Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Sunil Harjani
Nominee to be United States District Judge for the Northern District of Illinois

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, list all countries of citizenship 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: I have never been a citizen of another country.

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

   Response: A federal judge should treat all attorneys equally regardless of any immutable characteristics, such as race or sex. As a United States Magistrate Judge, I do not decide whether to grant oral argument based on an immutable characteristic of an attorney. I will continue that practice if I am fortunate to be confirmed as a district judge.

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

   Response: A federal judge should treat all attorneys equally regardless of any immutable characteristics, such as race or sex. As a United States Magistrate Judge, I do not decide whether to grant additional oral argument time based on an immutable characteristic of an attorney. I will continue that practice if I am fortunate to be confirmed as a district judge.

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: It is generally inappropriate to consider foreign law in constitutional interpretation. The only exception I am aware of is the Supreme Court's consideration of English statutes and common law when evaluating the original public meaning of a

constitutional provision. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 40 (2022).

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 do not agree with that statement. A judge is obligated to faithfully and impartially apply the law to the facts of the case directly before the court. A judge's value judgment is not a basis to resolve constitutional questions. If confirmed, I would faithfully follow all binding Supreme Court and Seventh Circuit precedent without regard to my own independent 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: No, it is inappropriate for a federal judge to knowingly write opinions that the judge believes will be reversed by the Supreme Court.

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 and receive relief from the sentence under these federal statutes: a direct appeal of the district court judgment (28 U.S.C. § 1291); a motion attacking the sentence (28 U.S.C. § 2255); a petition for writ of habeas corpus (28 U.S.C. § 2241); 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: Petitioner Students for Fair Admissions (SFFA) sued Harvard College over its admissions process, alleging that the process violated Title VI of the Civil Rights Act of 1964 by discriminating against Asian American applicants. SFFA also sued the University of North Carolina alleging that its admissions process violated the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964 by using race as a factor in admissions. The Supreme Court ruled that race-based admissions adopted by both Harvard and the University of North Carolina cannot survive strict scrutiny and were unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll*., 600 U.S. 181 (2023).

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 United States Magistrate Judge, I hire law clerks and interns and solicit applications for both positions. When I was at the United States Attorney's Office for the Northern District of Illinois, I interviewed candidates for Assistant United States Attorney positions. As an associate at Jenner & Block, I participated in interviews for summer associate positions. I have also served on a selection committee for the Bartlett Trial Director position at Northwestern University School of Law.

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 Seventh 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 Coll.*, 600 U.S. 181, 206 (2023); *Hope v. Comm'r of Indiana Dep't of Corr.*, 9 F.4th 513, 529 (7th Cir. 2021).

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

    Response: The Supreme Court held in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), that the Fifth Amendment prohibits Colorado from forcing a website designer to create expressive designs for a same-sex couple 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: The Supreme Court cited *Barnette* in *303 Creative LLC v. Elenis*, 600 U.S. 570, 585 (2023). *Barnette* is binding precedent. If I were fortunate to be

confirmed as a district court judge, I will faithfully apply all binding precedent of the Seventh Circuit and the Supreme Court.

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: Under the First Amendment, courts must consider the text of the law. If a law regulating expression is "content-based," then the law is subject to strict scrutiny. A "content-neutral" law is subject to intermediate scrutiny. "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, Ariz*., 576 U.S. 155, 163 (2015). However, the Supreme Court has also stated that, though facially content neutral, laws will be considered content-based regulation of speech if they "cannot be justified without reference to the content of the regulated speech, or that were adopted by the government because of disagreement with the message [the speech] conveys." *Id.* at 164 (internal quotation marks omitted). "Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." *Id*. at 169; *see also City of Austin, Tx. v. Reagan Nat'l Advertising of Austin, LLC*, 596 U.S. 61, 76 (2022) ("If there is evidence that an impermissible purpose or justification underpins a facially content-neutral restriction, for instance, that restriction may be content based.").

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

Response: "True threats are 'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.'" *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (*quoting Virginia v. Black*, 538 U.S. 343, 359 (2003)). "When the statement is understood as a true threat, all the harms that have long made threats unprotected naturally follow. True threats subject individuals to fear of violence and to the many kinds of disruption that fear engenders." *Id.* (*quoting Black*, 538 U.S. at 359 (internal quotation marks omitted)). In *Counterman*, the Supreme Court held that the First Amendment requires proof that the defendant had a subjective understanding of the threatening nature of his statements. *Id.* at 71-83. A mental state of recklessness is sufficient because "[i]t offers enough 'breathing space' for protected speech, without sacrificing too many of the benefits of enforcing laws against true threats." *Id.* at 82 (*quoting Elonis v. United States*, 575 U.S. 723, 748 (2015) (internal quotation marks omitted)).

21. Under Supreme Court and Seventh 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: Facts are "questions of who did what, when or where, how or why." *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 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). The Supreme Court and Seventh Circuit have recognized that the appropriate methodology for distinguishing questions of fact from questions of law in close cases has been elusive. *See Thompson v. Keohane,* 516 U.S. 99, 110-11 (1995); *Miller v. Fenton*, 474 U.S. 104, 113-14 (1985); *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982); *Gekas v. Att'y Registration & Disciplinary Comm'n of Sup. Ct. of Illinois*, 793 F.2d 846, 849-50 (7th Cir. 1986). For mixed questions of law and fact, the court must attempt to break the question into its factual and legal parts, and, when it cannot be reduced further, determine whether answering the question involves primarily legal or factual work. *Google LLC v. Oracle Am., Inc.*, 141 S. Ct. 1183, 1199 (2021).

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

Response: Congress has identified all four purposes as goals of the sentencing process. Congress has not directed that one of the purposes of sentencing is entitled to greater weight than another. Furthermore, Congress has identified factors that courts must apply during the sentencing process in 18 U.S.C. § 3553(a). If confirmed as a district judge, I will faithfully apply all applicable statutes and Supreme Court and Seventh Circuit precedent when imposing sentences.

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

Response: Judges are bound to apply all relevant, binding precedent from the Supreme Court. It would not be appropriate for me as a sitting United States Magistrate Judge or a nominee for district judge to express an opinion on the reasoning in any particular Supreme Court decision. *See* Code of Conduct for United States Judges, Canon 3.

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

Response: Judges are bound to apply all relevant, binding precedent from the Supreme Court and, in my case, from the Seventh Circuit. It would not be appropriate for me as a sitting United States Magistrate Judge or a nominee for district judge to express an opinion on the reasoning in any particular Seventh Circuit decision. *See* Code of Conduct for United States Judges, Canon 3.

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

Response: 18 U.S.C. § 1507 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 unaware of any Supreme Court decision that has considered the constitutionality of 18 U.S.C. § 1507. The Supreme Court rejected a facial constitutional challenge to a similar Louisiana state statute in *Cox v. State of Louisiana*, 379 U.S. 559, 564 (1965). As a sitting United States Magistrate Judge and a judicial nominee, Canon 3A(6) of the Code of Conduct for United States Judges does not permit me to make any public comment on a matter that may come before me as a judge.

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 sitting United States Magistrate Judge and judicial nominee, it generally is improper for me to comment on whether I believe a Supreme Court case was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3A(6). However, consistent with the practice of past judicial nominees, I can state that *Brown v. Board of Education* was correctly decided because the issue of de jure segregation is highly unlikely to be relitigated again.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, it generally is improper for me to comment on whether I believe a Supreme Court case was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3A(6). However, consistent with the practice of past judicial nominees, I can state that *Loving v. Virginia* was correctly decided because the issue of interracial marriage is highly unlikely to be relitigated again.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am prohibited from commenting on whether I believe a Supreme Court case was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3A(6).

I can state that *Griswold v. Connecticut* is binding Supreme Court precedent, which I would follow if confirmed as a district judge.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am prohibited from commenting on whether I believe a Supreme Court case was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3A(6). I can state that *Roe v. Wade* is no longer binding Supreme Court precedent, and I would follow the binding precedent in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022) if confirmed as a district judge.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am prohibited from commenting on whether I believe a Supreme Court case was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3A(6). I can state that *Planned Parenthood v. Casey* is no longer binding Supreme Court precedent, and I would follow the binding precedent in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022) if confirmed as a district judge.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am prohibited from commenting on whether I believe a Supreme Court case was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3A(6). I can state that *Gonzales v. Carhart* is binding Supreme Court precedent, which I would follow if confirmed as a district judge.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am prohibited from commenting on whether I believe a 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 as a district judge.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am prohibited from commenting on whether I believe a 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 as a district judge.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am prohibited from commenting on whether I believe a 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 as a district judge.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am prohibited from commenting on whether I believe a 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 as a district judge.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am prohibited from commenting on whether I believe a 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 Organization* is binding Supreme Court precedent, which I would follow if confirmed as a district judge.

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 judicial nominee, I am prohibited from commenting on whether I believe a Supreme Court case was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3A(6). I can state that S*tudents 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 as a district judge.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am prohibited from commenting on whether I believe a 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 as a district judge.

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

    Response: The legal standard for determining whether or not a regulation or statutory provision infringes on Second Amendment rights is set forth in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). In *Bruen*, the Supreme Court held that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct and, to justify the regulation in question, the government must demonstrate that the regulation in question is consistent with the Nation's historical tradition of firearm regulation. *Id.* at 17-19.

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 Question 29 and 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 Question 30 and 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 Question 31 and 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 Question 32 and 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 Question 33 and 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 September 8, 2023, I submitted an application to the Judicial Screening Committee established by United States Senators Richard Durbin and Tammy Duckworth for a position on the United States District Court for the Northern District of Illinois. On October 8, 2023, I interviewed with the Northern District of Illinois Judicial Screening Committee. On November 8, 2023, I interviewed with Senator Duckworth. On November 10, 2023, I interviewed with Senator Durbin. On November 16, 2023, I was informed that my name would be on a list of candidates submitted to the White House for further consideration. On November 17, 2023, Senators Durbin and Duckworth wrote a letter to President Biden submitting my name for consideration. On November 20, 2023, I interviewed with attorneys from the White House Counsel's office. Since November 20, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and the White House. On January 10, 2024, 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: I did not talk with anyone affiliated with the organization Demand Justice during my selection process and I am unaware of anyone doing so on my behalf.

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: I did not talk with anyone affiliated with the American Constitution Society during my selection process and I am unaware of anyone doing so on my behalf.

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: I did not talk with anyone affiliated with Arabella Advisors or its known subsidiaries during my selection process and I am unaware of anyone doing so on my behalf.

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: I did not talk with anyone affiliated with the Open Society Foundations during my selection process and I am unaware of anyone doing so on my behalf.

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: I did not talk with anyone affiliated with Fix the Court during my selection process and I am unaware of anyone doing so on my behalf.

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 to Question 40 and all subparts: 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 November 20, 2023, I interviewed with attorneys from the White House Counsel's office. Since November 20, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and the White House. On January 10, 2024, the President announced his intent to nominate me.

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

    Response: I reviewed the Senators' Questions for the Record on February 15, 2024, conducted legal research, and drafted my answers. I submitted my draft answers to the Office of Legal Policy at the Department of Justice, received limited feedback, then finalized and submitted my answers.

Senate Judiciary Committee
Nominations Hearing
February 8, 2024
Questions for the Record
Senator Amy Klobuchar

For Sunil Harjani, nominee to be U.S. District Judge for the Northern District of Illinois

In 2019, you were appointed as a magistrate by the sitting Article III judges of the Northern District of Illinois. In this capacity you oversee approximately 150 federal civil cases and 50 federal criminal cases annually.

- **What are some of the most valuable lessons that you have learned while serving as a magistrate judge?**

  Response: My service as a United States Magistrate Judge since 2019 has provided me valuable lessons in the administration of justice that I hope to bring as a district judge if confirmed. I have learned the importance of treating everyone who comes before the court with respect and dignity, to be prepared for all court proceedings, to listen to their arguments patiently, and to make timely and well-reasoned rulings that all parties can understand, win or lose. I have learned to approach each case with humility and with an understanding that I am bound by precedent and the text of a constitutional provision, statute or rule, and that my personal beliefs have no place in any decision I make. At the same time, I have appreciated the grave responsibility of a judge – that a case involves people with real and important disputes and that any decision I make will have a significant impact on their lives. Finally, I have had the opportunity to serve as a mentor and role model for young lawyers in the community and the law clerks and externs who work in my chambers, and I appreciate the positive impact I can have on their careers.

- **How has your experience as a magistrate judge informed your view on the role of a federal district court judge?**

  Response: My experience as a United States Magistrate Judge since 2019 has given me significant insight into the work of a district judge. First, it has provided me a breadth of experience in federal litigation that will allow me to hit the ground running if confirmed. Since 2019, I have handled both federal civil and criminal cases. In civil cases, I preside over pretrial matters in cases referred to me by the district judge in both federal question and diversity matters. This includes rulings on discovery motions, active discovery management, and conducting settlement conferences. In consent cases, I preside over the case from start to finish, including ruling on dispositive motions, such as motions to dismiss and for summary judgment. In federal criminal cases, I conduct initial appearances, detention hearings, extradition hearings, preliminary (probable cause) hearings, and arraignments in felony matters, as well as review requests for arrest and search warrants. I have authored over 200 opinions and thousands of orders in federal civil and criminal cases. I have also presided over two federal civil trials in consent cases, and numerous criminal misdemeanor cases from start to finish, including sentencing defendants. In many of these judicial duties, I have worked closely with

experienced district judges on case management and have learned much from them. I believe the wide range of service I performed as a United States Magistrate Judge has given me insight into the role of a district judge and prepared me well to serve as a district judge if I am confirmed. Second, through my time as a United States Magistrate Judge, I have appreciated that federal courts are one of limited jurisdiction. I ensure that the court has Article III standing, and personal and subject matter jurisdiction in any case before me. To the extent applicable, I consider other justiciability factors such as mootness or ripeness. When presented with an issue in the case, I first determine whether there is binding precedent from the Supreme Court or the Seventh Circuit that applies to the case. I conduct legal research and review the parties' briefs and arguments. If there is no binding precedent on point, I apply the plain text of any constitutional provision, statute, or rule that governs the matter. In either situation, I apply the applicable law to the facts of the case in the record to make a ruling. I exercise judicial restraint by deciding only the issues that I need to decide. These are insights that I will bring with me to the district judge position if I am fortunate to be confirmed.

Senator Jon Ossoff
Questions for the Record for Judge Sunil Harjani
February 8, 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 Seventh Circuit precedent on the specific First Amendment issue before me. If the Supreme Court and Seventh Circuit have spoken on the issue, the inquiry ends and I will apply the established law to the facts of the case. In the event that there is no applicable precedent on that particular First Amendment issue, I will apply the test set out by the Supreme Court and the Seventh Circuit for that particular clause of the First Amendment. For example, in evaluating a Free Exercise claim, the Supreme Court has stated that "laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021).

   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 First Amendment's protections of freedom of speech, publication, assembly, and exercise of religion are vitally important to safeguard individual autonomy and our democratic form of government. *See Torcaso v. Watkins*, 367 U.S. 488, 491-92 (1961) (noting the First Congress' proposal of the First Amendment "broke new constitutional ground in the protection it sought to afford to freedom of religion, speech, press, petition and assembly."); *Gibson v. Florida Legis. Investigation Comm.*, 372 U.S. 539, 544 (1963) ("The First and Fourteenth Amendment rights of free speech and free association are fundamental and highly prized[.]"). If confirmed as a district judge, I will faithfully follow all binding precedent from the Supreme Court and the Seventh Circuit in matters involving the First Amendment.

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 guarantees the constitutional right to an attorney in federal cases for indigent defendants. *Gideon v. Wainwright*, 372 U.S. 335 (1963). As a federal magistrate judge, I regularly appoint counsel for indigent defendants at their initial appearances, and I have

seen firsthand the importance of this right. All criminal defendants deserve a competent attorney who will zealously represent them and protect their constitutional rights, particularly those under the Fourth, Fifth and Sixth Amendments. As the Supreme Court stated in *Gideon*: "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." *Id.* at 344. I will faithfully apply *Gideon* and other binding Supreme Court and Seventh Circuit precedent on the Sixth Amendment if confirmed as a district judge.

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 in civil or criminal proceedings for whom English is not their native language have challenges in understanding legal proceedings. As a sitting federal magistrate judge, I have arranged for court interpreters to attend hearings to assist non-English speakers. Sometimes this involves parties who do not speak any English, but at other times, it also involves arranging for an interpreter for a party who may not understand legal terms in English but will comprehend those terms in their native language. Providing interpreters is important in ensuring access to our courts for all individuals. The Northern District of Illinois is fortunate to have a robust roster of interpreters in a host of different languages if one is needed, and I will continue to use the resources of our court to ensure that non-native English speakers have the same opportunities in court as an English speaker if I am fortunate to be confirmed as a district judge.

   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 plays an important role in protecting individuals' due process rights and ensuring access to justice. Litigants must be able to understand legal proceedings and participate in a meaningful way in order to believe their received a fair and just determination of their case. *See e.g.*, *Tennessee v. Lane*, 541 U.S. 509, 532-33 (2004) (right of access to courts involve "affirmative obligations" that flow from a duty to accommodate to allow "all individuals a meaningful opportunity to be heard."). This is true in both civil and criminal cases. As a federal magistrate judge, I ensure that litigants before me understand and comprehend the legal proceedings, and if they do not, I take steps to ensure that they do. This may include such basic tasks as speaking slower or using non-legal terms, or other accommodations such as making arrangements for an interpreter, providing access to translated documents if available, or appointing counsel for a *pro se* litigant who can assist in this endeavor.

Senator Mike Lee
Questions for the Record
Sunil R. Harjani, Nominee for District Court Judge for the Northern District of Illinois

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

   Response: As a sitting United States Magistrate Judge, I have a methodology that I apply in cases assigned to me. I approach all cases with an open-mind so I can make a fair and impartial decision and without regard for any personal views. I appreciate that federal courts are one of limited jurisdiction. I ensure that the court has Article III standing, and personal and subject matter jurisdiction in any case before me. To the extent applicable, I consider other justiciability factors such as mootness or ripeness. When presented with an issue in the case, I first determine whether there is binding precedent from the Supreme Court or the Seventh Circuit that applies to the case. I conduct legal research and review the parties' briefs and arguments. If there is no binding precedent on point, I apply the plain text of any constitutional provision, statute, or rule that governs the matter. In either situation, I apply the applicable law to the facts of the case in the record to make a ruling. I exercise judicial restraint by deciding only the issues that I need to decide. In deciding a matter, I treat the litigants with respect and directly consider their arguments so they feel like that they received fair consideration of their positions. I endeavor to decide all matters expeditiously and to put my decision in writing in a clear and concise manner that can be understood by both lawyers and their clients.

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

   Response: In any case requiring the interpretation of a federal statute, I would first look to the binding Supreme Court and Seventh Circuit precedent interpreting that statute. If there is no binding precedent, I would look at the plain text of the statute. If the statutory language is unambiguous, the analysis ends. If the text of the statute is ambiguous and there is no binding precedent interpreting it, I would look at the structure, context, and design of the statute, review dictionary definitions, consider how the relevant terms were used elsewhere in the statute, and apply canons of statutory construction. I would also consider persuasive authority from the Supreme Court and Seventh Circuit precedent on analogous or similar language.

3. **What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?**

   Response: I would start the analysis by consulting the precedent set forth by the Supreme Court and the Seventh Circuit. As a lower court judge, I am duty-bound to apply binding precedent. If there is no binding precedent, I would consider the plain text of the provision. If the language of the provision is unambiguous, that would end the analysis. If the provision is ambiguous, I would apply the interpretive tools specified by the Supreme Court and Seventh Circuit precedent for that constitutional provision. For example, in analyzing modern firearms regulations, the Supreme

Court has consistently looked to the text and original public meaning of the Second Amendment at the time of enactment to assess the constitutionality of those regulations. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); *McDonald v. City of Chicago, Ill.*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (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 plays critical roles when interpreting the Constitution. The Supreme Court has set forth the importance of this approach when interpreting many Constitutional provisions and I would faithfully apply that methodology. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 27-29 (2022); *District of Columbia v. Heller*, 554 U.S. 570 (2008) (Second Amendment); *see also Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535-36 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 50 (2004) (Sixth Amendment).

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 refer to 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 refers to the public understanding of the relevant language at the time of enactment. The Supreme Court has looked to the original public meaning in multiple contexts. *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022); *see also Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 654 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."). The Constitution does not change unless amended in accordance with the procedures set forth in Article V, and statutes do not change unless Congress amends them.

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

Response: Article III standing requires that a plaintiff show: (1) an injury in fact that is concrete and particularized, and actual or imminent; (2) fairly traceable to the conduct of the defendant; and (3) that is likely to be redressed by a favorable decision of the court. *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: In *M'Culloch v. Maryland*, the Supreme Court held that under the Necessary and Proper Clause of Article I, Section 8, Congress has implied powers beyond those enumerated in the Constitution, to implement its enumerated powers. 17 U.S. 316, 421 (1819); U.S. Const. art. I, § 8, cl. 18 (Congress has the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution," the powers otherwise vested by the Constitution). In *National Federation of Independent Business v. Sebelius*, the Supreme Court further stated: "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." 567 U.S. 519, 559 (2012) (*quoting M'Culloch*, 17 U.S. at 411, 421).

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

Response: I would apply binding Supreme Court and Seventh Circuit precedent when evaluating the constitutionality of a law enacted by Congress, including *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 570 (2012) ("The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.") (*quoting Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948)).

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

Response: The Supreme Court has held that the Due Process Clauses of the Fifth and Fourteenth Amendment protect certain fundamental rights that are so deeply rooted in our history and tradition that they are essential to the nation's scheme of ordered liberty. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 236-37 (2022); *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). The Supreme Court has found the following fundamental rights: the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), *Obergefell v. Hodges*, 576 U.S. 644 (2015); to marital privacy and contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); to engage in private sexual conduct, *Lawrence v. Texas*, 539 U.S. 558 (2003); and to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952).

11. What rights are protected under substantive due process?

Response: See my answer to Question 10.

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, but not economic rights such as those at stake in *Lochner*

v. *New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: The Supreme Court has recognized a fundamental right to contraceptives. *Griswold v. Connecticut*, 381 U.S. 479 (1965). *Lochner v. New Y*ork has been overturned and is no longer good law. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). As a sitting United States Magistrate Judge and a judicial nominee, I have and will continue to faithfully apply Supreme Court and Seventh Circuit precedent on substantive due process issues. *See Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 236-37 (2022); *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

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

Response: The Supreme Court has held that Congress's power under the Commerce Clause is limited to: (1) regulating the use of channels of interstate commerce; (2) regulating and protecting the instrumentalities of interstate commerce, or person or things in interstate commerce; and (3) regulating those activities having a substantial effect on 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: A suspect class is one that has experienced a "history of purposeful unequal treatment or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities." *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976) (internal quotations omitted). The Supreme Court has recognized that race, alienage, national origin, and religion qualify as suspect classes and are subject to strict scrutiny. *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 are the hallmarks of our Constitution. Each branch of government – the legislature, the executive, and the judiciary – have defined roles as specified by Articles I, II, and III. As the Supreme Court observed in *Morrison v. Olson*, "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." 487 U.S. 654, 693 (1988) (internal quotations and citations omitted).

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 Supreme Court and Seventh Circuit precedent and applicable constitutional provisions to resolve the case. For example, in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court did not find congressional authority or a basis in Article II of the Constitution for a Presidential order directing the Secretary of Commerce to seize control of the steel mills to avert a nationwide strike. *See also Bond v. United States*, 564 U.S. 211 (2011); *Marbury v. Madison*, 5 U.S. 137 (1803).

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

Response: Empathy does not play a role in a judge's consideration of the facts and the applicable law, or the court's decision. As a sitting United States Magistrate Judge, however, I do ensure that litigants have a meaningful opportunity to be heard, that I acknowledge and consider the arguments raised by both sides, that I treat all litigants with respect and dignity, and that any decision I issue is understandable to both the lawyers and the clients so they feel like they had their day in court and received fair consideration of their positions.

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

Response: Both are improper outcomes and should not be employed by federal judges.

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 or studied this particular issue. As a sitting United States Magistrate Judge, and if confirmed, a district judge, I will apply all Supreme Court and Seventh Circuit precedent to the issues that are raised in the cases pending before me.

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

Response: Judicial review refers to the courts' power to review legislative and executive acts. *See Marbury v. Madison*, 5 U.S. 137 (1803). Judicial supremacy refers to the concept that the Supreme Court is the authoritative interpreter of the Constitution and that the Court's decisions are binding on the other branches of 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: Article VI of the Constitution binds legislators, executive and judicial officers to support the Constitution. *See* U.S. Const., art. VI. Each are also required to follow the Supreme Court's interpretation of the Constitution. *See Cooper v. Aaron*, 358 U.S. 1 (1958). Both obligations can be upheld simultaneously. Elected officials also have the means to dissent through legislation or proposing constitutional amendments.

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 vitally important that all judges understand that the role of a judge is to apply the law to a particular case or controversy. The job is not to make the law, which belongs to the legislative branch, or enforce the law, which belongs to the executive branch. As a sitting United States Magistrate Judge, and if confirmed as a district judge, I will continue to faithfully adhere to these principles.

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 district judge should not call into question binding precedent. A district judge must faithfully apply all Supreme Court and applicable circuit court precedent to each case.

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: When sentencing criminal defendants as a United States Magistrate Judge, I have faithfully applied the factors set forth in 18 U.S.C. § 3553(a). Any consideration of the defendant's group identity(ies) is not appropriate and should not be considered. *See* U.S.S.G. § 5H1.10. I will continue this practice if I am confirmed as a district judge.

25. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I am not familiar with the definition of "equity" that is quoted above. Blacks's Law Dictionary (11th ed. 2019), defines equity as "fairness, impartiality, and 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" to include freedom from bias or favoritism and "equality" to include the quality or state of being equal. Merriam-Webster's Collegiate Dictionary 422-23 (11th ed.).

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

Response: The Fourteenth Amendment provides, "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1. I am not aware of any federal statute or precedent from the Supreme Court or Seventh Circuit that has applied the Equal Protection Clause to the definition of equity cited above.

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

Response: Merriam-Webster (online) 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: Merriam-Webster (online) 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 institutions of a country and especially the United States."

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

Response: I have not studied "critical race theory" or "systemic racism." I will apply all Supreme Court and Seventh Circuit precedent and the text of applicable statutes in any case that involves an issue of race.

Senator John Kennedy
Questions for the Record

Sunil Harjani

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

   Response: Yes, Congress has determined the offenses that are punishable by death and the procedures for cases involving a sentence of death. 18 U.S.C. § 3591-99. The Supreme Court has held that the death penalty is not *per se* unconstitutional. *Gregg v. Georgia*, 428 U.S. 153 (1976). If confirmed, I will faithfully follow binding precedent of the Supreme Court, Seventh Circuit, and the federal statutory procedure for sentencing defendants, including death sentences.

2. **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.

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

   Response: Yes.

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

   Response: Yes.

5. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: As a sitting United States Magistrate Judge, I have a methodology I apply in cases assigned to me. I approach all cases with an open mind so I can make a fair and impartial decision and without regard for any personal views. I appreciate that federal courts are one of limited jurisdiction. I ensure that the court has Article III standing, and personal and subject matter jurisdiction in any case before me. To the extent applicable, I consider other justiciability factors such as mootness or ripeness. When presented with an issue in the case, I first determine whether there is binding precedent from the Supreme Court or the Seventh Circuit that applies to the case. I conduct legal research and review the parties' briefs and arguments. If there is no binding precedent on point, I apply the plain text of any constitutional provision, statute, or rule that governs the matter. In either situation, I apply the applicable law to the facts of the case in the record to make a ruling. I exercise judicial restraint by deciding only the issues that I need to decide. I endeavor to decide all matters expeditiously to keep the case moving and to put my decision in writing in a clear and concise manner that can be understood by both

lawyers and their clients. In deciding a matter, I treat the litigants with respect and consider their arguments so they feel like that they received fair consideration of their position.

6. **Is originalism a legitimate method of constitutional interpretation?**

   Response: Yes, for example, the Supreme Court has held that the text and original public meaning of a constitutional provision are important in interpreting the Constitution. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); *McDonald v. City of Chicago, Ill.*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004). In *Bruen*, the Supreme Court discussed the use of history to interpret constitutional provisions in addition to the Second Amendment, such as the First Amendment's Freedom of Speech and Establishment Clauses and the Sixth Amendment's Confrontation Clause. *Bruen*, 597 U.S. at 25.

7. **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: The Supreme Court has stated that courts must look first to the text of a constitutional provision. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); *District of Columbia v. Heller*, 554 U.S. 570 (2008). If the text is unambiguous, then the inquiry ends there. If it is ambiguous, then I would apply the methods of interpretation consistent with the approach the Supreme Court or Seventh Circuit has used for that constitutional provision. For example, the Supreme Court has interpreted various constitutional provisions by ascertaining the original meaning of the words used as understood by the public at the time of our country's founding.

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

   Response: Yes, for example, in *Bostock*, the Supreme Court stated "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*, 590 U.S. 644, 673-74 (2020). If confirmed, I would faithfully apply Supreme Court and Seventh Circuit precedent as well as the plain text when interpreting a statute.

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

   Response: When determining the meaning of a statute or provision, I would first faithfully apply any Supreme Court or Seventh Circuit precedent. As a lower court judge, I am duty-bound to apply precedent. If no precedent exists, I would apply the plain text of the statute or provision, and if it is unambiguous, the inquiry ends. If the

text of the statute is ambiguous and there is no binding precedent interpreting it, I would look at the structure, context, and design of the statute, review dictionary definitions, consider how the relevant terms were used elsewhere in the statute, and apply canons of statutory construction. I would also consider persuasive authority from the Supreme Court and Seventh Circuit precedent on analogous or similar language. The Supreme Court has also looked to *The Federalist Papers* and historical sources in interpreting the Constitution. *See e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

10. 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 Constitution has a fixed and enduring meaning. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). It may be changed only through the Article V amendment process.

11. 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*, 595 U.S. 1, 5 (2021), the Supreme Court held that an officer is entitled to qualified immunity when the officer's conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." (*quoting White v. Pauly*, 137 S. Ct. 548, 551 (2017)). In that case, Cortesluna brought suit under 42 U.S.C. § 1983, claiming that Officer Rivas-Villegas used excessive force in violation of the Fourth Amendment. The Supreme Court ruled in favor of the officer, holding Cortesluna had not "identified any Supreme Court case that addresses facts like the ones at issue here" and therefore the officer did not have notice that the specific conduct was unlawful. *Rivas-Villegas,* 595 U.S. at 6.

12. 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. "[A] plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; 3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156-57 (2010) (internal citation omitted). "An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course" *Id.* at 165. Injunctions having nationwide effect have been issued by federal

district judges. However, neither the Supreme Court nor the Seventh Circuit has issued binding precedent as to the precise circumstances in which a nationwide injunction can be issued. In *City of Chicago v. Barr*, the Seventh Circuit stated that "both historical and current practice lends support to a determination that the courts possess the authority to impose injunctions that extend beyond the parties before the court. The propriety of such an injunction, in a given case, is another matter. Such injunctions present real dangers, and will be appropriate only in rare circumstances." 961 F.3d 882, 916 (7th Cir. 2020). If confirmed, I will faithfully follow all Supreme Court and Seventh Circuit precedent.

13. **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.

14. **Will you faithfully apply all precedents of the U.S. Supreme Court and the U.S. Court of Appeals for the Seventh Circuit?**

    Response: Yes.

15. **If confirmed, please describe what role U.S. Supreme Court dicta would play in your decisions.**

    Response: If confirmed, I will apply binding precedent of the Supreme Court and Seventh Circuit. Dicta is neither law nor binding precedent.

16. **When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race, sex, or religion of the applicants play in your consideration?**

    Response: None.

17. **Why should Senator Kennedy support your nomination?**

    Response: I have devoted my career to public service and it would be an honor to continue my public service journey as a district judge with Senator Kennedy's support. As an Assistant United States Attorney for over a decade, I prosecuted white collar criminals who defrauded investors and helped provide justice to victims of fraud crimes. In that time, I tried 13 federal criminal trials and argued 14 appeals before the Seventh Circuit Court of Appeals. For the last five years, I have served as a United States Magistrate Judge. I preside over 150 federal civil cases and 50 criminal cases annually. In civil cases, I preside over pretrial matters referred to me by the district judge in both federal question and diversity matters. In consent cases, I preside over the case from start to finish, including ruling on dispositive motions, such as motions to dismiss and for summary judgment. In federal criminal cases, I conduct initial appearances, detention hearings, preliminary (probable cause) hearings, and arraignments in felony matters, as

well as review requests for arrest and search warrants under the Fourth Amendment. I have authored over 200 opinions and thousands of orders in federal civil and criminal cases. I have also presided over two federal civil trials and numerous criminal misdemeanor cases from start to finish, including sentencing criminal defendants. Through my opinions, I have demonstrated fidelity to the Constitution, adherence to binding precedent, strict application of the plain text of statutes and rules, and exercised judicial restraint. *See e.g.*, *Roman v. City of Chicago*, 2023 WL 121765 (N.D. Ill. Jan. 6, 2023); *United States v. Donley*, 2023 WL 6623549 (N.D. Ill. Oct. 11, 2023); *Cage v. Harper*, 2020 WL 1248685 (N.D. Ill. Mar. 16, 2020); *Alcorn v. City of Chicago*, 336 F.R.D. 440 (N.D. Ill. Aug. 20, 2020). I appreciate that federal courts are one of limited and enumerated powers in a system of checks and balance and separation of powers. Based on my 23 years of experience in federal litigation, I was grateful to receive the American Bar Association's rating of "Well Qualified." I believe I will hit the ground running given my deep experience in federal civil and criminal procedural and substantive law, and I would deeply appreciate Senator Kennedy's vote in favor of my confirmation.