

- 35. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, 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 the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

- 37. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

- 38. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

- 39. During your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

- 40. 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.

- 41. 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 11, 2021, I communicated with Governor Dave Freudenthal and Governor Mike Sullivan regarding an opening on the United States District Court for the District of Wyoming. On June 14, 2021, I sent a letter expressing my interest for the position to Senator John Barrasso and Senator Cynthia Lummis. Over the course of the next several months I maintained communications with both Governors and the offices of both Senators regarding the position. On October 25, 2021, I was contacted by the White House Counsel's Office to set up an interview with attorneys from that office. The interview occurred on October 26, 2021. Since November 2, 2021, I have been in contact with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me.

- 42. Please explain, with particularity, the process whereby you answered these questions.**

Response: On January 31, 2024, I received questions from the Committee through the Department of Justice Office of Legal Policy. I drafted my answers, and, where

necessary, conducted legal research. I reviewed my records where appropriate. I shared my draft with OLP, which provided feedback. I reviewed and considered the feedback and submitted my answers to the Committee.

Senate Judiciary Committee  
Nominations Hearing  
January 24, 2023  
Questions for the Record  
Senator Amy Klobuchar

For Kelly Harrison Rankin, nominee to be U.S. District Judge for the District of Wyoming

**You served in the U.S. Attorney’s Office in the District of Wyoming for nearly a decade. In addition to serving as an Assistant U.S. Attorney, and serving as the office’s Criminal Chief, you were appointed by President Bush to lead the office as the U.S. Attorney.**

- **How will your experience as a prosecutor inform your approach to interpreting and applying the law?**

Response: I was fortunate to serve as a prosecutor at the state and federal level for approximately 18 years. A prosecutor “may strike hard blows, [but] he is not at liberty to strike foul ones.” *Berger v. United States*, 295 U.S. 78, 88 (1935). From speeding violators to persons charged with first degree homicide, no matter the case, I had an obligation to faithfully enforce and maintain the rule of law. I also had an obligation to protect the innocent and convict only the guilty. Those experiences as a prosecutor have helped me in my role as a magistrate judge and will similarly help me should I be so fortunate to be confirmed as a district judge. As a judge, I am duty bound to correctly interpret and apply the law. This means that I need to objectively assess the facts, thoroughly research the applicable law, and follow all binding precedent. And just as I did as a prosecutor, as a judge I treat everyone with respect and understanding. I listen carefully and I do my best to make sure the case is fairly and impartially decided. Finally, just as I did as a prosecutor, I will make sure the rights of the accused are fully protected, and the rights of the victims are upheld.

- **Can you speak to some of the challenges you faced as a prosecutor and how your work on complex cases has informed your view of the criminal justice system?**

Response: In my various roles as a prosecutor, I managed complex cases involving multiple defendants often charged with various drug, firearm, and money laundering related offenses. Others were charged with homicide and other violent offenses. These cases were challenging to manage given the number of charges, defendants, legal complexities, and case related obligations for each. Fortunately, however, I was surrounded by a team of professionals that included the investigative law enforcement officers and my colleagues in the U.S. Attorney’s Office. I relied on their expertise and hard work to make sure every case and every person charged received the proper attention it deserved.

My work on complex cases taught me the importance of good communication, organization, and preparedness. Our criminal justice system affords every person

important constitutional rights like the right to counsel, the right to a public and speedy jury trial, and the right to confront witnesses. After serving nearly 30 years in the courtroom I have learned how important it is for every person involved in the criminal justice system to guard, protect, and enforce these rights. When that happens, from my experience, justice is served. This approach applies no matter how big or small the case. We all have a duty to uphold the promise that justice be served in every case. If fortunate to be confirmed, I will remember the importance of these rights and enforce them always.

Senator Hirono Questions for the Record for the January 24, 2024, Hearing in the Senate Judiciary Committee entitled "Nominations."

**QUESTIONS FOR KELLY HARRISON RANKIN**

**Sexual Harassment**

As part of my responsibility as a member of this committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

QUESTIONS:

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

Response: No.

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

Response: No.

**Senator Jon Ossoff**  
**Questions for the Record for Judge Kelly Rankin**  
**January 24, 2024**

1. **Will you pledge to faithfully apply the law without bias and without regard for your personal policy or political preferences?**

Response: Yes.

2. **How will you approach First Amendment cases?**

Response: In my nearly 12 years as a magistrate judge, I follow the same approach in all matters before me. If confirmed as a district judge, I would approach First Amendment cases in the same way by faithfully researching the factual record and applying binding precedent from the Supreme Court and the Tenth Circuit. For example, if confronted with a case that involved the “fighting words” doctrine, I would follow Supreme Court and Tenth Circuit precedent. *See, e.g., Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942); *Canon v. City & Cnty. Of Denver*, 998 F.2d 867 (10th Cir. 1993). In the unusual event there is no applicable precedent, I would follow the interpretive methods set out by the Supreme Court and Tenth Circuit. I will treat all parties and their counsel with respect. I will work diligently to ensure that all who come before me leave with the understanding that their case has been carefully considered and fairly decided.

- a. **In your view, why are First Amendment protections of freedom of speech, publication, assembly, and exercise of religion vital in our society?**

Response: The rights enumerated in the First Amendment of the U.S. Constitution allow us all to express our ideas and beliefs by our words and actions, with few limitations. The freedom to do so is a bedrock right in our Nation’s history and tradition – protected by a careful and thoughtful history of jurisprudence that provides an enduring freedom to think and act as we wish. The courts play a vital role in assuring these rights are protected for everyone. If confirmed as a district judge, I will faithfully follow all binding precedent from the Supreme Court and Tenth Circuit in matters involving the First Amendment, and in all cases and controversies brought before me.

3. **In your experience, why is it critical that indigent defendants have access to public defense under the Sixth Amendment right to counsel and precedent set in *Gideon v. Wainwright*?**

Response: In *Gideon*, the Supreme Court held the Due Process Clause of the Fourteenth Amendment applies to extend the constitutional right to an attorney in federal cases for indigent defendants. *Gideon v. Wainwright*, 372 U.S. 335 (1963). I have a deep appreciation for the importance of our federal public defenders and Criminal Justice Act (CJA) panel attorneys who represent indigent persons charged in our courts. For nearly

12 years, I have overseen the appointment process of all attorneys in our court. I see firsthand how critical their role is from the initial appearance to appeal. Approximately 95 percent of all our criminal defendants are without the financial resources to hire their own attorney. Every day the men and women who are dedicated to upholding the right to counsel under the Sixth and Fourteenth Amendments provide competent and essential representation to their clients. If confirmed, I will continue to protect this critical and fundamental right.

**4. In your experience, what are the challenges faced by parties in civil or criminal proceedings for whom English is not their first language?**

Response: As a state and federal prosecutor for 18 years, and more recently as a magistrate judge for the past nearly 12 years, the biggest challenge is making sure we have enough certified court interpreters. It is important to ensure that non-English-speaking litigants have access to court in the same way as English-speaking litigants. In criminal matters, it is equally important to have quality interpreters assisting in their defense to assure the defendant's rights are fully protected. This can only occur with effective communication between the accused and their attorney.

**a. What do you see as the role of language access in courts in protecting due process rights and ensuring access to justice?**

Response: A litigant that cannot communicate effectively with her attorney, or the court, is denied access to justice. Improving language access in court through interpreters can help to ensure each litigant gets their fair day in court.



**Senator Mike Lee**  
**Questions for the Record**

**Kelly Harrison Rankin, Nominee for District Court Judge for the District of Wyoming**

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

Response: In my nearly 12 years as a magistrate judge, I follow the same approach in all matters before me. If confirmed as a district judge, my continued philosophy will be to apply the rule of law in all cases in a fair and impartial manner. In doing so, where necessary, I will consult my judicial colleagues and law clerks. I will treat all parties and their counsel with respect. I will work diligently to ensure that all who come before me leave with the understanding that their case has been carefully considered and fairly decided. I will be fully prepared for every case.

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

Response: In deciding a case that turned on the interpretation of a federal statute, I would faithfully apply Supreme Court and Tenth Circuit precedent. If there is no such precedent, I would first review the statutory text and any relevant statutory definitions. If the text is clear, the inquiry ends there. *Bostock v. Clayton County*, 140 S. Ct. 1731, 1749 (2020) (“This Court has explained many times over many years that, when the meaning of the statute’s terms is plain, our job is at an end.”). If the text is not clear, I would consult the sources authorized by Supreme Court and Tenth Circuit precedent, which include cases from other jurisdictions and recognized canons of statutory construction and interpretive principles. If the question remains unresolved, to the extent authorized by the Supreme Court and Tenth Circuit, I would consider the legislative history of the statute. *Id.* At 1750.

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

Response: In deciding cases that turned on the interpretation of a constitutional provision, I would faithfully apply Supreme Court and Tenth Circuit precedent. In certain contexts, the Supreme Court has held that constitutional interpretation begins by applying the original public meaning of the text. See *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (interpreting the Second Amendment under the original public meaning). If there is no applicable precedent, I would follow the interpretive methods set out in the binding precedent of the Supreme Court and the Tenth Circuit. For example, when evaluating a firearm regulation under the Second Amendment, the Supreme Court “requires courts to assess whether modern firearms regulations are consistent with the Second Amendment’s text and historical understanding.” *New York State Rifle & Pistol Ass’n, v. Bruen*, 142 S. Ct. 2111, 2131 (2022).

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

Response: The Supreme Court has analyzed the original public meaning of the

Constitution's text in interpreting the meaning of a constitutional provision including, for example, the Fifth and Second Amendments. *See, e.g., Currier v. Virginia*, 138 S. Ct. 2144, 2153-54 (2018) (referring to "original public understanding of the Fifth Amendment"); *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008) (defining "original public meaning"). If confirmed, I would faithfully follow binding precedent from the Supreme Court and the Tenth Circuit when interpreting the Constitution.

5. **How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: Please see 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 has said that it "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of enactment." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). Similarly, the Supreme Court has said that when interpreting the Constitution, we are to use the "normal meaning" of the text known at the time of ratification. *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008). If confirmed, I would faithfully follow binding precedent of the Supreme Court and the Tenth Circuit in determining the plain meaning of a statute or constitutional provision.

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

Response: To establish standing under Article III of the Constitution, a plaintiff needs a "personal stake" in the case and must suffer "an injury in fact—a concrete and imminent harm to a legally protected interest, like property or money—that is fairly traceable to the challenged conduct and likely to be redressed by the lawsuit." *Biden v. Nebraska*, 143 S. Ct. 2355, 2365 (2023).

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 of the Constitution enumerates the powers of Congress. Congress is limited to those powers. The Supreme Court has recognized, however, that the express grant of powers to Congress in the Constitution "necessarily implies the grant of all usual and suitable means for the execution of the powers granted," and that "Congress is authorized to pass all laws 'necessary and proper' to carry into execution the powers conferred on it." *McCulloch v. Maryland*, 17 U.S. 316, 323-324 (1819).

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 that “[t]he question of the constitutionality of action taken by Congress does not depend on recitals of power which it undertakes to exercise.” *Nat’l Fed. of Ind. Bus. v. Sebelius*, 132 S. Ct. 2566, 2598 (2012). If confirmed, I would evaluate the constitutionality of such a law by following the procedure outlined in my response to Question 3.

**10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: Yes. The Supreme Court has held that the Due Process Clause protects fundamental rights and liberties 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 include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and the right to direct 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 recognized several rights that are protected under substantive due process. Please see my response to Question 10. Others the Supreme Court has determined are fundamental are based on the test articulated in *Washington v. Glucksberg*, 117 S. Ct. 2258 (1997).

**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: A judge has an absolute duty to apply binding precedent. 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. The Court 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, I will faithfully follow all Supreme Court and Tenth Circuit precedent.

**13. What are the limits on Congress’s power under the Commerce Clause?**

Response: Congress’s power under the Commerce Clause is limited by Article I, Section 8. The Supreme Court has identified three categories of activity that Congress may regulate under the Commerce Clause: (1) “the use of the channels of interstate commerce,” (2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities” and (3) “those activities that substantially affect interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558–559 (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 explained that a group qualifies as a “suspect class” if it “possess[es] an immutable characteristic determined solely by the accident of birth” or if it is “saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1975). The suspect classification to which strict scrutiny applies include race, religion, national origin, and alienage. See, e.g., *Fulton v. City of Philadelphia, Pa.*, 141 S. Ct. 1868, 1876-77 (2021).

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 is a constitutional doctrine under which the Constitution grants separate, unique powers to each of the three branches of government. Each branch is given the power to check and balance the other two branches to prevent the excessive power of any one branch. “[T]he system of separated powers and checks and balances established in the Constitution was regarded by the Framers as ‘a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.’” *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (quoting *Buckley v. Valeo*, 424 U.S. 1, 122 (1976)).

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: If confirmed, I would decide a case of this type in the same way I would decide all cases, by faithfully applying binding precedent from the Supreme Court and the Tenth Circuit in a fair and impartial manner to the facts presented. As an example, I would apply the Supreme Court’s decision in *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579 (1952), holding that the President had no power to act except in those cases that are expressly or implicitly authorized by the Constitution or an Act of Congress. Please also see my responses to Questions 2, 3, 4, and 5.

17. **What role should empathy play in a judge’s consideration of a case?**

Response: Judges must apply the law in a fair and impartial manner to the facts of each case. A judge’s personal feelings, opinions, or beliefs are not proper in considering a case.

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 avoid both outcomes; each is equally undesirable. If confirmed, I would faithfully apply the Supreme Court and Tenth Circuit precedent in determining the constitutionality of a 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 researched nor am I familiar with judicial trends over time. I therefore do not have a basis to form an opinion on this subject. If confirmed, I will faithfully apply binding precedent of the Supreme Court and the Tenth Circuit in a fair and impartial manner.

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

Response: “Judicial review” is defined as “[a] court’s power to review the actions of other branches or levels of government.” Black’s Law Dictionary (11th ed. 2019). By contrast, “Judicial supremacy” is defined as “[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review...are binding on the coordinate branches of the federal government and the states.” Black’s Law Dictionary (11th ed. 2019).

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 magistrate judge and a judicial nominee, I should not counsel elected officials on their independent obligation to follow the Constitution. Regardless, the Supreme Court has held elected officials have an obligation to obey federal decisions in *Cooper v. Anderson*, 358 U.S. 1, 4 (1955) (rejecting argument state officials have no duty to obey federal court orders). Further, Article VI of the Constitution requires government officials, elected and appointed, to take an oath to uphold the Constitution. U.S. Const. art. VI, §3.

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: Hamilton expressed his belief that the role of the federal courts is to interpret and apply the law, while the role of the legislative and executive branches is

to make or enforce the law. As written in Article III of the Constitution, judges must only decide the cases and controversies brought before them. If confirmed, it will be important that I not make law nor impose my personal view about the law; instead, my role is strictly limited to applying the law to the facts of the case before me.

23. **As a federal judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a federal 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 federal judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: If confirmed, I would continue to apply binding precedent from the Supreme Court and the Tenth Circuit, regardless of the foundations of that precedent. If there is no controlling precedent on point, I would utilize the constitutional framework employed by the Supreme Court and Tenth Circuit in the most similar case. Moreover, the Supreme Court has made clear that only it, not lower courts, has the ability to overrule its precedent. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478-79 (2018).

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 is not an appropriate consideration for the determination of a sentence. Therefore, I would not consider it. The factors to be applied at sentencing include those set out in 18 U.S.C. § 3553(a), binding precedent from the Supreme Court and the Tenth Circuit, and the relevant provisions of the United States Sentencing Guidelines. The Sentencing Guidelines provide that race, sex, national origin, creed, religion, and socio-economic status "are not relevant in the determination of a sentence." U.S.S.G. §5H1.10.

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 Biden Administration's definition of "equity" or in what context the Administration used it. If presented with a question involving these terms, I would faithfully apply the binding precedent of the Supreme Court and the Tenth Circuit.

26. **Without citing Black's Law Dictionary, do you believe there is a difference between "equity" and "equality?" If so, what is it?**

Response: I do not have my own definition for these terms. However, in the context of the Fourteenth Amendment the Supreme Court has reiterated the general principle of "equality" for all persons. *Students for Fair Admissions, Inc., v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023). What the law requires is determined by applying binding precedent from the Supreme Court and Tenth Circuit, both of which I would follow and apply faithfully.

27. **Does the 14<sup>th</sup> Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 25)?**

Response: As noted above, I am not familiar with the Biden Administration's statement and its use of the term "equity" or the context in which the statement was made. The Equal Protection Clause of the Fourteenth Amendment guarantees "the equal protection of the laws." U.S. Const. amend. XIV. I am not aware of any Supreme Court or Tenth Circuit precedent analyzing and applying the Equal Protection Clause to the definition provided in Question 25.

28. **Without citing Black's Law Dictionary, how do you define "systemic racism?"**

Response: I do not have my own definition for this phrase. I am not aware of any Supreme Court or Tenth Circuit decision defining "systemic racism."

29. **Without citing Black's Law Dictionary, how do you define "critical race theory?"**

Response: I do not have my own definition for this phrase. I am not aware of any Supreme Court or Tenth Circuit decision defining "critical race theory."

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

Response: Please see my responses to Questions 28 and 29.

**SENATOR TED CRUZ**  
**U.S. Senate Committee on the Judiciary**

**Questions for the Record for Kelly Harrison Rankin, nominated to be United States District Judge for the District of Wyoming**

**I. Directions**

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.



## II. Questions

### 1. Is racial discrimination wrong?

Response: Yes. The United States Supreme Court recently reiterated that “the central purpose of the Fourteenth Amendment was to eliminate racial discrimination.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2161 (2023) (quoting *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964)). Additionally, Congress has passed laws that prohibit racial discrimination such as the Civil Rights Act and the Fair Housing Act.

### 2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

Response: The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment guarantees rights not enumerated in the Constitution. *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2242 (2022). The test for making this determination is that the right must be “deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). While the Judicial Code of Conduct precludes me from offering my opinion on unenumerated, unarticulated rights, should I be confirmed I would faithfully and to the best of my ability apply the *Glucksberg* test and all applicable Tenth Circuit and Supreme Court precedent.

### 3. How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice’s philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.

Response: In my nearly 12 years as a magistrate judge, I follow the same approach in all matters before me. If confirmed as a district judge, my continued philosophy will be to apply the rule of law in all cases in a fair and impartial manner. In doing so, where necessary, I will consult my judicial colleagues and law clerks. I will treat all parties and their counsel with respect. I will work diligently to ensure that all who come before me leave with the understanding that their case has been carefully considered and fairly decided. I will be fully prepared for every case.

The work of a district judge is considerably different from the work of a Supreme Court Justice, and I have not closely analyzed the judicial philosophies in the Warren, Burger, Rehnquist, and Roberts Courts to determine which Justice’s philosophy is most analogous to my own.

### 4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an “originalist”?

Response: “Originalism” is defined as “[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a

legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect.” Black’s Law Dictionary (11th ed. 2019). If confirmed, I would faithfully follow the binding precedent of the Supreme Court and Tenth Circuit when interpreting the Constitution. If there is no binding precedent, I will apply the relevant rules of construction to determine the meaning of the disputed provision.

5. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a ‘living constitutionalist’?**

Response: 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 am unaware of any case in which the Supreme Court has directed lower courts to use a living constitutionalism method. If confirmed as a district judge, I will faithfully follow all Supreme Court and Tenth Circuit precedent concerning interpretative methods of constitutional analysis.

6. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: As a district court judge dealing with a rare issue of first impression, I would faithfully utilize the analytical framework set forth by the Supreme Court and Tenth Circuit that pertains to the constitutional question presented. This begins with the text of the Constitution. I would then apply all interpretive principles required under Supreme Court and Tenth Circuit precedent.

7. **Is the public’s current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: The Supreme Court has said that it “normally interprets a statute in accord with the ordinary public meaning of its terms at the time of enactment.” *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). Similarly, the Supreme Court has said that when interpreting the Constitution, we are to use the “normal meaning” of the text known at the time of ratification. *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008). In certain limited circumstances, the Supreme Court has looked to contemporary standards when deciding the bounds of constitutional activity. See, e.g., *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (noting that Eighth Amendment excessive punishment claims are determined by the evolving standards of decency).

8. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: No. The Constitution has a fixed and enduring meaning, and it can only be

modified through the amendment process in Article V of the Constitution. *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1, 31 (2022).

**9. Is the Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health Organization* settled law?**

Response: Yes, *Dobbs* is binding precedent.

**a. Was it correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

**10. Is the Supreme Court’s ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: Yes, *Bruen* is binding precedent.

**a. Was it correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

**11. Is the Supreme Court’s ruling in *Brown v. Board of Education* settled law?**

Response: Yes, *Brown* is binding precedent.

**a. Was it correctly decided?**

Response: Yes. Because the constitutionality of racial segregation in schools is not likely to ever come before the court again, I believe it is permissible as a sitting 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, *Harvard* is binding precedent.

**a. Was it correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

**13. Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?**

Response: Yes, *Ogden* is binding precedent.

**a. Was it correctly decided?**

Response: As a sitting magistrate judge and judicial nominee, the Canons of the Code of Conduct for United States Judges prohibit commenting on whether a particular case was correctly decided, as other matters that implicated that case may come before me if confirmed. If confirmed, my duty would be to follow binding precedents of the Supreme Court and the Tenth Circuit, and I pledge to do so faithfully and to the best of my ability.

**14. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: A rebuttable presumption that no condition or combination of conditions can reasonably assure the safety of the community and the appearance of a federal criminal defendant can arise depending on the defendant's criminal history or if the defendant is charged with a specified offense (including weapons offenses, certain offenses involving a minor victim, and serious drug trafficking offenses). 18 U.S.C. § 3142(e)(2), (3).

**a. What are the policy rationales underlying such a presumption?**

Response: The Supreme Court considered the policy rationales behind the Bail Reform Act of 1984 in *United States v. Salerno*, 481 U.S. 739, 747-51 (1987). In *Salerno*, the Supreme Court identified the government's interest in promoting community safety and preventing crime with the Act. *Id.*; see also 18 U.S.C. §§ 3142(e)-(f) (listing offenses that Congress determined present a greater risk of flight or danger to the community).

**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 both constitutional limits under the First Amendment Free

Exercise Clause and statutory limits under the Religious Freedom Restoration Act. They each limit what the government can require of religious organizations or observant business owners. See, e.g., *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2315 (2023); *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020); *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1732 (2018); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 736 (2014).

**16. Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: The Supreme Court has held that discrimination against religious organizations or religious people must survive strict scrutiny; that is, the challenged activity must be narrowly tailored to advance a compelling governmental interest. See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022); The Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*; *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (government regulations must satisfy strict scrutiny whenever they treat comparable secular activity more favorably than religious exercise).

**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 weighed the factors that govern injunctive relief. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)) ("A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest."). The Court concluded that, under the strict scrutiny standard, New York's restrictions on gatherings within certain zones were not facially neutral, and therefore failed to meet strict scrutiny. Thus, the plaintiffs were entitled to injunctive relief.

**18. Please explain the U.S. Supreme Court's holding and rationale in *Tandon v. Newsom*.**

Response: The Supreme Court held that California's COVID-19 related restrictions that included religious gatherings in homes were not neutral and treated secular activity more favorably than comparable religious activity. Thus, the Court enjoined enforcement of the limitations finding that the applicants would likely prevail on the merits and that the government must satisfy strict scrutiny.

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

Response: Yes. The Supreme Court held in *Kennedy v. Bremerton School District*, 142 S. Ct. 2407, 2421 (2022), that the Free Exercise Clause of the Constitution protects religious exercise in activities of daily life.

20. **Explain your understanding of the U.S. Supreme Court’s holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.**

Response: The Supreme Court in *Masterpiece Cakeshop* held that the Colorado Civil Rights Commission violated the Free Exercise Clause when it enforced the Colorado Antidiscrimination Act against a bakery that had religious objections to same-sex weddings.

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 so long as the plaintiff’s religious practices are sincere, she will be afforded First Amendment protection under the Free Exercise Clause. See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014); *Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829, 834 (1989); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (“religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.”).

- a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Supreme Court precedent requires a plaintiff to establish that the burdened religious practice is sincere to be afforded protection under the Free Exercise Clause. *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022). This is the legal framework I would faithfully apply if confirmed and confronted with such a case.

- b. **Can courts decide that anything could constitute an acceptable “view” or “interpretation” of religious and/or church doctrine?**

Response: The First Amendment protects beliefs that are rooted in religion, and “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). Granted, religious practices cannot violate viewpoint neutral law such as criminal conduct.

- c. **Is it the official position of the Catholic Church that abortion is acceptable**

**and morally righteous?**

Response: I am not personally familiar with the official position of the Catholic Church on this subject.

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 held that the "ministerial exception" derived from the First Amendment's Religion Clauses foreclosed the adjudication of the employment-discrimination claims of two Catholic school teachers. The Court reasoned that because their "vital religious duties" involved educating young people in their faith they qualified for the exception. The Court added that judicial intervention between the school and teachers threatened the school's independence, which was not permitted under the First Amendment.

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*, the Supreme Court held that Philadelphia's refusal to contract with a foster care agency, which was affiliated with the Catholic Church, and which declined to certify same-sex couples as foster parents, violated the Free Exercise Clause. The Court found that the city burdened the organization's religious beliefs and because it was not generally applicable, failed to meet the strict scrutiny standard.

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 held that Maine's tuition assistance program, which excluded "nonsectarian" schools violated the Free Exercise Clause of the First Amendment. Under the program, parents living in districts without a public high school could direct state-funded subsidies to secular private schools but not to religious private schools. The Court reasoned that excluding some students from the program for purely religious reasons, when it was otherwise available to the public, was unconstitutional.

25. **Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: In *Kennedy*, the Supreme Court held that the school district who disciplined a football coach engaged in prayer with a number of students after a game violated the Establishment Clause under the First Amendment. The Court determined the coach's prayer was his sincerely held religious practice and that the government's prohibition of this practice was not neutral and could not satisfy strict scrutiny.

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's concurrence in *Mast* provided additional guidance to the lower courts on his view of the proper strict scrutiny analysis required under the Religious Land Use and Institutionalized Persons Act. 42 U.S.C. § 2000cc(a). He wrote that the government's compelling interest must be more than general. He further wrote that the lower court's analysis should carefully consider the harm to the government's interest in granting an exception to this particular religious group.

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 faced with a dispute over the meaning of a specific word or phrase in a statute, I would start with the plain text of the disputed word or phrase. If the plain meaning is subject to more than one reasonable interpretation, I would consider the arguments presented, all legal authority relating to those arguments, and, if necessary, the applicable definitions of the disputed text. If the plain meaning of the disputed text was not clear at that point, I would apply the interpretive principles relied on in Supreme Court and Tenth Circuit 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: 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 governed by Article II, Section 2, Clause 2 of the U.S. Constitution. I will faithfully follow Supreme Court and Tenth Circuit precedent should this issue come before me as a judge.

- 32. If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?**

Response: If confronted with a legal claim under the Civil Rights Act of 1964, the Equal Protection Clause, or some other racial disparate outcome, I would faithfully examine the factual record and apply binding precedent from the Supreme Court and Tenth Circuit.

- 33. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: The appropriate number of Justices on the Supreme Court presents a political question unfit for judicial determination. If confirmed as a district judge, I will follow all Supreme Court precedent regardless of the number of Justices.

- 34. In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: No. Each of the Justices was nominated by the President and confirmed by the Senate, as required under Article II, Section 2, of the Constitution.

- 35. What do you understand to be the original public meaning of the Second**

**Amendment?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that the original public meaning of the Second Amendment guarantees an individual and fundamental right to bear arms in the home and to carry a firearm outside the home for self-defense.

- 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: When considering the constitutionality of a restriction on firearms, district courts must consider 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).

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

Response: Yes. The Supreme Court held in *District of Columbia v. Heller* that the right to own a firearm is an individual right protected by the Second Amendment.

- 38. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: The United States Supreme Court recently held that the right to bear arms "is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022).

- 39. Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: The United States Supreme Court recently held that the right to bear arms "is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022). Both rights would invoke the strict scrutiny standard.

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

Response: Article II, Section 3 of the Constitution requires the President to "take Care that the Laws be faithfully executed." Further, the Supreme Court has explained that the Executive Branch has discretion in enforcement matters. *See, e.g., United States v.*

*Texas*, 143 S. Ct. 1964, 1970-72 (2023).

41. **Explain your understanding of what distinguishes an act of mere ‘prosecutorial discretion’ from that of a substantive administrative rule change.**

Response: An act of prosecutorial discretion involves a decision whether and how to enforce a criminal statute. Black’s Law Dictionary (11th ed. 2019) defines “prosecutorial discretion” as a “prosecutor’s power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court.” A substantive administrative rule change involves a decision by an administrative agency to change a substantive rule. A rule change must be consistent with applicable law, including the Administrative Procedure Act.

42. **Does the President have the authority to abolish the death penalty?**

Response: No. Congress authorized capital punishment for certain criminal offenses such as murder; attempted murder of a witness, juror, or court officer; treason; and large-scale drug trafficking. *See* 18 U.S.C. § 3591. The President does not have the authority to unilaterally abolish a statute.

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*, the Court vacated the stay and enjoined a nationwide moratorium, concluding that the Centers for Disease Control exceeded the scope of its authority pertaining to residential evictions during the COVID-19 pandemic. The Court concluded the petitioners were likely to succeed on the merits of their claim and the court would expect “Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance.” 141 S. Ct. 2485, 2489 (2021).

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 former federal prosecutor, I know firsthand that the Department of Justice Manual prohibits the disclosure of information to the public before charges are filed. However, as a sitting magistrate judge and judicial nominee, it would be inappropriate for me to discuss a hypothetical case that could come before me. If confirmed and should a case with this specific issue be presented to me, I would faithfully review the factual record, understand the arguments of the parties, and fairly and impartially apply the applicable law and precedent from the Supreme Court and Tenth Circuit.

**Senator John  
Kennedy Questions  
for the Record**

**Kelly Rankin**

- 1. Are there any circumstances under which it is justifiable to sentence a criminal defendant to death? Please explain.**

Response: Yes. The death penalty is constitutional in the United States. *See Gregg v. Georgia*, 428 U.S. 153 (1976). The legislature of each state decides which offenses, if any, are capital offenses. Under federal law, 18 U.S.C. § 3591 defines which offenses are eligible for the death penalty. These offenses include persons convicted of murder; attempted murder of a witness, juror, or court officer; treason; and large-scale drug trafficking. *Id.* The procedure for federal courts to follow in determining whether death is the appropriate sentence are also set out under 18 U.S.C. §§ 3591-3599. The canons of judicial conduct prohibit judges and judicial nominees from commenting on legal issues that could become the subject of litigation, and it would therefore be inappropriate for me to comment further. If confirmed, however, I would faithfully follow all binding precedent of the Supreme Court and the Tenth Circuit as well as the federal statutory procedure for sentencing defendants. If there is no clear guidance, I would look at the law in other circuits in accordance with the traditional weight of authority.

- a. Should a judge's opinions on the morality of the death penalty factor into the judge's decision to sentence a criminal defendant to death in accordance with the laws prescribed by Congress and the Eighth Amendment?**

Response: No.

- 2. Is the U.S. Supreme Court a legitimate institution?**

Response: Yes.

- 3. Is the current composition of the U.S. Supreme Court legitimate?**

Response: Yes.

- 4. Please describe your judicial philosophy. Be as specific as possible.**

Response: In my nearly 12 years as a magistrate judge, I follow the same approach in all matters before me. If confirmed as a district judge, my continued philosophy will be to apply the rule of law in all cases in a fair and impartial manner. In doing so, where necessary, I will consult my judicial colleagues and law clerks. I will treat all parties and their counsel with respect. I will work diligently to ensure that all who come

before me leave with the understanding that their case has been carefully considered and fairly decided. I will be fully prepared for every case.

**5. Is originalism a legitimate method of constitutional interpretation?**

Response: Yes. “Originalism” is defined as “[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect.” Black’s Law Dictionary (11<sup>th</sup> ed. 2019). If confirmed, I would faithfully follow the binding precedent of the Supreme Court and Tenth Circuit when interpreting the Constitution.

**6. If called on to resolve a constitutional question of first impression with no applicable precedents from either the U.S. Supreme Court or the U.S. Courts of Appeals, to what sources of law would you look for guidance?**

Response: As a district court judge dealing with a rare issue of first impression, I would faithfully utilize the analytical framework set forth by the Supreme Court and Tenth Circuit that pertains to the constitutional question presented. This begins with the text of the Constitution. I would then apply all interpretive principles required under Supreme Court and Tenth Circuit precedent.

**7. Is textualism a legitimate method of statutory interpretation?**

Response: Yes. The Supreme Court has held that the ordinary public meaning of a statute at the time of enactment controls its meaning. *Bostock v. Clayton County*, 140 S. Ct. 1731, 1749 (2020) (stating “when the meaning of the statute’s terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration.”).

**8. When is it appropriate for a judge to look beyond textual sources when determining the meaning of a statute or provision?**

Response: It is appropriate to look beyond the text only when there remains some ambiguity as to the meaning of the statute or provision. Otherwise, if the text is clear, the analysis ends there. *Bostick v. Clayton County*, 140 S. Ct. 1731, 1749 (2020). If the text is ambiguous, I would study the structure of the statute, examine all statutory definitions, consider how terms have been used elsewhere in the statute, and all other canons of construction authorized by the Supreme Court and Tenth Circuit.

**9. Does the meaning (rather than the applications) of the U.S. Constitution change over time? If yes, please explain the circumstances under which the U.S. Constitution’s meaning changes over time and the relevant constitutional provisions.**

Response: No. The Constitution has a fixed and enduring meaning, and it can only be

modified through the amendment process in Article V of the Constitution. *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1, 31 (2022).

**10. Please summarize Part II(A) of the U.S. Supreme Court’s decision in *Brown v. Davenport*, 596 U.S. 118 (2022).**

Response: In Part II(A) of *Brown v. Davenport*, 596 U.S. 118 (2022), the Supreme Court provides a historical account of the writ of habeas corpus. The Court noted writ of habeas corpus petitions developed through common law. The Court also noted that in both English and American law, a habeas court could examine only the power and authority of a court to act, not the correctness of its conclusions. The Court further noted that in *Brown v. Allen*, 344 U.S. 443 (1953), the U.S. Supreme Court expanded habeas review by allowing federal courts to review state court proceedings for constitutional error. The *Brown v. Davenport* decision cited to this increase and held that before relief could be granted, a state prisoner had to show “serous and injurious effect or influence on the verdict.” See *Brecht v. Abrahamson*, 507 U.S. 619 (1993).

**11. Please summarize Part IV of the U.S. Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).**

Response: In Part IV of *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023), the Supreme Court held that race-based admissions at Harvard College and the University of North Carolina violated the Equal Protection Clause of the Fourteenth Amendment. It held that schools must now meet the strict scrutiny test for any race-based admissions policies. Specifically, the Court held these two schools failed to meet the strict scrutiny test because they used race as an impermissible “negative,” as an impermissible stereotype, and without a logical endpoint.

**12. Please summarize Part III of the U.S. Supreme Court’s decision in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).**

Response: In Part III of *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held the First Amendment prohibits the State of Colorado from forcing a website designer to create designs with which the designer disagrees. The owner filed a lawsuit to prevent the State from requiring her to create website designs for same-sex couples, which was against her beliefs. The Court held the website designs are protected speech and the First Amendment exists to protect an “uninhibited marketplace of ideas.” The Court added that Colorado’s law intending to enforce non-discrimination must bow to the Constitution when the law compels individuals to express messages with which they disagree.

**13. Please summarize Part II of the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* (2022).**

Response: In Part II of *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), the Court overturned *Roe v. Wade* and concluded that “the Fourteenth Amendment does protect the right to an abortion.” In reaching that result, the Court relied on *Washington v. Glucksberg* to find that the right to abortion is not deeply rooted in our Nation’s history and traditions. The Court also distinguished the abortion right from rights recognized in the cases on which *Roe* and *Casey* relied, as noted below.

**14. Please summarize Part III of the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022).**

Response: In Part III of *Dobbs v. Jackson Women’s Health Org.*, 596 U.S. 215 (2022), the Court considered the doctrine of stare decisis and the factors under which the Court may overturn its own precedent. To overturn precedent the Court applies five factors: the workability of the rule, quality of the reasoning, nature of the error, effect on other areas of law, and reliance. Applying those factors, the Court concluded that *Roe v. Wade* and *Casey v. Planned Parenthood* must be overturned.

**15. Please describe the legal rule employed in *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), and explain why the U.S. Supreme Court sided with the Petitioner.**

Response: *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), involved the doctrine of qualified immunity in a Fourth Amendment context. The Court reviewed whether the officer’s alleged conduct involving excessive force violated a clearly established statutory or constitutional right. The Court held that “[a] right is clearly established when it is ‘sufficiently clear that every reasonable official would have understood that what he is doing violates that right.’” Although “this Court’s case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate.” Because a determination of excessive force is fact specific, the officer was entitled to qualified immunity when neither the Circuit Court nor the respondent identified any case that held similar conduct clearly put the officer on notice that a right was being violated.

**16. When is it appropriate for a district judge to issue a nationwide injunction? Please also explain the legal basis for issuing nationwide injunctions and the relevant factors a district judge should consider before issuing one.**

Response: Federal Rule of Civil Procedure 65 governs the issuance of injunctions by federal courts. As a general matter, injunctions are an extraordinary remedy. *Nken v. Holder*, 556 U.S. 418, 428 (2009). Injunctions having nationwide effect have been issued by federal courts, however, neither the Supreme Court nor the Tenth Circuit has issued binding precedent as to the precise circumstances in which a nationwide injunction can be issued. The Tenth Circuit has stated in *dicta* that an individual class representative may not have standing to seek a nationwide injunction in her own right over actions not directly affecting her. *Colorado Cross Disability v. Abercrombie & Fitch*, 765 F.3d 1205, 1212 (10<sup>th</sup> Cir. 2014).

- 17. Is there ever a circumstance in which a district judge may seek to circumvent a published precedent of the U.S. Court of Appeals under which it sits or the U.S. Supreme Court?**

Response: No.

- 18. If confirmed, please describe what role U.S. Supreme Court dicta would play in your decisions.**

Response: If confirmed, I will follow binding precedent of the Supreme Court and Tenth Circuit. Dicta is not binding precedent.

- 19. To the best of your recollection, please list up to 10 cases in which you served as lead counsel in a bench trial in federal district court or a case tried before a jury in federal district court.**

Response:

*United States v. Cortez, Sr.*, No. 01-CR-16-B (D. Wyo.)

*United States v. Magallanez*, No. 02-CR-125-D (D. Wyo.)

*United States v. Griebel*, No. 05-CR-133-D (D. Wyo.)

*United States v. Burnell*, No. 07-CR-238-J (D. Wyo.)

*United States v. Leiker*, No. 02-CR-125-D (D. Wyo.)

*United States v. Jackett*, No. 03-CR-260-D (D. Wyo.)

*United States v. Medina*, No. 03-CR-159-D (D. Wyo.)

*United States v. Johnson*, No. 06-CR-139-D (D. Wyo.)

- 20. When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race and/or sex of the applicants play in your consideration?**

Response: None.

- 21. Please list all social-media accounts you have had during the past 10 years with Twitter/X, Facebook, Reddit, Instagram, Threads, TikTok, and LinkedIn and the approximate time periods during which you had the account. If the account has been deleted, please explain why and the approximate date of deletion.**

Response: I have not had a social-media account.

- 22. Why should Senator Kennedy support your nomination?**

Response: I have had the honor and privilege of serving as the Chief Magistrate Judge in the District of Wyoming for nearly 12 years. During that time, I have presided over a wide variety of civil and criminal cases – issuing thousands of orders and hundreds of written opinions. On the civil side, the parties routinely consent to my jurisdiction



and over time my consent cases have increased. I have also presided over 12 civil trials, 9 of which were before a jury. I also routinely mediate cases – over 150 in total. I co-chair our local rules committee and am involved in the administration of our courts. Prior to taking the bench, I spent approximately 18 years as a prosecutor, both in federal and state court. I tried approximately 35 jury trials during that time. I was the presidentially appointed United States Attorney, Criminal Chief, and lead attorney for the Organized Crime and Drug Enforcement Task Force. Prior to 2003, when my federal service began, I was the twice elected Park County Attorney, overseeing all civil and criminal matters for the county. I served as a deputy county attorney. I also served as counsel to the Governor. For nearly 30 years, I have been in the courtroom. I strive to be an evidence technician and keep up on new developments in the law. As a judge, I have done my best to uphold my oath to the Constitution. I have approached each case with an open mind and an appreciation for the positions of the lawyers and litigants who appear before me. In each case, I have faithfully and impartially applied the rule of law to the facts. As a judge, I hold myself to a high standard. I approach my work and my life with great humility knowing that I am blessed to serve.

**CHAIR**  
Hon. Ann Claire Williams (Ret.)  
acwilliams@jonesday.com  
(312) 269-1575

**VICE CHAIR**  
David L. Brown  
dlbrown@hmlawfirm.com  
(515) 244-2141

**FIRST CIRCUIT**  
Kay H. Hodge  
khodge@ncmla.com  
(517) 542-6789

**SECOND CIRCUIT**  
Dana M. Iwelle  
diwelle@pulscom.com  
(860) 424-4382

**THIRD CIRCUIT**  
G. Glennon Troublefield  
gtroublefield@camllaw.com  
(978) 994-1700

**FOURTH CIRCUIT**  
Pamela J. Roberts  
pajroberts@bownanandbrooke.com  
(803) 725-7423

**FIFTH CIRCUIT**  
Michael D. Hunt  
michael.hunt@phelps.com  
(275) 346-0285

**SIXTH CIRCUIT**  
Khalish V. Spencer  
kspencer@hooigan.com  
(313) 465-7654

**SEVENTH CIRCUIT**  
Nigel F. Tolman  
ntolman@proskauer.com  
(312) 962-3548

**EIGHTH CIRCUIT**  
Sonia Miller-Van Court  
soniamv@saperlaw.com  
(612) 756-7125

**NINTH CIRCUIT**  
John C. Dwyer  
dwyerjc@cooley.com  
(508) 843-5228

**TENTH CIRCUIT**  
Eric S. Cather  
ecather@emeyerslaw.com  
(510) 808-2000

**ELEVENTH CIRCUIT**  
Jennifer M. Weddie  
jweddie@gslaw.com  
(303) 572-6500

**D.C. CIRCUIT**  
Michael L. Huang  
mhuang@gpmlaw.com  
(734) 678-1531

**FEDERAL CIRCUIT**  
Joseph Michael Deayton  
jdeayton@proskauer.com  
(212) 969-3479

**SPECIAL ADVISORS**  
Peter Bennett  
pbennett@thebennettclawfirm.com  
(207) 831-9999

Vincent Chang  
vincent.chang@davispolk.com  
(212) 450-4242

Susan Saltzstein  
ssaltzstein@skadden.com  
(212) 755-4132

**STAFF COUNSEL**  
Denise A. Cardman  
denise.cardman@americanbar.org



Please reply to:  
Hon. Ann Claire Williams (Ret.)  
Jones Day  
110 North Wacker Drive, Suite 4800  
Chicago, Illinois 60606  
acwilliams@jonesday.com

January 23, 2024

**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 Kelly Harrison Rankin to the  
United States District Court for the District of Wyoming*

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 Kelly Harrison Rankin, who has been nominated by the President to the United States District Court for the District of Wyoming. 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 Rankin is "**Well Qualified**" to serve on the United States District Court for the District of Wyoming.

Very truly yours,

*Ann Claire Williams*  
Hon. Ann Claire Williams (Ret.)  
Chair, Standing Committee  
on the Federal Judiciary

cc: Edward N. Siskel, 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 Kelly Harrison Rankin (*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).  
  
Leon Schydlower
2. **Position:** State the position for which you have been nominated.  
  
United States District Judge for the Western 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 Western District of Texas  
525 Magoffin Avenue, Fifth Floor  
El Paso, Texas 79901
4. **Birthplace:** State year and place of birth.  
  
1971; Long Beach, 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 – 1995, University of Texas School of Law; J.D., 1995  
  
1989 – 1993, University of Texas at Austin; B.A., 1993  
  
1989 (Summer), El Paso Community College (no degree received)
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.  
  
2015 – present  
United States District Court, Western District of Texas – El Paso Division  
525 Magoffin Avenue, Fifth Floor

El Paso, Texas 79901  
United States Magistrate Judge

2002 – 2015  
Leon Schydlower, Attorney at Law, PLLC  
221 North Kansas Street, Suite 1103  
El Paso, Texas 79901  
Owner / Partner

2000 – 2002  
Kemp Smith, P.C.  
221 North Kansas Street, Suite 1900  
El Paso, Texas 79901  
Partner (2001 – 2002)  
Associate (2000 – 2001)

1998 – 2000  
United States Attorney's Office  
District of Hawaii  
300 Ala Moana Boulevard, Suite 6100  
Honolulu, Hawaii 96850  
Special Assistant United States Attorney

1997 – 1998  
United States Navy Trial Service Office Pacific  
850 Willamette Street  
Pearl Harbor, Hawaii 96860  
Military Prosecutor

1996 – 1997  
United States Navy Legal Service Office Pacific  
850 Willamette Street  
Pearl Harbor, Hawaii 96860  
Assistant Staff Judge Advocate

Fall 1995 – 1996  
Travis County District Attorney's Office  
411 West 11th Street  
Austin, Texas 78701  
Law clerk

Summer 1995  
Texas Attorney General's Office  
300 West 15th Street  
Austin, Texas 78701  
Law clerk

Summer 1994  
Travis County Attorney's Office  
314 West 11th Street  
Austin, Texas 78701  
Law clerk

1993  
Texas House of Representatives  
Texas Capitol  
Austin, Texas 78701  
Part-time student legislative assistant

Other Affiliations (United States Air Force Reserve):

2021 – present  
35th Fighter Wing  
Torii Building, Building 656  
Misawa Air Base  
Japan  
Individual Mobilization Assistant to the Staff Judge Advocate

2017 – 2021  
United States Air Force Judge Advocate General's School  
150 Chennault Circle  
Maxwell Air Force Base  
Alabama 36112  
Instructor of Law

2011 – 2017  
49th Wing Judge Advocate  
490 First Street, Building 29  
Holloman Air Force Base  
New Mexico 88330  
Assistant Staff Judge Advocate

**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.

2010 – present  
United States Air Force Reserve  
Lieutenant Colonel  
I am presently serving and have not been discharged.

1996 – 2000  
United States Navy  
Lieutenant  
I was honorably discharged.

2000 – 2004  
United States Naval Reserve (Inactive Reserve)  
Lieutenant  
I was honorably discharged.

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.

United States Air Force – Meritorious Service Medal (2016, 2021)

El Paso Bar Association, Outstanding Young Lawyer of the Year (2006)

United States Navy – Navy Commendation Medal (2000)

United States Navy – Pearl Harbor Trial Service Office Pacific Junior Officer of the Quarter: 1998

Phi Beta Kappa, University of Texas (1993)

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

El Paso Bar Association (2000 – present)

El Paso Young Lawyer's Association (2000 – 2008)  
President (2003)

Fifth Circuit Committee on Criminal Pattern Jury Instructions, 2019 Edition

Federal Magistrate Judges Association (2015 – present)

Lawyer-Pilots Bar Association (approximately 2010 – 2015)

Texas Young Lawyer's Association (2000 – 2008)

United States District Court for the District of New Mexico Criminal Justice Act Committee (2007 – 2015)

10. **Bar and Court Admission:**

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

California, 2000  
New Mexico, 2000  
Texas, 1996

There have been no lapses in membership, but I have been on inactive status in California and New Mexico since approximately 2016.

- 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, 2003  
United States Court of Appeals for the Ninth Circuit, 1999  
United States Court of Appeals for the Tenth Circuit, 2004  
Court of Appeals for the Armed Forces, 2000  
United States District Court for the Central District of California, 2002  
United States District Court for the Southern District of California, 2005  
United States District Court for the District of New Mexico, 2003  
United States District Court for the Northern District of Texas, 2001  
United States District Court for the Western District of Texas, 2000

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.

Air Force Association (approximately 2016 – 2018)

Aircraft Owners and Pilot Association (2007 – 2022)

El Paso County Club (approximately 2000 – 2019)

El Paso Texas Exes (University of Texas Alumni Association) (2000 –

approximately 2010)  
Board Member (2002 – 2005)

Hawaii Texas Exes (University of Texas Alumni Association) (approximately 1996 – 2000)  
President (1997 – 1998)

Navy League of the United States (approximately 2016 – 2018)

United States Soccer Federation (mid-2000s)

- 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 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.

Book Note, 22 Am. J. Crim. L. (Winter 1995) (reviewing BRENT L. SMITH, *TERRORISM IN AMERICA: PIPE BOMBS AND PIPE DREAMS* (1994)). Copy supplied.

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

None.

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



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

None.

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

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.

October 10, 2023: Speaker, Common Pitfalls in Personal Injury Litigation Post-Removal to Federal Court, El Paso Bar Association Monthly Luncheon Meeting, El Paso, Texas. Presentation supplied.

May 24, 2023: Panelist, Law Day at Fort Bliss, Texas. I sat on a panel with two state court judges and a practicing attorney before a military legal audience to discuss pathways to the bench and best court practices. I have no notes, transcript or recording. The sponsoring organization was the Office of the Staff Judge Advocate, Building 113, Pershing Road, USAG Fort Bliss, Texas 79916.

April 3, 2023: Panelist, Roadways to the Bench, United States District Courthouse, Austin, Texas. I sat on a panel speaking to law students and lawyers about my experiences and path that led me to the bench. I have no notes, transcript, or recording. The address of the U.S. District Court is 501 West Fifth Street, Austin, Texas 78701.

2015 – 2020, various Sunday mornings: Speaker. I gave numerous speeches on Sunday mornings at Eastwood High School, El Paso, Texas, to West Texas and Southern New Mexico high school students and parents interested in the United States Air Force Academy. I spoke broadly about admission requirements, physical fitness requirements, and cadet life. I have no notes, transcripts, or recordings. The address of Eastwood High School is 2430 McRae Boulevard, El Paso, TX 79925.

January 22, 2016: Speaker, Naturalization Ceremony, United States District Court for the Western District of Texas. As part of my duties as a United States

Magistrate Judge, I spoke at a naturalization ceremony for new citizens. I have no notes, transcript, or recording. The address of the U.S. District Court is 525 Magoffin Avenue, El Paso, Texas 79901.

January 13, 2016: Speaker, Investiture as United States Magistrate Judge, United States Courthouse in El Paso, Texas. I thanked my family, friends, and colleagues for supporting me personally and professionally during my career. I have no notes, transcript, or recording. The address of the U.S. District Court is 525 Magoffin Avenue, El Paso, Texas 79901.

2010 – approximately 2016 (usually every April): Speaker, Federal Civil Motion Practice, United States District Courthouse, El Paso, Texas. I presented this topic annually to lawyers as part of a continuing legal education program. The most recent version of the presentation is supplied.

May 22, 2014: Speaker, Whither Minimum Mandatory Sentences in Federal Drug Cases? Texas Minority Attorney Continuing Legal Education program, United States District Courthouse, El Paso, Texas. Presentation supplied.

May 16, 2013: Panelist, Civil Trial Tips CLE, United States District Courthouse, El Paso, Texas. I sat on a panel during a Federal Bar Association Continuing Legal Education program to discuss federal court civil trial tips with a United States District Judge and another trial attorney. I have no notes, transcript, or recording. The address of the U.S. District Court is 525 Magoffin Avenue, El Paso, Texas 79901.

December 5, 2005: Speaker, Federal Sentencing Guidelines, Texas Young Lawyers Association online video series. Video available at <https://www.texasbarcle.com/CLE/AATYLAPlayer5.asp?IEventID=216&sTitle=Federal+Sentencing+Guidelines&sAuthor=Leon+++Schydlower>.

- 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.

Phillip Countryman, *Getting to Know the Honorable Leon Schydlower*, DICTA, Vol. 6, Iss. 2 (Winter 2019). Copy supplied.

Daniel Borunda, *Former Beaumont Army Medical Center Doctor Indicted in Fraud Scheme*, EL PASO TIMES (Feb. 7, 2014). Copy supplied.

Marty Schladen, *Public corruption: Chilo Madrid wants help with restitution*, EL PASO TIMES (Nov. 3, 2013). Copy supplied.

Marty Schladen, *Jury Finds Cirilo "Chilo" Madrid Guilty in Corruption Case*,

EL PASO TIMES (Dec. 14, 2012). Copy supplied.

Adriana M. Chavez, *Ex-FBI agent's appeal at risk*, EL PASO TIMES (May 30, 2012). Copy supplied.

Zahira Torres, *EPISD Paid New Beginnings of Texas \$3.2 Million in Contracts*, EL PASO TIMES (Apr. 27, 2012). Copy supplied.

Ashley Meeks, *Family of man who died in prison sues*, LAS CRUCES SUN-NEWS (Dec. 9, 2010). Copy supplied.

Adriana Gomez Licon, *Inmate's death focus of lawsuit*, EL PASO TIMES (Dec. 9, 2010). Copy supplied.

Adriana Gomez Licon, *ACLU suing over immigrant death in Texas*, EL PASO TIMES (Dec. 8, 2010). Copy supplied.

Jose Medina (Media Coordinator, ACLU Foundation of Texas), *ACLU Of Texas Sues on Behalf of Immigrant Inmate Who Died in Solitary Confinement in Pecos Prison*, ACLU Press Release (Dec. 8, 2010). Copy supplied.

Jim Mustian, *Court Tosses Life Sentence – Midland Man is Jailed Again on Lesser Charge*, ODESSA AMERICAN (July 3, 2010). Copy supplied.

Adriana M. Chavez, *William Josef Berkley, on Day Before Execution: 'I Didn't Kill Her,'* EL PASO TIMES (Apr. 22, 2010). Copy supplied.

Adriana M. Chavez, *Delay of William Josef Berkley's Thursday execution is sought*, EL PASO TIMES (Apr. 21, 2010). Copy supplied.

Jose L. Medina, *'Crosses' Plaintiff Found in Contempt*, LAS CRUCES SUN-NEWS (Oct. 27, 2006). Copy supplied.

*Ex-supt. Owns Rap to Avoid Jail Time*, THE FILIPINO REPORTER (Apr. 28, 2006). Copy supplied.

Gustavo Reveles Acosta, *Ex-Socorro Official Gets Probation for Failing to Report Gifts*, EL PASO TIMES (Apr. 11, 2006). Copy supplied.

Anita Davis, *Features: Pro Bono Work Is "Billable Hours For The Soul,"* 66 TEX. B. J. 994 (Dec. 2003). Copy supplied.

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

Since November 2015, I have served as a United States Magistrate Judge on the United States District Court for the Western District of Texas. I was selected for this position following a two-stage process. In the first stage, members of a merit selection committee comprised of lawyers and nonlawyers recommended five finalists from among the 77 applicants. In the second stage, the United States District Judges of the Western District of Texas made their final selection from the five finalists. My first term expired on November 30, 2023, and before its expiration the merit selection committee conducted a review and recommended that I be reappointed to a second term. The United States District Judges for the Western District of Texas thereafter voted to reappoint me to a second eight-year term which began December 1, 2023.

The United States District Court for the Western 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. When assigned, I also conduct jury selection for trial over which a District Judge will preside.

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

I have presided over one civil trial and five misdemeanor criminal trials. 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 33 civil consent cases that have gone to verdict or judgment.

- i. Of these cases, approximately what percent were:

jury trials:	17%
bench trials:	83%

- ii. Of these cases, approximately what percent were:

civil proceedings:	17%
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criminal proceedings: 83%

- 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. *U.S. Department of Labor v. Five Star Automatic Fire Protection, LLC*, No. 3:16-cv-00282-LS, 2018 U.S. Dist. LEXIS 167522, 2018 WL 4691615 (W.D. Tex. Sept. 28, 2018) (liability), 2019 U.S. Dist. LEXIS 169841, 2019 WL 4765324 (W.D. Tex. Sept. 30, 2019) (damages), *aff'd*, 987 F.3d 436 (5th Cir. 2021), *reh'g denied*, 997 F.3d 1258 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 1667 (2022).

Five Star is a company that installs fire prevention and sprinkler systems in commercial buildings. The Department of Labor alleged that Five Star violated the Fair Labor Standards Act because it did not pay certain employees for pre-shift and post-shift work, and improperly calculated overtime pay for certain employees. Five Star's employee recordkeeping was problematic, so *Anderson v. Mt. Clemens Pottery Company*, 328 U.S. 680 (1946), which provides an inference against employers whose records are inaccurate or inadequate, was at the fore. Following a bench trial, I found the defendant liable and awarded damages to the employees. The Fifth Circuit affirmed and the Supreme Court denied certiorari.

Counsel for Plaintiff:

Mia F. Terrell  
Sheryl L. Vieyra  
U.S. Department of Labor  
Office of the Solicitor  
525 Griffin Street, Suite 501  
Dallas, TX 75202  
(972) 850-3100

Brian L. Hurt  
Steptoe & Johnson PLLC  
500 North Akard Street, Suite 3200  
Dallas, TX 75201  
(214) 251-8424

Counsel for Defendant:

Robert L. Blumenfeld  
 Mendel Blumenfeld LLP  
 5809 Acacia Circle  
 El Paso, TX 79912  
 (915) 587-7878

Michael T. Milligan  
 Attorney at Law  
 4171 North Mesa Street  
 Suite B-201  
 El Paso, TX 79902

2. *Villegas v. City of El Paso et al.*, No. 3:15-cv-00386-DCG-LS (W.D. Tex. June 17, 2019), *R. & R. adopted in part, rejected in part*, No. 3:15-cv-00386-DCG-LS (W.D. Tex. Sept. 20, 2019). Opinion supplied.

Mr. Villegas was convicted of capital murder in 1995 and sentenced to life imprisonment. The Texas Court of Criminal Appeals vacated the conviction in December 2013 after Mr. Villegas spent nearly twenty years in prison. A jury found Villegas not guilty during an October 2018 retrial. He sued the El Paso Police Department and all police officers he claims framed him for a murder he did not commit. After the police department and all 12 defendant officers moved to dismiss for failure to state a claim, I issued a report and recommendation regarding which claims were viable against which particular officers. Specifically, I found that Villegas sufficiently alleged claims against three officers for coercing a confession and for coercing other teenagers' false statements implicating Villegas in the murders. I also recommended that the plaintiff be allowed to replead his complaint within 30 days, in light of my analysis. The District Judge adopted my recommendation that some officers be outrightly dismissed from the lawsuit, that some nonviable claims be dismissed, and mooted my recommendations regarding other claims in light of my recommendation that the plaintiff be allowed to replead his lawsuit. This case is set for trial before Senior United States District Judge David C. Guaderrama in May 2024.

Counsel for Plaintiff:

Felix Valenzuela  
 Valenzuela Law Firm  
 701 Magoffin Avenue  
 El Paso, TX 79901  
 (915) 209-2719

Quinn K. Rallins  
 Wallace Hilke  
 Alison R. Leff  
 Jon Loewy  
 Samuel Heppell

Russell Ainsworth  
 Loevy & Loevy  
 311 North Aberdeen Street, Third Floor  
 Chicago, IL 60697  
 (312) 243-5900

Counsel for Defendant City of El Paso:

Karla M. Nieman  
 Evan D. Reed  
 Laura Gordon  
 Maria G. Martinez  
 Nicole J. Anchondo  
 Oscar G. Gabaldon, Jr.  
 El Paso City Attorney's Office  
 P.O. Box 1890  
 El Paso, TX 79950  
 (915) 212-0033

Lowell F. Denton  
 Scott M. Tschirhart  
 Ricardo J. Navarro  
 Denton Navarro Rocha Bernal & Zech P.C.  
 2500 West William Cannon Drive, Suite 609  
 Austin, TX 78745  
 (512) 279-6431

George E. Hyde  
 Hyde Kelley LLP  
 2806 Flintrock Terrace, Suite A104  
 Austin, TX 78738  
 (512) 686-0700

Manuel Arambula  
 Nava Law Texas  
 1012 North Campbell, Suite 1  
 El Paso, TX 79901  
 (915) 203-1910

Ramiro Canales  
 Canales PLLC  
 P.O. Box 49106  
 Austin, TX 78765  
 (512) 659-3237

Counsel for Defendant Marquez:

James A. Martinez

Mounce, Green, Myers, Safi, Paxson & Galatzan  
P.O. Box 1977  
El Paso, TX 79999  
(915) 532-2000

Counsel for Defendants Ortega and Armendariz:

Carl H. Green  
Andres E. Almanzan  
Mounce, Green, Myers, Safi, Paxson & Galatzan  
P.O. Box 1977  
El Paso, TX 79999  
(915) 532-2000

Counsel for Defendants Graves, Arbogast, Brown, Loya, and Sanchez:

James O. Darnell  
Cris Estrada  
James O. Darnell, Jr.  
Jim Darnell, P.C.  
310 North Mesa, Suite 212  
El Paso, TX 79901  
(915) 532-2442

Counsel for Defendant Bellows:

Eric M. Brittain  
Windle Hood Norton Brittain & Jay LLP  
Chase Bank Building, 13th Floor  
210 East Main, Suite 1350  
El Paso, TX 79901  
(915) 545-4911

Counsel for Defendant Scagno:

Eduardo Miranda  
2330 Montana Avenue  
El Paso, TX 79903  
(915) 351-7693

3. *Barnett v. Eckel Manufacturing Company, Inc., et al.*, No. 7:16-cv-00111-FM, 2017 WL 11037927 (W.D. Tex. Jan. 19, 2017).

Mr. Barnett sued his employer under the Family and Medical Leave Act ("FMLA") and alleged that he was fired for taking excessive medical leave to treat a kidney stone condition. Two individual defendants, supervisors at the defendant company, filed a Rule 12(b)(6) motion to dismiss in which they argued that Mr. Barnett's complaint insufficiently alleged that they were "employers" for FMLA purposes. I disagreed and recommended that the motion to dismiss be denied. The District Judge adopted my report and recommendation and the case



ultimately settled.

Counsel for Plaintiff:  
Christine A. Hopkins  
Tremain Artaza PLLC  
4925 Greenville Avenue, Suite 200  
Dallas, TX 75206  
(469) 573-0297

Counsel for Defendants Eckel Manufacturing Company, Inc., Eckel Heat Treating Company, Jon Stuart, and Justin Eckel:  
James W. Essman  
Richard Layne Rouse  
Shafer Davis O'Leary & Stoker  
P.O. Drawer 1552  
Odessa, TX 79760-1552  
(432) 332-0893

4. *Poe v. Bock*, No. 3:17-cv-00232-DCG-LS, 2018 WL 4677901 (W.D. Tex. June 11, 2018), *appeal dismissed*, 2018 WL 11451307 (5th Cir. Nov. 8, 2018).

Mr. Poe alleged in a civil RICO lawsuit that the defendants conspired to wrest ownership and control of multiple car dealerships from him after his father died. I recommended dismissal of the lawsuit because, for several reasons, Poe did not adequately plead a viable civil RICO claim. The District Judge adopted my report and recommendation and dismissed the case. The plaintiffs appealed the dismissal to the Fifth Circuit but ultimately moved to dismiss the appeal.

Counsel for Plaintiffs:  
William A. Brewer  
Brewer, Attorneys & Counselors  
1717 Main Street, Suite 5900  
Dallas, TX 75201  
(214) 653-4875

Michael J. Collins  
Stutzman, Bromberg, Esserman & Plifka, P.C.  
2323 Bryan Street, Suite 2200  
Dallas, TX 75201-4651  
(214) 969-4900

Michael J. Shane  
Gordon Davis Johnson & Shane, P.C.  
P.O. Box 1322  
El Paso, TX 79947

(915) 545-1133

Robert M. Millimet  
Richards Law PLLC  
6125 Luther Lane, Number 301  
Dallas, TX 75225  
(469) 480-4878

Counsel for Defendants:

Francisco J. Ortega  
Richard G. Munzinger (deceased)  
Scott Hulse, PC  
1100 Chase Tower  
201 East Main Drive  
El Paso, TX 79901  
(915) 546-8333

Joseph L. Hood, Jr.  
Windle Hood Alley Norton Brittain & Jay, LLP  
Chase Tower  
201 East Main Drive, Suite 1350  
El Paso, TX 79901

5. *Valdez v. Allstate Texas Lloyd's*, No. 3:16-cv-00346-PRM-LS, 2016 WL 9414131 (W.D. Tex. Oct. 7, 2016).

The plaintiff in this insurance case sought to compel mediation pursuant to a Texas Insurance Code provision mandating same. The question before me was whether a state law can bind a federal court to order mediation in a diversity case. I found that the state law in question did not bind the federal court and denied the motion to compel mediation. The parties ultimately stipulated to the dismissal of the lawsuit.

Counsel for Plaintiff:

J. Michael Moore  
The Moore Law Firm  
4900 North Tenth Street, Suite F3  
McAllen, TX 78504  
(956) 631-0745

Manuel A. Pelaez-Prada  
Flores & Pelaez-Prada, PLLC  
3552 Paesanos Parkway, Suite 301  
San Antonio, TX 78231  
(210) 361-0070

Cori Ann Harbour-Valdez  
The Harbour Law Firm, P.C.  
701 North Saint Vrain  
El Paso, TX 79902  
(915) 544-7600

Counsel for Defendant:

Roger D. Higgins  
Thompson, Coe, Cousins & Irons  
700 North Pearl Street, 25th Floor  
Dallas, TX 75201  
(214) 871-8256

Sean C. White  
Kemp Smith, LLP  
221 North Kansas Street, Suite 1700  
El Paso, TX 79901  
(915) 533-4424

Brandt R. Johnson  
Zelle LLP  
901 Main Street, Suite 4000  
Dallas, TX 75202  
(214) 749-4214

Vanessa A. Rosa  
Kubik Sustaita PLLC  
12222 Merit Drive #130  
Dallas, TX 75251  
(214) 775-0728

6. *Anderson v. 21st Mortgage Corp., et al.*, No. 7:15-cv-0200-KC-LS, 2016 WL 11582928 (W.D. Tex. Sept. 26, 2016), *adopted as modified*, 2017 WL 11037113 (W.D. Tex. Mar. 10, 2017).

Mr. Anderson asserted antitrust, defamation, and tortious interference with contract claims against the defendants, including his former employer, who sell mobile homes and make loans for such sales. He alleged he was fired after complaining about perceived financing improprieties with respect to mobile home sales. The mobile home seller filed a Rule 12(b)(6) motion to dismiss all claims. I recommended that the District Judge dismiss all claims, two with prejudice, and four without prejudice. The District Judge adopted my report and recommendation, except as to the basis for dismissing one of the claims, and dismissed the lawsuit. The parties ultimately settled the lawsuit.

Counsel for Plaintiff:

Naomi Cobb  
Independence Plaza  
400 West Illinois, Suite 1140  
Midland, TX 79701  
(432) 460-9437

Holly B. Williams  
Williams Law Firm, P.C.  
1209 West Texas Avenue  
Midland, TX 79701  
(432) 682-7800

Counsel for Defendant 21st Century Corporation:

Michael D. Mitchell  
Ogletree Deakins Nash Smoak & Stewart, P.C.  
One Allen Center  
500 Dallas Street, Suite 3000  
Houston, TX 77002  
(713) 655-5756

Counsel for Titan Factory Direct Homes, Inc.:

Daniel L. Bates  
Decker Jones, P.C.  
801 Cherry Street, Unit #46, Suite 2000  
Fort Worth, TX 76102  
(817) 336-2400

Kyle B. Fonville  
Warren Fonville, PLLC  
1635 Rogers Road  
Fort Worth, TX 76107  
(682) 610-3030

7. *A.S. et al. v. Kermit Independent School District et al.*, No. 4:16-cv-00037-FM-LS (W.D. Tex. Jan. 3, 2017). Opinion supplied.

A.S. was a fifth grader and through his parents sued his school principal, school superintendent, and his school district for a series of school disciplinary measures that he argued violated his Fourteenth Amendment substantive due process rights. I recommended that the plaintiff's complaint be dismissed primarily because A.S. did not sufficiently allege municipal liability and because A.S. failed to assert a viable constitutional cause of action. The District Judge adopted my report and recommendation and dismissed the lawsuit.

Counsel for Plaintiff:

John S. Klassen

Klassen Law Firm PLLC  
4000 North Big Spring Street  
Midland, TX 79705  
(432) 684-1111

Counsel for Defendant:  
Philip Blake Henshaw  
Walsh Gallegos Trevino Kyle and Robinson P.C.  
10370 Richmond Avenue, Suite 1400  
Houston, TX 77042  
(713) 789-6864

Todd Aaron Clark  
Travis County Attorney's Office  
314 West 11th Street, Suite 500  
Austin, TX 78701  
(512) 854-9513

8. *Windmann v. Sun Life Assurance Co. of Canada*, No. 7:16-cv-00061-KC-LS, 2016 WL 11591768 (W.D. Tex. Dec. 15, 2016).

Ms. Windmann sued Sun Life when it denied her accidental death benefits after her husband died. Sun Life maintained that ERISA preempted Ms. Windmann's state law claims and moved to dismiss. I found that ERISA did indeed preempt all of Ms. Windmann's state law claims and recommended that they be dismissed. The parties settled after I issued my report and recommendation.

Counsel for Plaintiff:  
Todd Robinson  
Batek & Robinson, LLP  
102 North Staples  
Corpus Christi, TX 78401  
(361) 883-2200

Counsel for Defendant:  
Claire Winniford Parson  
Wilson Elser Moskowitz Edelman & Dicker LLP  
909 Fannin Street, Suite 3300  
Houston, TX 77010  
(713) 353-2000

9. *Mora v. Albertson's, L.L.C. et al.*, No. 3:15-cv-0071-LS, 2016 WL 11580767 (W.D. Tex. July 11, 2016).

Ms. Mora filed an ERISA suit against grocery store defendants for their alleged failure to provide her medical and wage benefits under a workplace injury benefit

plan. I denied the defendants' motion for summary judgment on the denial of medical benefits claim and granted their motion for summary judgment on the plaintiff's ERISA estoppel claim. The parties settled after I issued my opinion.

Counsel for Plaintiff:

James D. Tawney  
7016 Orizaba Avenue  
El Paso, TX 79912  
(915) 308-1000

Counsel for Defendants:

Christopher C. White  
Steptoe & Johnson, PLLC  
500 North Akard Street, Suite 3200  
Dallas, TX 75201  
(945) 235-6802

Kris Alderman  
The Summerville Firm  
1226 Ponce de Leon Avenue North East  
Atlanta, GA 30306  
(770) 635-0030

10. *Morris v. Sorenson et al.*, No. 7:16-cv-00071-DC, 2016 WL 11554094 (W.D. Tex. Nov. 9, 2016).

Ms. Morris sued Midland law enforcement officers for entering her home without a warrant and removing her to a police car. All three defendant officers filed motions to dismiss for failure to state a claim. I recommended against dismissal of the claim against the officer who made the warrantless entry and removal and recommended that the District Judge dismiss the claims against the other two officers. The District Judge adopted my report and recommendation. The plaintiff lost at jury trial, and her subsequent appeal was dismissed for her failure to prosecute it.

Plaintiff proceeded *pro se*

Counsel for Defendant Sorenson:

Jon Mark Hogg  
421 West Concho Avenue  
San Angelo, TX 76903  
(325) 777-0455

Carmen Symes Dusek  
51st District Court  
112 West Beauregard Avenue

San Angelo, TX 76903  
(325) 657-8011

Counsel for Defendants Arellano and Mancha:

Aaron Dorfner  
Cotton Bledsoe Tighe & Dawson PC  
P.O. Box 2776  
Midland, TX 79702  
(432) 684-5782

- 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. *U.S. Department of Labor v. Five Star Automatic Fire Protection, LLC*, No. 3:16-cv-00282-LS, 2018 WL 4691615 (W.D. Tex. Sept. 28, 2018) (liability), 2019 WL 4765324 (W.D. Tex. Sept. 30, 2019) (damages), *aff'd*, 987 F.3d 436 (5th Cir. 2021), *reh'g denied*, 997 F.3d 1258 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 1667.

Counsel for Plaintiff:

Mia F. Terrell  
Sheryl L. Vieyra  
U.S. Department of Labor  
Office of the Solicitor  
525 Griffin Street, Suite 501  
Dallas, TX 75202  
(972) 850-3100

Brian L. Hurt  
Steptoe & Johnson PLLC  
500 North Akard Street, Suite 3200  
Dallas, TX 75201  
(214) 251-8424

Counsel for Defendant:

Robert L. Blumenfeld  
Mendel Blumenfeld LLP  
5809 Acacia Circle  
El Paso, TX 79912  
(915) 587-7878

Michael T. Milligan  
Attorney at Law  
4171 North Mesa Street, Suite B-201

El Paso, TX 79902  
(915) 544-5587

2. *Villegas v. City of El Paso et al.*, No. 3:15-cv-00386-DCG-LS (W.D. Tex. June 17, 2019), *R. & R. adopted in part, rejected in part*, No. 3:15-cv-00386-DCG-LS (W.D. Tex. Sept. 20, 2019). Opinion previously supplied in response to Question 13c.

Counsel for Plaintiff:  
Felix Valenzuela  
Valenzuela Law Firm  
701 Magoffin Avenue  
El Paso, TX 79901  
(915) 209-2719

Quinn K. Rallins  
Wallace Hilke  
Alison R. Leff  
Jon Loewy  
Samuel Heppell  
Russell Ainsworth  
Loevy & Loevy  
311 North Aberdeen Street, Third Floor  
Chicago, IL 60697  
(312) 243-5900

Counsel for Defendant City of El Paso:  
Karla M. Nieman  
Evan D. Reed  
Laura Gordon  
Maria G. Martinez  
Nicole J. Anchondo  
Oscar G. Gabaldon, Jr.  
El Paso City Attorney's Office  
P.O. Box 1890  
El Paso, TX 79950  
(915) 212-0033

Lowell F. Denton  
Scott M. Tschirhart  
Ricardo J. Navarro  
Denton Navarro Rocha Bernal & Zech P.C.  
2500 West William Cannon Drive, Suite 609  
Austin, TX 78745  
(512) 279-6431



George E. Hyde  
Hyde Kelley LLP  
2806 Flintrock Terrace, Suite A104  
Austin, TX 78738  
(512) 686-0700

Manuel Arambula  
Nava Law Texas  
1012 North Campbell, Suite 1  
El Paso, TX 79901  
(915) 203-1910

Ramiro Canales  
Canales PLLC  
P.O. Box 49106  
Austin, TX 78765  
(512) 659-3237

Counsel for Defendant Marquez:

James A. Martinez  
Mounce, Green, Myers, Safi, Paxson & Galatzan  
P.O. Box 1977  
El Paso, TX 79999  
(915) 532-2000

Counsel for Defendants Ortega and Armendariz:

Carl H. Green  
Andres E. Almanzan  
Mounce, Green, Myers, Safi, Paxson & Galatzan  
P.O. Box 1977  
El Paso, TX 79999  
(915) 532-2000

Counsel for Defendants Graves, Arbogas, Brown, Loya, and Sanchez:

James O. Darnell  
Cris Estrada  
James O. Darnell, Jr.  
Jim Darnell, P.C.  
310 North Mesa, Suite 212  
El Paso, TX 79901  
(915) 532-2442

Counsel for Defendant Bellows:

Eric M. Brittain  
Windle Hood Norton Brittain & Jay LLP  
Chase Bank Building, 13th Floor

210 East Main, Suite 1350  
El Paso, TX 79901  
(915) 545-4911

Counsel for Defendant Scagno:

Eduardo Miranda  
2330 Montana Avenue  
El Paso, TX 79903  
(915) 351-7693

3. *Barnett v. Eckel Manufacturing Company, Inc., et al.*, No. 7:16-cv-00111-FM, 2017 WL 11037927 (W.D. Tex. Jan. 19, 2017).

Counsel for Plaintiff:

Christine A. Hopkins  
Tremain Artaza PLLC  
4925 Greenville Avenue, Suite 200  
Dallas, TX 75206  
(469) 573-0297

Counsel for Defendants Eckel Manufacturing Company, Inc., Eckel Heat Treating Company, Stuart, and Eckel:

James W. Essman  
Richard Layne Rouse  
Shafer Davis O'Leary & Stoker  
P.O. Drawer 1552  
Odessa, TX 79760  
(432) 332-0893

4. *Poe v. Bock*, No. 3:17-cv-00232-DCG-LS, 2018 WL 4677901 (W.D. Tex. June 11, 2018).

Counsel for Plaintiffs:

William A. Brewer  
Brewer, Attorneys & Counselors  
1717 Main Street, Suite 5900  
Dallas, TX 75201  
(214) 653-4875

Michael J. Collins  
Stutzman, Bromberg, Esserman & Plifka, P.C.  
2323 Bryan Street, Suite 2200  
Dallas, TX 75201  
(214) 969-4900

Michael J. Shane

Gordon Davis Johnson & Shane, P.C.  
P.O. Box 1322  
El Paso, TX 79947  
(915) 545-1133

Robert M. Millimet  
Richards Law PLLC  
6125 Luther Lane, Number 301  
Dallas, TX 75225  
(469) 480-4878

Counsel for Defendants:

Francisco J. Ortega  
Richard G. Munzinger (deceased)  
Scott Hulse, PC  
1100 Chase Tower  
201 East Main Drive  
El Paso, TX 79901  
(915) 546-8333

Joseph L. Hood, Jr.  
Windle Hood Alley Norton Brittain & Jay, LLP  
Chase Tower  
201 East Main Drive, Suite 1350  
El Paso, TX 79901  
(915) 545-4900

5. *Valdez v. Allstate Texas Lloyd's*, No. 3:16-cv-00346-PRM-LS, 2016 WL 9414131 (W.D. Tex. Oct. 7, 2016).

Counsel for Plaintiff:

J. Michael Moore  
The Moore Law Firm  
4900 North Tenth Street, Suite F3  
McAllen, TX 78504  
(956) 631-0745

Manuel A. Pelaez-Prada  
Flores & Pelaez-Prada, PLLC  
3552 Paesanos Parkway, Suite 301  
San Antonio, TX 78231  
(210) 361-0070

Cori Ann Harbour-Valdez  
The Harbour Law Firm, P.C.  
701 North Saint Vrain

El Paso, TX 79902  
(915) 544-7600

Counsel for Defendant:

Roger D. Higgins  
Thompson, Coe, Cousins & Irons  
700 North Pearl Street, 25th Floor  
Dallas, TX 75201  
(214) 871-8256

Sean C. White  
Kemp Smith, LLP  
221 North Kansas Street, Suite 1700  
El Paso, TX 79901  
(915) 533-4424

Brandt R. Johnson  
Zelle LLP  
901 Main Street, Suite 4000  
Dallas, TX 75202  
(214) 749-4214

Vanessa A. Rosa  
Kubik Sustaita PLLC  
12222 Merit Drive #130  
Dallas, TX 75251  
(214) 775-0728

6. *Anderson v. 21st Mortgage Corp. et al.*, No. 7:15-cv-0200-KC-LS, 2016 WL 11582928 (W.D. Tex. Sept. 26, 2016).

Counsel for Plaintiff:

Naomi Cobb  
Independence Plaza  
400 West Illinois, Suite 1140  
Midland, TX 79701  
(432) 460-9437

Holly B. Williams  
Williams Law Firm, P.C.  
1209 West Texas Avenue  
Midland, TX 79701  
(432) 682-7800

Counsel for Defendant 21st Century Corporation:

Michael D. Mitchell

Ogletree Deakins Nash Smoak & Stewart, P.C.  
One Allen Center  
500 Dallas Street, Suite 3000  
Houston, TX 77002  
(713) 655-5756

Counsel for Titan Factory Direct Homes, Inc.  
Daniel L. Bates  
Decker Jones, P.C.  
801 Cherry Street, Unit #46, Suite 2000  
Fort Worth, TX 76102  
(817) 336-2400

Kyle B. Fonville  
Warren Fonville, PLLC  
1635 Rogers Road  
Fort Worth, TX 76107  
(682) 610-3030

7. *A.S. et al. v. Kermit Independent School District et al.*, No. 4:16-cv-00037-FM-LS (W.D. Tex. Jan. 3, 2017). Opinion previously supplied in response to Question 13c.

Counsel for Plaintiff:  
John S. Klassen  
Klassen Law Firm PLLC  
4000 North Big Spring Street  
Midland, TX 79705  
(432) 684-1111

Counsel for Defendant:  
Philip Blake Henshaw  
Walsh Gallegos Trevino Kyle and Robinson P.C.  
10370 Richmond Avenue, Suite 1400  
Houston, TX 77042  
(713) 789-6864

Todd Aaron Clark  
Travis County Attorney's Office  
314 West 11th Street, Suite 500  
Austin, TX 78701  
(512) 854-9513

8. *Windmann v. Sun Life Assurance Co. of Canada*, No. 7:16-cv-00061-KC-LS, 2016 WL 11591768 (W.D. Tex. Dec. 15, 2016).

Counsel for Plaintiff:

Todd Robinson  
Batek & Robinson, LLP  
102 North Staples  
Corpus Christi, TX 78401  
(361) 883-2200

Counsel for Defendant:

Claire Winniford Parson  
Wilson Elser Moskowitz Edelman & Dicker LLP  
909 Fannin Street, Suite 3300  
Houston, TX 77010  
(713) 353-2000

9. *Mora v. Albertson's, L.L.C. et al.*, No. 3:15-cv-0071-LS, 2016 WL 11580767 (W.D. Tex. July 11, 2016).

Counsel for Plaintiff:

James D. Tawney  
7016 Orizaba Avenue  
El Paso, TX 79912  
(915) 308-1000

Counsel for Defendants

Christopher C. White  
Steptoe & Johnson, PLLC  
500 North Akard Street, Suite 3200  
Dallas, TX 75201  
(945) 235-6802

Kris Alderman  
The Summerville Firm  
1226 Ponce de Leon Avenue North East  
Atlanta, GA 30306  
(770) 635-0030

10. *Morris v. Sorenson et al.*, No. 7:16-cv-00071-DC, 2016 WL 11554094 (W.D. Tex. Nov. 9, 2016).

Plaintiff proceeded *pro se*

Counsel for Defendant Sorenson:

Jon Mark Hogg  
421 West Concho Avenue  
San Angelo, TX 76903  
(325) 777-0455

Carmen Symes Dusek  
51st District Court  
112 West Beauregard Avenue  
San Angelo, TX 76903  
(325) 657-8011

Counsel for Defendants Arellano and Mancha:

Aaron Dorfner  
Cotton Bledsoe Tighe & Dawson PC  
P.O. Box 2776  
Midland, TX 79702  
(432) 684-5782

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

*U.S. Dep't of Labor v. Five Star Automatic Fire Protection, LLC*, No. 3:16-cv-00282-LS, 2018 WL 4691615 (W.D. Tex. Sept. 28, 2018) (liability), 2019 WL 4765324 (W.D. Tex. Sept. 30, 2019) (damages), *aff'd*, 987 F.3d 436 (5th Cir. 2021), *reh'g denied*, 997 F.3d 1258 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 1667 (2022).

*Ysleta de Sur Pueblo v. Texas*, No. 3:17-cv-179-PRM, *aff'd*, 955 F.3d 408 (5th Cir. 2020), *vacated and remanded*, 142 S. Ct. 1929 (2022).

- 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.

*Arredondo v. Monetary Inquisition Group, LLC*, No. 3:22-cv-00236-DCG-LS, 2022 WL 18911611 (W.D. Tex. Nov. 22, 2022), *R. & R. adopted in part, rejected in part*, 2023 WL 420922 (W.D. Tex. Jan. 26, 2023). Plaintiff sued defendant telemarketers for violations of the Telephone Consumer Protection Act. Plaintiff moved for a default judgment when the defendants failed to answer. I recommended that the District Judge deny Plaintiff's default judgment motion for want of sufficient service under federal and California law. I also recommended that the District Court vacate the Clerk's Office entry of default. The District Court found that service on one of the individual defendants was valid under California law and rejected my conclusion to the contrary. The District Court adopted the remainder of my recommendations, and ultimately dismissed the lawsuit because Plaintiff failed to prosecute it diligently and repeatedly violated court orders.

*Muhammad v. Wiles*, No. 3:19-cv-00051-KC-LS, 2019 WL 13301470 (W.D. Tex.

Mar. 5, 2019), *R. & R. adopted*, 2019 WL 13301701 (W.D. Tex. July 16, 2019), *rev'd and remanded*, 841 F. App'x 681 (5th Cir. 2021). Plaintiff, a *pro se* prisoner, sought injunctive relief to improve the kosher meals the jail served him. Prisoners must exhaust their administrative remedies in the jail before filing federal lawsuits about jail conditions, and Plaintiff filed a pleading confirming he had not exhausted his administrative remedies before filing suit. On this basis I recommended that the lawsuit be dismissed and the District Court adopted my recommendation. The Fifth Circuit reversed and remanded because it held that Plaintiff's pleading about failure to exhaust his administrative remedies was technically outside of his complaint. On remand, the District Court ultimately dismissed the lawsuit again on other grounds and it is now on appeal.

*Rivas v. Greyhound Lines, Inc.*, No. 3:14-CV-166-DB-LS, 2017 WL 8890775 (W.D. Tex. Oct. 4, 2017), *R. & R. adopted in part*, 2018 WL 1896413 (W.D. Tex. Mar. 1, 2018). This lawsuit concerned a bus accident that occurred on a Mexican highway. The defendants filed motions to dismiss based on forum non conveniens, arguing that the lawsuit should be litigated in Mexico. I found that it made more sense to litigate the case in Mexico, that Mexico would be an "adequate" alternative forum, and that the private and public factors courts must analyze weighed in favor of the defendants' motions to dismiss. Nevertheless, I found that the defendants failed to meet their burden to show that Mexico was an "available" alternative forum because the defendants did not establish that the statute of limitations had not run in Mexico. Accordingly, I recommended denial of the defendants' motions to dismiss. The District Judge disagreed with my report and recommendation and found that the lawsuit would not be time-barred in Mexico, adopted the remainder of my findings, and dismissed the lawsuit on the defendants' motions.

*Texas v. Ysleta Del Sur Pueblo*, No. 3:17-cv-179-PRM-LS, 2018 WL 1663282 (W.D. Tex. Jan. 29, 2018), *R. & R. accepted in part and rejected in part*, 2018 WL 1566866 (Mar. 29, 2018), *aff'd*, 955 F.3d 408 (5th Cir. 2020), *vacated and remanded*, 142 S. Ct. 1929 (2022). Texas filed a lawsuit to stop a Native American tribe from operating slot machines and an unlicensed bingo operation in its casino. Texas sought a preliminary injunction to bar the use of the slot machines during the pendency of the lawsuit. I recommended that the District Court deny Texas's motion for a preliminary injunction because of concerns about whether the federal statute at issue, The Restoration Act, 25 U.S.C. § 1300, *et seq.*, authorized the requested injunctive relief. The District Court agreed with my recommendation that no preliminary injunction should issue, but disagreed with my concerns about whether the statute authorized the injunctive relief sought and whether federal subject matter jurisdiction was tenuous. The District Court ultimately granted the injunctive relief Texas sought, and the Fifth Circuit affirmed. The United States Supreme Court granted certiorari and vacated and remanded, holding that the Restoration Act did not provide for general state regulatory jurisdiction over tribal gaming. Instead, the Act banned on tribal lands only those gaming activities "prohibited" by Texas.



- 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 eight years as a magistrate judge, I have issued more than 34,000 orders, reports and recommendations, opinions, and orders on motions. Most of these are routine, but approximately 100 rulings involved substantive factual or legal analysis. Of these rulings, approximately 80 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 Western 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.

As a magistrate judge, I have not issued any significant opinions on state or federal 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, and I comply with the conflicts screening procedures of the United States District Court for the Western District of Texas. My recusal has been sought in only one case:

*Muhammad v. Wiles*, No. 3:19-cv-00367-KC (W.D. Tex.). A *pro se* prisoner plaintiff moved to recuse the assigned District Judge and me, the referral Magistrate Judge, and generally alleged that we were biased against him. The District Judge denied the motion and I had no input in the resolution of the motion.

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

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

I was a candidate for, but not elected to, the Texas House of Representatives in 2006.

- 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, other than my own 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 did not serve as a law clerk to a judge.

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

I was in private practice alone from 2002 to 2015, with a short stint as a member of Schydlower & Harbour, LLP, from approximately February 2007 to April 2007. The following were my addresses while in private practice.

210 North Campbell Street  
El Paso, Texas 79901  
Approximately 2002 to approximately 2007

303 Texas Avenue, Ninth Floor  
El Paso, Texas 79901  
Approximately 2007 to 2010

210 North Campbell Street  
El Paso, Texas 79901  
Approximately 2010 to approximately 2012

221 North Kansas Street, Suite 1103  
El Paso, Texas 79901  
Approximately 2012 to 2015

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

1995 – 1996  
Travis County District Attorney's Office  
509 West 11th Street  
Austin, Texas 78701  
Law Clerk

1996 – 1997  
United States Navy Legal Service Office Pacific  
850 Willamette Street  
Pearl Harbor, Hawaii 96860  
Navy Assistant Staff Judge Advocate

1997 – 1998  
United States Navy Trial Service Office Pacific  
850 Willamette Street  
Pearl Harbor, Hawaii 96860  
Navy Prosecutor

1998 – 2000  
United States Attorney's Office  
District of Hawaii  
300 Ala Moana Boulevard, Suite 6100  
Honolulu, Hawaii 96850  
Federal Prosecutor

2000 – 2002

Kemp Smith, P.C.  
221 North Kansas Street, Suite 1700  
El Paso, Texas 79901  
Partner (2001 – 2002)  
Associate (2000 – 2001)

2002 – 2015  
Leon Schydlower, Attorney at Law, PLLC  
221 North Kansas Street, Suite 1103  
El Paso, Texas 79901  
Owner / Partner

Spring 2007  
Schydlower & Harbour, LLP (defunct)  
Partner

2015 – present  
United States Courthouse  
525 Magoffin Avenue, Suite 551  
El Paso, Texas 79901  
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 have not served as a mediator or arbitrator except in my capacity as a United States Magistrate Judge.

b. Describe:

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

I began my legal career as an Assistant Staff Judge Advocate in the United States Navy in Hawaii. From 1996 to 1997 I served as a Legal Assistance Attorney providing civil law services to military members and their families in the areas of divorce, child custody, wills and estate planning, and consumer law issues. From 1997 to 1998 I was a Navy prosecutor in Hawaii working on primarily sex crimes and child sex crimes. I prosecuted cases charging manslaughter, rape, drug offenses, and fraud. From 1998 to 2000 I was federal prosecutor in Hawaii handling FBI, DEA, ATF, NCIS, and Honolulu Police Department cases at the trial and appellate levels. I left government service in 2000.

From 2000 to 2002 I was an attorney at El Paso's oldest and largest law

firm practicing commercial litigation and medical malpractice defense. I was an associate from 2001 to 2002 and a partner there from 2001 to 2002.

From 2002 to 2015 I had a private practice of law with an emphasis on trial and appellate litigation in the areas of federal criminal defense, commercial litigation, and international business litigation. The court dockets reflect that I was counsel of record in 1,729 criminal and civil federal court cases in the Western District of Texas and the District of New Mexico. In most of these cases I represented those charged with federal crimes, a substantial portion of whom were indigent. The dockets for the United States Courts of Appeals for the Fifth, Ninth, and Tenth Circuits reflect that I was counsel of record in 133 federal criminal and civil appellate cases.

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

From 1996 to 1997, my clients were primarily military servicemembers and their family members. From 1998 to 2000, I represented the government as a military and federal prosecutor. From 2000 to 2002, I primarily represented hospitals, doctors, and nurses in medical malpractice cases, and businesses in commercial litigation. While in private practice from 2002 to 2015, I represented individuals and companies with an emphasis on trial and appellate litigation in the areas of federal criminal defense, commercial litigation, and international business litigation. A large portion of my practice was appellate and I argued numerous times before the Fifth and Tenth Circuit Courts of Appeal.

- 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 would estimate that 95 percent of my practice was in litigation and I appeared in court daily.

- i. Indicate the percentage of your practice in:

1. federal courts:	85%
2. state courts of record:	10%
3. other courts:	5%
4. administrative agencies:	0%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	30%
2. criminal proceedings:	70%

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

I estimate that I tried approximately 30 jury trials to verdict between 1997 and 2015 in federal, state, and military courts, nearly all as sole or lead counsel.

- i. What percentage of these trials were:

- |              |      |
|--------------|------|
| 1. jury:     | 100% |
| 2. non-jury: | 0%   |

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

The Supreme Court's docket reflects that I filed 22 petitions for writ of certiorari, one of which was granted. Because each was accompanied by a motion to proceed in forma pauperis, I have been unable to locate any of the filings, which I understand are not available online or in legal databases.

In *United States v. Guzman-Reyes*, 113 F. App'x 607 (5th Cir. 2004), *vacated and remanded*, 543 U.S. 1181 (2005), the Supreme Court granted the petition for writ of certiorari and remanded to the United States Court of Appeals for the Fifth Circuit to reconsider my indigent client's sentence in light of *United States v. Booker*, 543 U.S. 220 (2005). The Fifth Circuit reaffirmed his sentence on reconsideration. *United States v. Guzman-Reyes*, 162 F. App'x 281 (5th Cir. 2006).

The Supreme Court denied certiorari in the following cases:

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Castro-Gomez v. United States*, No. 15-6546 (Oct. 15, 2015).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Dupree v. United States*, No. 13-9732 (Apr. 7, 2014).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Shipley v. United States*, No. 13-9231 (Mar. 17, 2014).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Nieto v. United States*, No. 13-7659 (Dec. 2, 2013).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Benavidez v. United States*, No. 13-7499 (Nov. 18, 2013).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Barrow v. United States*, No. 13-10416 (Jun. 2, 2014).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Lopez v. United States*, No. 12-9156 (Mar. 5, 2013).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Jurado-Rincon v. United States*, No. 12-10600 (May 13, 2013).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Garcia v. United States*, No. 12-10456 (May 14, 2013).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Sedillo v. Hatch*, No. 11-8566 (Jan. 23, 2012).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Rosa v. Martinez*, No. 11-5582 (Jul. 25, 2011).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Varela v. United States*, No. 10-5577 (Feb. 16, 2010).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Berkley v. Thaler*, No. 08-10547 (May 19, 2009).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Weeden v. United States*, No. 07-6010 (Aug. 17, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Romero v. United States*, No. 07-5790 (Aug. 6, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Castro-Sanchez v. United States*, No. 07-5171 (Jul. 3, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Montano v. United States*, No. 07-5071 (Jun. 28, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Avila-Rodriguez v. United States*, No. 06-8751 (Jan. 3, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Cooksey v. United States*, No. 06-11657 (May 31, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Martinez v. United States*, No. 05-10597 (Aug. 17, 2007).

Petition for Writ of Certiorari and Motion For Leave to Proceed In Forma Pauperis, *Rodriguez-Herrera v. United States*, No. 04-7939 (Dec. 30, 2004).

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. Song and Spondylos Consulting LLC et al.*, Cause No. 3:14-CR-00213-DB (W.D. Tex.).

I represented Dr. Song and her family's limited liability company, Spondylos Consulting, LLC, in a federal criminal healthcare fraud case. The government alleged that Dr. Song conspired with others (including her physician husband, also a named defendant) to receive bribes from a spinal implant hardware vendor in return for using that vendor's hardware during orthopedic surgeries at William Beaumont Army Medical Center in El Paso, Texas. I secured a dismissal of the charges against Dr. Song. Spondylos pled guilty pursuant to a plea agreement and was placed on probation for five years.

Dates of representation: 2014 – 2015

Judge: Senior United States District Judge David Briones

Counsel for the United States:

Debra Kanof  
 Anna Arreola  
 Assistant United States Attorneys  
 700 East San Antonio Street  
 El Paso, TX 79901  
 (915) 534-6884

Counsel for Co-Defendant:

Solomon L. Wisenberg  
 101 Constitution Avenue, Northwest, Suite 900  
 Washington, DC 20001  
 (202) 689-2922



Counsel for Co-Defendant:

Mary Stillinger  
401 Boston Avenue  
El Paso, TX 79902  
(915) 775-0705

Counsel for Co-Defendant:

Gary J. Hill (Deceased)

Counsel for Co-Defendant:

Todd Maybrow  
Allen, Hansen, Maybrow & Offenbecher  
600 University Street, Suite 3020  
Seattle, WA 98101  
(206) 447-9681

Counsel for Co-Defendant

Felix Valenzuela  
Valenzuela Law Firm  
701 Magoffin Avenue  
El Paso, TX 79926  
(915) 209-2719

Counsel for Co-Defendant

Christopher Antcliff  
221 North Kansas Street, Suite 609  
El Paso, TX 79901  
(915) 533-1221

2. *United States v. Shipley*, No. 3:09-CR-1867-DB, *aff'd*, 546 F. App'x 450 (5th Cir. 2013), *cert. denied*, 573 U.S. 933 (June 23, 2014).

I represented Mr. Shipley, an FBI agent who was convicted of illegally dealing firearms without a license, causing a firearms dealer to maintain false records, and making a false official statement. I did not represent Mr. Shipley during the jury trial but was hired to represent him at sentencing. After Mr. Shipley was sentenced to 24 months of imprisonment, I represented him on appeal. The Fifth Circuit affirmed his convictions and sentence, and the Supreme Court denied his petition for a writ of certiorari.

Dates of representation: 2010 – 2014

Trial Judge: Senior United States District Judge David Briones

Appellate Judges: Senior United States Circuit Judge James L. Dennis, Senior United States Circuit Judge Edith B. Clement, and United States Circuit Judge Leslie H.

Southwick

Counsel for the United States (Trial Court):

Gregory E. McDonald  
Assistant United States Attorney  
700 East San Antonio Street, Suite 200  
El Paso, TX 79901  
(915) 534-6884

Counsel for the United States (Trial Court):

Michael R. Hardy  
Assistant United States Attorney  
601 North West Loop 410, Suite 600  
San Antonio, TX 78216-5512  
(210) 384-7150

Counsel for the United States (Appellate Court):

Joseph H. Gay, Jr.  
Assistant U.S. Attorney  
601 North West Loop 410, Suite 600  
San Antonio, TX 78216  
(210) 384-7030

Counsel for Defendant (Jury Trial):

Marjorie Wilcox Jobe  
442 Country Oaks Drive  
El Paso, TX 79932  
(915) 478-2325

Counsel for Defendant (Jury Trial):

Robert J. Perez  
Attorney at Law  
221 North Kansas Street, Suite 1103  
El Paso, TX 79901  
(915) 542-1222

3. *United States v. Holloway*, No 09-50114, 377 F. App'x 383 (5th Cir. 2010).

I was appointed to represent Mr. Holloway on appeal after a jury convicted him of conspiracy to possess with the intent to distribute crack cocaine for which he received a life sentence. After reviewing the pleadings and trial transcripts, I argued on appeal that the evidence was insufficient to sustain Mr. Holloway's conviction and life sentence. The Fifth Circuit agreed, and reversed the conviction and rendered a judgment of acquittal.

Dates of representation: 2009 – 2010

Judges: Senior United States Circuit Judge William L. Garwood (deceased); Senior United States Circuit Judge Jacques L. Wiener, Jr.; Senior United States Circuit Judge Fortunato Benavides (deceased).

Appellate Counsel for the United States:

Joseph H. Gay, Jr.  
Diane D. Kirstein  
Assistant United States Attorneys  
601 North West Loop 410, Suite 600  
San Antonio, TX 78216  
(210) 384-7030

4. *United States v. Clark*, Cause No. 3:09-CR-2453-KC (W.D. Tex.).

Mr. Clark was a college student from Missouri who was caught on video delivering a bag containing 15 kilograms of cocaine. I was appointed to represent Mr. Clark at the trial court level. I requested specialized jury instructions using other circuits' law on venue and conspiracy, and the Court instructed the jury accordingly. After receiving these instructions and hearing my closing argument, the jury acquitted Mr. Clark of all charges after a five-day trial with three co-defendants, all of whom were convicted.

Dates of representation: 2009 – 2010

Judge: United States District Judge Kathleen Cardone

Counsel for the United States:

Carlos Hermosillo (retired)

Counsel for the United States:

Stephen G. Garcia  
Assistant United States Attorney  
700 East San Antonio Street, Suite 200  
El Paso, TX 79901  
(915) 534-6884

Counsel for Co-Defendant:

Edgar H. Holguin  
Federal Public Defenders Office  
700 East San Antonio Street  
Room D-401  
El Paso, TX 79901  
(915) 534-6525

Counsel for Co-Defendant:

Frank T. Ivy  
Law Office of Frank T. Ivy

1004 West Avenue  
Austin, TX 78701  
(512) 450-0054

Counsel for Co-Defendant:

Ray Velarde  
Attorney at Law  
1216 Montana Avenue  
El Paso, TX 79902  
(915) 532-6003

Counsel for Co-Defendant:

Jeffrey D. Rago  
Law Office of Jeff Rago  
813 Myrtle Avenue  
El Paso, TX 79901  
(915) 533-2535

Counsel for Co-Defendant:

Robert Ramos  
Attorney at Law  
1145 East Rio Grande Avenue  
El Paso, TX 79902  
(915) 545-1175

Counsel for Co-Defendant:

Kathleen S. Smith (deceased)

Counsel for Co-Defendant:

Leonard C. Morales  
Law Office of Leonard Morales  
221 North Kansas Street, 11th Floor, Suite 1103  
El Paso, TX 79901  
(915) 546-2696

Counsel for Co-Defendant:

Louis E. Lopez, Jr.  
Attorney at Law  
416 North Stanton, Fourth Floor, Suite 400  
El Paso, TX 79901  
(915) 543-9800

Counsel for Co-Defendant:

John D. Gates (Inactive and no current contact information)

Counsel for Co-Defendant:

Luis E. Islas  
Law Office of Luis Islas  
909 East Rio Grande  
El Paso, TX 79902  
(915) 532-6011

Counsel for Co-Defendant:

Thomas L. Wright  
Attorney at Law  
6636 El Parque Drive  
El Paso, TX 79912  
(915) 526-4299

Counsel for Co-Defendant:

John L. Williams  
Law Office of John L. Williams  
1119 East San Antonio Avenue  
El Paso, TX 79901  
(915) 533-9016

Counsel for Co-Defendant:

Jose Montes, Jr.  
Jose Montes, Jr., P.C.  
1155 Westmoreland Drive, Suite 120  
El Paso, TX 79925  
(915) 881-8600

Counsel for Co-Defendant:

Maria B. Ramirez  
Law Office of Maria B. Ramirez  
1119 East San Antonio  
El Paso, TX 79901  
(915) 544-6115

5. *Reed v. Wayans et al.*, No. 3:07-cv-00296-DB (W.D. Tex.).

I represented the owner of an El Paso comedy club owner in a breach of contract and defamation lawsuit against comedian Damon Wayans. The allegations in the case concerned Mr. Wayans' failure to perform all scheduled shows in June 2007 and his subsequent public statements about Mr. Reed and his business. After extensive written discovery and depositions, and multiple cross-motions for summary judgment, the case settled.

Dates of Representation: 2007 – 2009

Judge: Senior United States District Judge David Briones

Counsel for Defendant:

Mark C. Walker  
Dickinson Wright  
221 North Kansas Street, Suite 2000  
El Paso, TX 79901  
(915) 541-9300

Counsel for Defendant:

William A. Elias  
1100 Montana, #102  
El Paso, TX 79902  
(915) 532-1907

6. *United States v. Flores*, No. 4:93-cr-00098-RAJ-3 (W.D. Tex.).

Mr. Flores was sentenced in 1993 to 240 months in prison following a marijuana conspiracy conviction. Fourteen years later, his family hired me to investigate whether anything could be done to lower the sentence because of Mr. Flores's advancing age and deteriorating medical condition. I was able to navigate limitations problems and in a quasi-habeas context secured Mr. Flores a sentencing reduction based on a claim of ineffective assistance of counsel during Mr. Flores's original 1993 sentencing. The parties did not dispute that Mr. Flores's original sentence was erroneous, and the Court granted the motion and released Mr. Flores after 14 years of incarceration.

Date of representation: 2007

Judge: Senior United States District Judge Robert Junell

Counsel for the United States:

Margaret F. Leachman  
Assistant United States Attorney,  
601 North West Loop 410, Suite 600  
San Antonio, TX 78216  
(210) 384-7122

Prior Counsel for Defendant:

Jose A. Chavez  
The Chavez Law Firm  
121 East 4th Street  
Odessa, TX 79761  
(432) 580-0303

Prior Counsel for Defendant:

Mary Stillinger  
401 Boston Avenue

El Paso, TX 79902  
(915) 775-0705

7. *Roberts v. Johnson*, No. 03-CV-00346-KC (W.D. Tex. May 24, 2004).

I represented Dr. Johnson in a medical malpractice case in which the plaintiff alleged that the failure to timely diagnose and treat cervical cord compression led to her quadriplegia. The case against Dr. Johnson was dismissed on my motion for want of personal jurisdiction and improper venue. The plaintiff settled with the United States, a co-defendant.

Date of Representation: 2004

Judge: United States District Judge Kathleen Cardone

Counsel for Plaintiff:

Walter L. Boyaki  
4621 Pershing Drive  
El Paso, TX 79903  
(915) 566-8688.

Lead Counsel for Co-Defendant:

Clayton R. Diedrichs  
Assistant United States Attorney  
601 North West Loop 410, Suite 600  
San Antonio, TX 78216  
(210) 384-7310.

8. *United States v. Aguilar et al.*, No. 3:04-CR-02093-KC (W.D. Tex.).

I represented Dr. Aguilar, the Superintendent of the Socorro Independent School District, in a case alleging that he participated in a fraudulent scheme to bring teachers from the Philippines to the United States in violation of federal immigration laws. I was Dr. Aguilar's only counsel and prepared to defend him against all felony charges during the scheduled jury trial. On the eve of trial, the government dismissed all felony charges against Dr. Aguilar in exchange for his plea of guilty to a misdemeanor and a one-year term of probation.

Dates of representation: 2004 – 2006

Judge: United States District Judge Kathleen Cardone

Counsel for the United States:

J. Brandy Gardes (deceased)

Counsel for Co-Defendant:

Miguel Torres  
525 Magoffin Avenue, Seventh Floor  
El Paso, TX 79901  
(915) 534-6732

Counsel for Co-Defendant:

Ray Velarde  
1216 Montana Avenue  
El Paso, TX 79902  
(915) 532-6003

Counsel for Co-Defendant:

Ronald F. Ederer  
The Law Office of Ron F. Ederer  
15345 Caravel Drive  
Corpus Christi, TX 78418  
(210) 573-3566

Counsel for Co-Defendant:

Mary Stillinger  
401 Boston Avenue  
El Paso, TX 79902  
(915) 775-0705

9. *Marks v. Conde Nast Publications, Inc.*, No. 3:02-cv-00374-KC (W.D. Tex.).

I represented Ms. Marks in a defamation action against the publisher of Glamour magazine. The lawsuit alleged that Glamour magazine used a photograph of Marks from decades earlier and without her permission, which created the false impression that Ms. Marks was involved in criminal activity. Ms. Marks was never involved in the crimes alleged, and indeed was a victim herself. The case involved an interesting legal question about whether a photograph alone, decades old, could constitute libel when its publication cast the plaintiff in a negative light and caused her to lose her job. After extensive written discovery, a summary judgment motion, and full preparations for jury trial, the case settled before trial.

Date of representation: 2002 – 2003

Judge: United States District Judge Kathleen Cardone

Counsel for Defendant:

Richard G. Munzinger (deceased)

10. *United States v. Shorts*, No. 1:99-cr-00148-SOM (D. Haw.), *aff'd*, 7 F. App'x 732 (9th Cir. 2001).



When I was at the United States Attorney's Office in Hawaii, I led the prosecution of Mr. Shorts for conspiracy to possess with the intent to distribute, and possession with the intent to distribute, crack cocaine. Mr. Shorts transported the crack cocaine to Hawaii from Spokane, Washington, on a commercial flight and the DEA seized it in a Waikiki hotel room. I was sole counsel at the jury trial and the jury found Mr. Shorts guilty, resulting in a 168-month sentence. Mr. Shorts' co-defendants both pled guilty and received 120-month sentences. The Ninth Circuit affirmed Mr. Shorts' conviction. I handled only Mr. Shorts' jury trial, not his appeal.

Date of Representation: 1999

Judge: Senior United States District Judge Susan Oki Mollway

Counsel for Defendant:

Rustam A. Barbee  
Attorney at Law  
P.O. Box 1547  
Kaneohe, HI 96744  
(808) 524-4406

Counsel for Defendant:

Jerry I. Wilson  
Honolulu, HI 96813  
2127 Barto Leggett Road  
McComb, MS 39648  
(808) 722-7211

Counsel for Defendant:

Stuart N. Fujioka  
Transportation Division  
465 South King Street, Room 300  
Honolulu, HI 96813  
(808) 587-2992

Counsel for Co-Defendant:

Alexander Silvert (retired)

Counsel for Co-Defendant:

Birney B. Bervar  
Bervar & Jones  
1100 Alakea Street, 20th Floor  
Honolulu, HI 96813  
(808) 550-4990

Counsel for Co-Defendant:

Richard D. Gronna

Law Office of Richard D. Gronna  
 841 Bishop Street, Suite 2201  
 Honolulu, HI 96813  
 (808) 523-2441

Counsel for Co-Defendant:  
 Lane Y. Takahashi (Inactive)

Counsel for Co-Defendant:  
 Sarah Courageous  
 850 Willamette Street  
 Pearl Harbor, HI 96860  
 (808) 473-1391

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 on the Fifth Circuit Committee on Criminal Pattern Jury Instructions. Moreover, while a lawyer in private practice, I served on the District of New Mexico Criminal Justice Act Committee for several years, from approximately 2007 to approximately 2015. In that position I represented the interests of private attorneys in New Mexico who were appointed to represent indigent federal criminal defendants during official court administrative meetings. I also mentored and taught new attorneys representing indigent federal criminal defendants.

My legal career before I took the bench was almost exclusively trial and appellate litigation in federal, state, and military courts. After leaving the Navy and the United States Attorney's Office in Honolulu, I appeared daily in federal court both in the Western District of Texas and the District of New Mexico. My civil cases were in the areas of medical malpractice defense, employment, and commercial litigation. My criminal cases while in private practice involved white collar crime, firearms, narcotics, and immigration cases. A vast majority of my criminal defense practice was as appointed counsel for indigent defendants. Finally, a large portion of my private practice was as appellate counsel. The court dockets for the United States Courts of Appeals for the Fifth, Ninth, and Tenth Circuits reflect that I was counsel of record in 133 federal criminal and civil appellate cases.

From 2017 to 2021, I was an instructor at the United States Air Force Judge Advocate General's School where I taught one to two-week trial advocacy courses to new Air Force lawyers. I taught multiple times during the Judge Advocate Staff Officer Courses and the Trial and Defense Advocacy Courses. The trial advocacy classes I taught and the

practical exercises I led concerned opening statement and closing arguments, direct and cross examination techniques, impeachment, motions practice, evidence, and sentencing arguments. I continue to teach in these areas as a member of the Air Force TRIALS team, of which I have been a member since approximately 2017. The TRIALS team, made up of Air Force JAG reservists who are seasoned trial lawyers, travels to various Air Force bases to conduct intensive trial advocacy instruction for Air Force trial lawyers.

I have never engaged in lobbying activities or registered as a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

From 2017 to 2021, I was an instructor at the United States Air Force Judge Advocate General's School where I taught one to two-week trial advocacy courses to new Air Force lawyers. I taught multiple times during the Judge Advocate Staff Officer Courses and the Trial and Defense Advocacy Courses. The trial advocacy classes I taught and the practical exercises I led concerned opening statement and closing arguments, direct and cross examination techniques, impeachment, motions practice, evidence, and sentencing arguments. I continue to teach in these areas as a member of the Air Force TRIALS team, of which I have been a member since approximately 2017. The TRIALS team, made up of Air Force JAG reservists who are seasoned trial lawyers, travels to various Air Force bases to conduct intensive trial advocacy instruction for Air Force trial lawyers. I do not have the syllabi for these courses, nor the Air Force's permission to obtain and disclose them. They are similar, however, to the syllabi that law schools and other private sector entities use for basic, advanced, and intensive trial advocacy instruction.

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. 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. Finally, I would recuse from any case involving a business or entity employing my wife.

- 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 November 2015 to present, I have been unable to take on direct pro bono representations. From 2002 through 2015, however, I deliberately set aside a large portion of my private practice to represent indigent criminal defendants in federal and state trial and appellate courts. Indeed, I have represented several hundred such indigent criminal defendants, some all the way to the United States Supreme Court. I also recruited, trained, and mentored dozens of lawyers to join me in this endeavor. I estimate that almost 50 percent of my private practice was devoted to service in this regard.

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 June 20, 2023, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Western District of Texas. On August 25, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. I interviewed with Senator Cruz on September 27, 2023, and with Senator Cornyn on September 28, 2023. On October 24, 2023, I interviewed with attorneys from the White House Counsel's Office. Since October 27, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 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 Leon Schydlower**  
**Nominee to be United States District Judge for the Western District of Texas**

1. **Are you a citizen of the United States?**

Response: Yes.

2. **Are you currently, or have you ever been, a citizen of another country?**  
 a. **If yes, state countries and dates of citizenship.**  
 b. **If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**  
 i. **If not, please explain why.**

Response: No.

3. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No.

4. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No.

5. **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.

6. **Please explain whether you agree or disagree with the following statement: “The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach.”**

Response: I disagree with this statement. Constitutional interpretation should be based on adherence to binding precedent and not a judge’s personal value judgments.

7. **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 neither familiar with this statement nor the context in which it was made. To the extent it suggests that Supreme Court precedent can and should be ignored, I disagree with it. If I am confirmed as a United States District Judge I will adhere to binding Supreme Court and Fifth Circuit precedent, as I do now in my capacity as a United States Magistrate Judge.

8. **Do you consider a law student's public endorsement of or praise for an organization listed as a "Foreign Terrorist Organization," such as Hamas or the Popular Front for the Liberation of Palestine, to be disqualifying for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Yes.

9. **In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University's student bar association wrote "Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary." Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Yes.

10. **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 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 federal prisoner may also seek a writ of habeas corpus challenging the constitutionality of his conviction or sentence under 28 U.S.C. § 2241.

11. **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: The plaintiffs in these companion cases challenged the race-based admissions programs at Harvard and the University of North Carolina under Title VI and the Equal Protection Clause of the Fourteenth Amendment, respectively. The Supreme Court held that the race-based admissions programs of both schools failed the strict scrutiny test as set forth in *Grutter v. Bollinger*, 539 U.S. 306 (2003).

12. **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 was in charge of hiring support staff for my law firm when I was in private practice. As a United States Magistrate Judge, I hired my chambers staff and courtroom deputy, and hire law clerks.

13. **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.

14. **Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

Response: No.

15. **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.



16. Under current Supreme Court and Fifth Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?

Response: Yes. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023); *Fisher v. Univ. of Tex. at Austin*, 758 F.3d 633 (5th Cir. 2014), *aff'd*, 579 U.S. 365 (2016).

17. Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.

Response: The Supreme Court held that a private website designer had a First Amendment right to refuse to design wedding websites for same-sex couples as mandated by the Colorado's Anti-Discrimination Act. The Court found that Colorado unconstitutionally interfered with the website designer's right to participate in the "uninhibited marketplace of ideas" when it sought to force her to produce a message that was contrary to her religious beliefs.

18. 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 included this quote from *Barnette* in *303 Creative LLC v. Elenis*, 600 U.S. 570, 585 (2023), and *Barnette* remains good law. If confirmed as a district judge, I will faithfully apply all binding Supreme Court precedent in matters that come before me.

19. 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 review the law's text and apply the applicable Supreme Court and Fifth Circuit precedent. "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). To gauge whether speech is "content based" a court will "consider whether a regulation of speech 'on its face' draws distinctions based on the message a speaker conveys." (*Id.*). "By contrast, laws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content-neutral." *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 643 (1994).

20. **What is the standard for determining whether a statement is not protected speech under the true threats doctrine?**

Response: True threats “encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). “The existence of a threat depends not on the ‘mental state of the author,’ but on ‘what the statement conveys’ to the person on the other end.” *Counterman v. Colorado*, 600 U.S. 66, 72 (2023)

21. **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: Whereas questions of fact are “questions of who did what, when or where, how or why,” *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 U.S. 387, 394 (2018), questions of law are “issue[s] to be decided by the judge, concerning the application or interpretation of the law.” BLACK’S LAW DICTIONARY (11th ed. 2019).

22. **Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?**

Response: The statute which lists the factors a judge must consider when imposing a sentence, 18 U.S.C. § 3553(a), incorporates all four of these listed purposes of punishment. Congress did not prioritize any of these factors in the statute and there is no Supreme Court or Fifth Circuit precedent indicating that one of the primary purposes of sentencing is more important than the others. I will follow Supreme Court and Fifth Circuit precedent when imposing sentences pursuant to § 3553(a).

23. **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 United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on the quality of the Supreme Court’s reasoning in a particular case. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

24. **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 United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting

on the quality of the Fifth Circuit's reasoning in a particular case. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

**25. 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. 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."

**26. Is 18 U.S.C. § 1507 constitutional?**

Response: I am unaware of any Supreme Court or Fifth Circuit precedent addressing the constitutionality of 18 U.S.C. § 1507. *See also Cox v. Louisiana*, 379 U.S. 559 (1965) (holding a similar Louisiana statute "on its face is a valid law.") If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent with respect to any constitutional challenge to § 1507.

**27. 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 courts are unlikely to revisit the constitutionality of racial segregation in schools. Accordingly, as a sitting United States Magistrate Judge and United States District Judge nominee I believe it is permissible for me to assert that the case was correctly decided.

**b. Was *Loving v. Virginia* correctly decided?**

Response: Yes. The courts are unlikely to revisit the constitutionality of interracial marriage. Accordingly, as a sitting United States Magistrate Judge and United States District Judge nominee I believe it is permissible for me to assert that the case was correctly decided.

**c. Was *Griswold v. Connecticut* correctly decided?**

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from

commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

d. **Was *Roe v. Wade* correctly decided?**

Response: The Supreme Court overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (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 overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). *Dobbs* is binding precedent and I will apply it fully and faithfully.

f. **Was *Gonzales v. Carhart* correctly decided?**

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

g. **Was *District of Columbia v. Heller* correctly decided?**

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

h. **Was *McDonald v. City of Chicago* correctly decided?**

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly

decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

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: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

m. **Was *303 Creative LLC v. Elenis* correctly decided?**

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

28. **What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?**

Response: According to the Supreme Court, "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. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. 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.'” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022); *see also District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023).

**29. Demand Justice is a progressive organization dedicated to “restor[ing] ideological balance and legitimacy to our nation’s courts.”**

- a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Are you currently in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

**30. The Alliance for Justice is a “national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society.”**

- a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Are you currently in contact with anyone associated with the Alliance for Justice? If so, who?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

31. Arabella Advisors is a progressive organization founded “to provide strategic guidance for effective philanthropy” that has evolved into a “mission-driven, Certified B Corporation” to “increase their philanthropic impact.”

- a. Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

- b. Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.

Response: No.

- c. Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

- d. Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella’s known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

32. The Open Society Foundations is a progressive organization that “work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens.”

- a. Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

- b. Are you currently in contact with anyone associated with the Open Society Foundations?

Response: No.

- c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

33. **Fix the Court is a “non-partisan, 501(C)(3) organization that advocates for non-ideological ‘fixes’ that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people.”**

- a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Are you currently in contact with anyone associated with Fix the Court? If so, who?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Fix the Court? If so, who?**

Response: No.

34. **Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: On June 20, 2023, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Western District of Texas. On August 25, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. I interviewed with Senator Cruz on September 27, 2023, and with Senator Cornyn on September 28, 2023. On October 24, 2023, I interviewed with attorneys from the White House Counsel’s Office. Since October 27, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me. On January 10, 2024, the President sent my nomination to the United States Senate.



35. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

36. **During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

37. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No

38. **During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No

39. **During your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No

40. **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

41. **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 20, 2023, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Western District of Texas. On August 25, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. I interviewed with Senator Cruz on September 27, 2023, and with Senator Cornyn on September 28, 2023. On October 24, 2023, I interviewed with attorneys from the White House Counsel's Office. Since October 27, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me. On January 10, 2024, the President sent my nomination to the United States Senate.

42. **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 January 31, 2024. 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  
January 24, 2023  
Questions for the Record  
Senator Amy Klobuchar

For Leon Schydlower, nominee to be U.S. District Judge for the Western District of Texas

**In 2015, you were appointed as a magistrate by the sitting Article III judges of the Western District of Texas, who were appointed by presidents of both parties. You have since presided over six trials that have gone to verdict or judgment, approximately 33 civil consent cases, and have issued over 34,000 orders, reports, and recommendations.**

- **What have you learned in your time as a magistrate judge and how will that inform your approach if confirmed as a district court judge?**

Response: My last eight years as a United States Magistrate Judge has been invaluable in preparing me to be a United States District Judge if I am so fortunate as to be confirmed. In leaving the practice of law to become a judge, I successfully made the transition from advocate to neutral arbiter. My job is to faithfully apply the law to the facts of the individual case before me, without bias or prejudice. In doing so, I treat the litigants and counsel before me with the utmost respect and dignity and afford all those with cases and controversies before me a full and fair opportunity to be heard. I am a public servant charged with serving as a neutral arbiter before whom the parties can efficiently and fairly resolve their cases. I will continue to employ this judicial philosophy should I be confirmed as a United States District Judge.

- **How has your experience as a magistrate judge informed your view on the role of a federal district court judge?**

Response: In serving as a United States Magistrate Judge for the last eight years on a busy border court, I have been steeped in the very types of cases the district judges with whom I work handle every single day. I issue search and arrest warrants, sign criminal complaints, conduct initial appearances, preside over contested preliminary and detention hearings, and preside over guilty plea hearings for the district judges. In short, in guilty plea cases I preside over every single stage of the case except the sentencing hearing. The district judges preside over criminal jury trials, but even in those cases I will preside over jury selection when needed. Of course, in civil cases where the parties consent to my jurisdiction as a magistrate judge, I perform the exact same role as a district judge. And in cases where there is no such consent, I will often preside over the bulk of the case short of trial or final disposition. Finally, I have had the opportunity to work with and be mentored by the seasoned and experienced district judges with whom I work. These experiences have not only informed my view on the role of a federal district judge, they have afforded me invaluable insight and experience on which I can call should I be so fortunate as to be confirmed as one.

Senator Hirono Questions for the Record for the January 24, 2024, Hearing in the Senate Judiciary Committee entitled "Nominations."

**QUESTIONS FOR LEON SCHYDLOWER**

**Sexual Harassment**

As part of my responsibility as a member of this committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

QUESTIONS:

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

Response: No.

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

Response: No.

Senator Jon Ossoff  
Questions for the Record for Judge Leon Schydlower  
January 24, 2024

1. **Will you pledge to faithfully apply the law without bias and without regard for your personal policy or political preferences?**

Response: Yes.

2. **How will you approach First Amendment cases?**

Response: I will approach each case individually, apply binding Supreme Court and Fifth Circuit precedent, and bear in mind that the framers of the Constitution believed that the exercise of First Amendment rights “lies at the foundation of free government by free men.” *Schneider v. New Jersey*, 308 U.S. 147, 150-51 (1939).

- a. **In your view, why are First Amendment protections of freedom of speech, publication, assembly, and exercise of religion vital in our society?**

Response: The spirit of the First Amendment encapsulates the very spirit of America: Freedom. The right to free expression, to publish our ideas, to join in support or protest of our values, to petition our government for change, and to practice our faith freely are the quintessential freedoms that define what it is to be American.

3. **In your experience, why is it critical that indigent defendants have access to public defense under the Sixth Amendment right to counsel and precedent set in *Gideon v. Wainwright*?**

Response: From 2002 through 2015 I deliberately set aside a large portion of my private practice of law to represent indigent criminal defendants in federal and state trial and appellate courts. Indeed, I represented several hundred such indigent criminal defendants, some all the way to the United States Supreme Court. I also recruited, trained, and mentored dozens of lawyers to join me in this endeavor. I estimate that almost 50 percent of my private practice was devoted to service in this regard. We have an adversarial system of justice and it is critical that indigent defendants have access not only to counsel, but *effective* counsel, to vindicate the Sixth Amendment and to inspire confidence in our criminal justice system.

4. **In your experience, what are the challenges faced by parties in civil or criminal proceedings for whom English is not their first language?**

Response: As a litigator on the Texas-Mexico border for nearly twenty years and as a United States Magistrate Judge on the border for more than eight years, I am happy to report that challenges in this regard in my division are minimal. I would estimate that 75% of the litigants in my division do not speak English, but we have an outstanding

court interpreter program and a seasoned corps of attorneys well-versed in communicating with their non-English speaking clients.

**a. What do you see as the role of language access in courts in protecting due process rights and ensuring access to justice?**

Response: Language access is critical to ensure that all litigants are afforded their due process rights. In this regard, the federal courts in my division handle cases in which approximately 75% of litigants do not speak English. Indeed, the outstanding court interpreter staff in my division has secured language access for litigants who speak languages as diverse as Spanish, Chinese, Serbian, and Turkish, all the way to indigenous non-Spanish Guatemalan dialects spoken only in remote villages and districts.

**Senator Mike Lee**  
**Questions for the Record**

**Leon Schydlower, Nominee for District Court Judge for the Western District of Texas**

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

Response: As a sitting United States Magistrate Judge, I faithfully apply the law to the facts of the individual case before me, without bias or prejudice. In doing so, I treat the litigants and counsel before me with the utmost respect and dignity and afford all those with cases and controversies before me a full and fair opportunity to be heard. I am a public servant charged with serving as a neutral arbiter before whom the parties can efficiently and fairly resolve their cases. I will continue to employ this judicial philosophy should I be confirmed as a United States District Judge.

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

Response: I would faithfully apply Supreme Court and Fifth Circuit precedent to determine the meaning of a statute or provision. In the absence of such precedent, I would review the text itself. If the text is unambiguous, no further analysis would be necessary. If the text is ambiguous, I would follow Supreme Court and Fifth Circuit precedent with respect to authorized statutory construction methods.

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

Response: I would faithfully apply Supreme Court and Fifth Circuit precedent to determine the meaning of the constitutional provision. In the unlikely absence of such precedent, I would turn to an analysis of the original public meaning of the text. *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (“...the public understanding of a legal text in the period after its enactment or ratification...is a critical tool of constitutional interpretation.”) (emphasis in original). If the text is unambiguous, no further analysis would be necessary. If the text is ambiguous, I would follow Supreme Court and Fifth Circuit precedent with respect to authorized statutory construction methods.

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

Response: Originalism is the “doctrine that words of a legal instrument are to be given the meanings they had when they were adopted.” BLACK’S LAW DICTIONARY (11th ed. 2019). The Supreme Court recognizes originalism as a legitimate method of constitutional interpretation because it employed the doctrine when analyzing the meaning of the Sixth Amendment’s Confrontation Clause in *Crawford v. Washington*, 541 U.S. 36 (2004). It subsequently reinforced originalism’s legitimacy as a constitutional interpretational method when it employed the doctrine to analyze the meaning of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570

(2008). With respect to text, Courts are to interpret 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). Finally, “when the meaning of a statute’s terms is plain, our job is at an end.” *Id.* at 1749.

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 turn first to Supreme Court and Fifth Circuit precedent to determine the meaning of a statute. In the absence of such precedent, I review the text of the statute itself. If the text is unambiguous, no further analysis is necessary.

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 interprets statutes and constitutional provisions 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). *See also District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (“[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.”).

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

Response: The Supreme Court explains that “[u]nder Article III of the Constitution, a plaintiff needs a ‘personal stake’ in the case.” *Biden v. Nebraska*, 143 S. Ct. 2355, 2365 (2023). “That is, the plaintiff must have suffered an injury in fact – a concrete and imminent harm to a legally protected interest, like property or money – that is fairly traceable to the challenged conduct and likely to be redressed by the lawsuit.” *Id.*

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

Response: Yes. Congress is authorized to pass laws “necessary and proper” to execute its enumerated powers. *McCulloch v. Maryland*, 17 U.S. 316, 411-12 (1819). *See also Nat. Fed. of Ind. Bus. v. Sebelius*, 567 U.S. 519, 559 (2012) (“Although the [Necessary and Proper 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.”) (internal quotations omitted); Constitution, Art. I, § 8, cl. 18.

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. of Ind. Bus. v. Sebelius*, 567 U.S. 519 (2012), the Supreme Court held that “[t]he question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.” *Id.* at 570. I would follow Supreme Court and Fifth Circuit precedent if presented with this issue.

**10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: The Supreme Court has recognized that the Due Process Clause of the Fifth and Fourteenth Amendments “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.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). The Court listed many of these fundamental rights in *Dobbs*: the right to marry a person of a different race; 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 v. Jackson Women’s Health Organization*, 597 U.S. 215, 256-57 (2022).

**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 rejected the *Lochner* analysis in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), and established in *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965), the fundamental right to use contraceptives. The remaining personal fundamental rights listed in my answer to Question 10 all remain good law. If confirmed, I will follow this and all other Supreme Court and Fifth Circuit precedent.

**13. What are the limits on Congress’s power under the Commerce Clause?**

Response: The Supreme Court has “identified 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) “those activities that substantially affect interstate commerce.” *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 defines a suspect class as one “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 Ind. School Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Suspect classes include alienage, nationality, race, and religion. *New Orleans v. Dukes*, 427 U.S. 297, 304 (1976) (race, religion, and alienage); *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971) (alienage, nationality, and race).

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 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).

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 follow binding Supreme Court and Fifth Circuit precedent, noting that “[i]n the framework of our Constitution, the President’s power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952).

17. **What role should empathy play in a judge’s consideration of a case?**

Response: If confirmed, I would make decisions based upon binding Supreme Court and Fifth Circuit precedent applied to the facts of each individual case. Judicial decisions should not be based upon a judge’s personal beliefs or opinions.

18. **Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?**

Response: Neither outcome is desirable. If confirmed, I would faithfully apply binding Supreme Court and Fifth Circuit to the facts of the individual case before me to avoid these outcomes.

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 cannot opine on this trend because I have not researched the issue. If confirmed, however, I would apply binding Supreme Court and Fifth Circuit to the facts of the individual case before me.

- 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). By contrast, Black's Law Dictionary 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).

- 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 Supreme Court explained the need for elected officials to respect federal court decisions: "If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery... A Governor who asserts a power to nullify a federal court order is similarly restrained. If he had such power...it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land." *Cooper v. Aaron*, 358 U.S. 1, 18-19 (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: Whereas the legislative and executive branches make and enforce the law, a court's limited role is to interpret the law and faithfully apply it to the facts of the individual case before it.

- 23. As a federal judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a federal 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 federal judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: If confirmed as a United States District Judge my duty would be to follow binding Supreme Court and Fifth Circuit precedent. Only the Supreme Court can overturn or extend its own 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. If confirmed, I would utilize the sentencing factors set forth in 18 U.S.C. § 3553(a).

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 definition of equity. Black's Law Dictionary defines "equity" as "[f]airness; impartiality; evenhanded dealing." BLACK'S LAW DICTIONARY (11th ed. 2019). I have not developed my own definition of "equity."

26. **Without citing Black's Law Dictionary, do you believe there is a difference between "equity" and "equality?" If so, what is it?**

Response: According to the Merriam-Webster Dictionary "equity" refers to fairness and the absence of prejudice or favoritism, and "equality" means the quality or state of being equal.

27. **Does the 14<sup>th</sup> Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 25)?**

Response: As I explained in my response to Question 25, I am not familiar with the Biden Administration's definition of equity. The Fourteenth Amendment's Equal Protection Clause provides for "equal protection of the laws." If confirmed, I would faithfully follow Supreme Court and Fifth Circuit precedent when applying the Fourteenth Amendment's Equal Protection Clause.

**28. Without citing Black's Law Dictionary, how do you define "systemic racism?"**

Response: I do not have a personal definition for this term. According to the Merriam-Webster Dictionary "systemic racism" refers to "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.)"

**29. Without citing Black's Law Dictionary, how do you define "critical race theory?"**

Response: I do not have a personal definition for this term. According to the Merriam-Webster Dictionary "critical race theory" refers to "a group of concepts (such as the idea that race is a sociological rather than biological designation, and that racism pervades society and is fostered and perpetuated by the legal system) used for examining the relationship between race and the laws and legal institutions of a country and especially the United States."

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

Response: Please see my responses to Questions 28 and 29.

**Senator John Kennedy  
Questions for the Record**

**Leon Schydlower**

1. **Are there any circumstances under which it is justifiable to sentence a criminal defendant to death? Please explain.**

Response: Yes. 18 U.S.C. § 3591 lists federal offenses for which a defendant may be sentenced to death, and §§ 3592-3599 outline the procedures a court must follow in a federal death penalty case. If confirmed and presented with a death penalty case, I will faithfully follow §§ 3591-3599 and relevant binding Supreme Court and Fifth Circuit precedent.

- a. **Should a judge's opinions on the morality of the death penalty factor into the judge's decision to sentence a criminal defendant to death in accordance with the laws prescribed by Congress and the Eighth Amendment?**

Response: No.

2. **Is the U.S. Supreme Court a legitimate institution?**

Response: Yes.

3. **Is the current composition of the U.S. Supreme Court legitimate?**

Response: Yes.

4. **Please describe your judicial philosophy. Be as specific as possible.**

Response: As a sitting United States Magistrate Judge, I faithfully apply the law to the facts of the individual case before me, without bias or prejudice. In doing so, I treat the litigants and counsel before me with the utmost respect and dignity and afford all those with cases and controversies before me a full and fair opportunity to be heard. I am a public servant charged with serving as a neutral arbiter before whom the parties can efficiently and fairly resolve their cases. I will continue to employ this judicial philosophy should I be confirmed as a United States District Judge.

5. **Is originalism a legitimate method of constitutional interpretation?**

Response: Yes. Originalism is the "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." BLACK'S LAW DICTIONARY (11th ed. 2019). The Supreme Court recognizes originalism as a legitimate method of constitutional interpretation because it employed the doctrine when analyzing the meaning of the Sixth Amendment's Confrontation Clause in *Crawford v. Washington*,

541 U.S. 36 (2004). It subsequently reinforced originalism's legitimacy as a constitutional interpretational method when it employed the doctrine to analyze the meaning of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008).

6. **If called on to resolve a constitutional question of first impression with no applicable precedents from either the U.S. Supreme Court or the U.S. Courts of Appeals, to what sources of law would you look for guidance?**

Response: I would begin with an analysis of the original public meaning of the text. *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (“...the public understanding of a legal text in the period after its enactment or ratification...is a critical tool of constitutional interpretation.”) (emphasis in original). I would then turn to persuasive precedent from other circuits, Supreme Court and Fifth Circuit precedent interpreting similar provisions, and permissible interpretative tools and canons of construction as provided in Supreme Court and Fifth Circuit precedent.

7. **Is textualism a legitimate method of statutory interpretation?**

Response: Yes. Courts are to interpret 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). Moreover, “when the meaning of a statute’s terms is plain, our job is at an end.” *Id.* at 1749.

8. **When is it appropriate for a judge to look beyond textual sources when determining the meaning of a statute or provision?**

Response: I would faithfully apply Supreme Court and Fifth Circuit precedent to determine the meaning of a statute or provision. In the absence of such precedent, I would review text itself. If the text is unambiguous, no further analysis would be necessary. If the text is ambiguous, I would follow Supreme Court and Fifth Circuit precedent with respect to authorized statutory construction methods.

9. **Does the meaning (rather than the applications) of the U.S. Constitution change over time? If yes, please explain the circumstances under which the U.S. Constitution’s meaning changes over time and the relevant constitutional provisions.**

Response: No. The Constitution’s meaning is fixed according to the understandings of those who ratified it. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 27-28 (2022).

10. **Please summarize Part II(A) of the U.S. Supreme Court’s decision in *Brown v. Davenport*, 596 U.S. 118 (2022).**

Response: The Supreme Court traced the historical development of federal habeas corpus practice regarding state court convictions from its original narrow focus on jurisdictional defects to today’s “exploding caseload of habeas petitions from state

prisoners” seeking “[f]ull-blown constitutional error correction.” *Brown v. Davenport*, 596 U.S. 118, 130-31 (2022).

**11. Please summarize Part IV of the U.S. Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).**

Response: The Supreme Court found that the race-based admissions programs at Harvard and the University of North Carolina violated the Fourteenth Amendment’s Equal Protection Clause because they failed the strict scrutiny test. *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 213 (2023). The Court found, as an initial matter, that the stated justifications for separating students based on race were so nebulous as to be immeasurable. *Id.* at 214-15. Next, the Court found that the race-based admissions programs operated as an impermissible “negative” because they resulted in fewer Asian American and white students being admitted. *Id.* at 218-19. They also impermissibly relied on stereotypes predicated on skin color. *Id.* at 219-21. Finally, the Court found that the universities’ race-based admissions programs violated the Equal Protection Clause because, as designed, they were permanent and contemplated no end point. *Id.* at 221-25.

**12. Please summarize Part III of the U.S. Supreme Court’s decision in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).**

Response: The Supreme Court held that Colorado could not compel a private wedding website designer to create websites for same-sex couples when doing so would interfere with her religious beliefs. The Court held that the websites the designer created constituted First Amendment-protected speech, *303 Creative LLC v. Elenis*, 600 U.S. 570, 587-88 (2023), and long-established Supreme Court precedent proscribed the compelled speech Colorado sought to impose on her. *Id.* at 588-90.

**13. Please summarize Part II of the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* (2022).**

Response: In Part II of the decision the Court analyzed whether the Constitution confers a right to an abortion. The Court first explains that a supposed fundamental right must be “deeply rooted in this Nation’s history and tradition.” *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 239 (2022). It then traced the history of abortion, all the way back to common law, and concluded it was not deeply rooted in the Nation’s history and traditions. *Id.* at 241-250. Finally, the Court found no sound precedential basis for the right to an abortion. *Id.* at 255-259.

**14. Please summarize Part III of the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022).**

Response: In Part III of the decision the Court analyzed the following factors when gauging whether to overrule *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992): the nature of the error in the prior cases; the quality of the



opinions' reasoning; the "workability" of the rules the opinions imposed on the country; the disruptive effect of the opinions on other areas of the law, and absence of concrete reliance. *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 268 (2022). Finding all five factors militated "strongly" for overruling *Roe* and *Casey*, *id.* at 268, the *Dobbs* decision did so. *Id.* at 292.

15. **Please describe the legal rule employed in *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), and explain why the U.S. Supreme Court sided with the Petitioner.**

Response: The petitioner, a police officer, was sued for using excessive force when arresting a suspect. The excessive force alleged was "briefly plac[ing] his knee on the left side of the [suspect's] back." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 2 (2021). A police officer is entitled to qualified immunity when his or her "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 5. The Court sided with the police officer and held that he was entitled to qualified immunity because existing precedent did not establish that he violated a clearly established right. *Id.* at 7-8.

16. **When is it appropriate for a district judge to issue a nationwide injunction? Please also explain the legal basis for issuing nationwide injunctions and the relevant factors a district judge should consider before issuing one.**

Response: Federal Rule of Civil Procedure 65 governs when and how federal courts issue injunctions generally. Although district courts have issued injunctions with nationwide effect, I am unaware of Supreme Court or Fifth Circuit precedent bearing on when such injunctions can be issued.

17. **Is there ever a circumstance in which a district judge may seek to circumvent a published precedent of the U.S. Court of Appeals under which it sits or the U.S. Supreme Court?**

Response: No.

18. **If confirmed, please describe what role U.S. Supreme Court dicta would play in your decisions.**

Response: If confirmed I will follow binding Supreme Court and Fifth Circuit precedent. Dicta is not binding precedent. *See also Cohens v. Virginia*, 19 U.S. 264, 399 (1821) ("It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.").

19. **To the best of your recollection, please list up to 10 cases in which you served as lead counsel in a bench trial in federal district court or a case tried before a jury in federal district court.**

Response:

1. *United States v. Bedolla-Talavera*, 3:13-CR-1695-KC (W.D. Tex. 2014) (Jury trial)
2. *United States v. Williams*, 3:13-CR-00902-DB (W.D. Tex. 2013) (Jury trial)
3. *United States v. Lara Madrid*, 3:11-CR-03020-FM (W.D. Tex. 2012) (Jury trial)
4. *United States v. Chavez*, 2:13-CR-00988-RB (D.N.M. 2013) (Jury trial)
5. *United States v. Clark*, 3:09-CR-02453-KC (W.D. Tex. 2010) (Jury trial)
6. *United States v. Diaz*, 3:07-CR-01456-DB (W.D. Tex. 2008) (Jury trial)
7. *United States v. Jimenez-Montoya*, 3:07-CR-02909-FM (W.D. Tex. 2008) (Jury trial)
8. *Bolanos v. Gadsden I.S.D.*, 2:05-CV-01062 (D.N.M. 2007) (Jury trial)
9. *United States v. Shorts*, 1:99-CR-00148-SOM (D.Haw. 1999) (Jury trial)
10. *United States v. Souza*, 1:96-CR-00608-DAE (D.Haw. 1998) (Jury trial)

20. **When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race and/or sex of the applicants play in your consideration?**

Response: None.

21. **Please list all social-media accounts you have had during the past 10 years with Twitter/X, Facebook, Reddit, Instagram, Threads, TikTok, and LinkedIn and the approximate time periods during which you had the account. If the account has been deleted, please explain why and the approximate date of deletion.**

Response: I currently have a Tiktok account which I created approximately nine months ago and have never posted anything on it. I had a Twitter account for a short period of time in 2016 or 2017, never posted anything on it, and deleted it in approximately 2018 or 2019 because I did not use it. I opened a Facebook account sometime in the 2009 to 2012 timeframe, deleted it because I did not use it, and cannot remember when I deleted it but it may have been in approximately 2013 or 2014.

22. **Why should Senator Kennedy support your nomination?**

Response: I have been honored to serve as United States Magistrate Judge for the Western District of Texas for more than eight years. During this time I have tried to create the kind of federal court I always wanted to appear before during my nearly twenty years as a federal court litigator. Our court focuses on the needs and requirements of the litigants and counsel, and we try to fulfill our duties as public servants. I handle each case individually, fully and fairly apply the correct law to the established facts, treat all litigants and counsel with dignity and respect, and ensure that all with business before the court have a full and fair opportunity to be heard. I hope to continue these policies and practices if confirmed as a United States District Judge.

**CHAIR**  
Hon. Ann Claire Williams (Ret.)  
acwilliams@jonesday.com  
(312) 269-1575

**VICE CHAIR**  
David L. Brown  
DBrown@femtausfem.com  
(313) 244-2142

**FIRST CIRCUIT**  
Kay M. Hodge  
khodge@comfip.com  
(317) 542-6789

**SECOND CIRCUIT**  
Diana M. Ivrelle  
divelle@quid.com  
(860) 424-4382

**THIRD CIRCUIT**  
G. Glenason Trouderfeld  
gtrouderfeld@camblaw.com  
(978) 994-1700

**FOURTH CIRCUIT**  
Famela J. Roberts  
Famela.Roberts@BrownandBrennan.com  
(803) 726-7423

**FIFTH CIRCUIT**  
Michael D. Hunt  
Michael.Hunt@ghilip.com  
(275) 345-0285

**SIXTH CIRCUIT**  
Khalid V. Spencer  
kspencer@hongsman.com  
(313) 465-7654

**SEVENTH CIRCUIT**  
Nigel F. Teisman  
nolman@proskauer.com  
(312) 962-3548

**EIGHTH CIRCUIT**  
Sonia Miller Van Dert  
Sonia.Miller@spencerlaw.com  
(612) 756-7125

**NINTH CIRCUIT**  
John C. Dwyer  
jdwyer@cooley.com  
(503) 843-5238

**TENTH CIRCUIT**  
Eric S. Casher  
ecasher@meysersnave.com  
(319) 858-2000

**ELEVENTH CIRCUIT**  
Suzanne F. Gilbert  
Suzanne.Gilbert@hlslaw.com  
(407) 244-1142

**D.C. CIRCUIT**  
Michael L. Huang  
mlhuang@qpm-law.com  
(734) 678-1531

**FEDERAL CIRCUIT**  
Joseph Michael Drayton  
jdrayton@proskauer.com  
(212) 969-3479

**SPECIAL ADVISORS**  
Pamela Bennett  
pbennett@thebennettlawfirm.com  
(202) 881-9999

Vincent Chang  
Vincent.Chang@lawglobe.com  
(712) 450-4242

Susan Saltzman  
Susan.Saltzman@akadden.com  
(712) 785-4132

**STAFF COUNSEL**  
Denise A. Cardman  
Denise.Cardman@americanbar.org



Please reply to:  
Hon. Ann Claire Williams (Ret.)  
Jones Day  
110 North Wacker Drive, Suite 4800  
Chicago, Illinois 60606  
acwilliams@jonesday.com

January 23, 2024

**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 Leon Schydlower to the  
United States District Court for the Western 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 Leon Schydlower, who has been nominated by the President to the United States District Court for the Western District of Texas. 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 Schydlower is "**Well Qualified**" to serve on the United States District Court for the Western District of Texas.

Very truly yours,

*Ann Claire Williams*  
Hon. Ann Claire Williams (Ret.)  
Chair, Standing Committee  
on the Federal Judiciary

cc: Edward N. Siskel, 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 Leon Schydlower (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)