Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Sanket J. Bulsara
Nominee to be United States District Judge for the Eastern District of New York

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, 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.**

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: No.

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: No.

5. **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. A judge is obligated to reach the result in a case through impartial and faithful application of the facts to governing law, irrespective of his or anyone's value judgments.

6. **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. Please see my response to Question 5.

7. **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.

8. **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.

9. **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 federal custody has two avenues to seek and receive relief from a sentence: by filing a motion pursuant to (1) 28 U.S.C. § 2255 to "vacate, set aside or correct the sentence," on the grounds, among others, that it was imposed "in violation of the Constitution and laws of the United States"; and (2) 18 U.S.C. § 3582(c) (under the First Step Act for Compassionate Release), on the grounds, among others, that "extraordinary and compelling reasons warrant" a modification of the "imposed term of imprisonment."

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: These two cases involved challenges to the affirmative action policies of the University of North Carolina and Harvard College alleging violations of the Equal Protection Clause of the 14th Amendment and Title VI of the 1964 Civil Rights Act, respectively. The Supreme Court struck down both programs holding that neither satisfied strict scrutiny: both "lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023).

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. I have participated in hiring decisions while working at Munger, Tolles & Olson, the New York City Department of Education, WilmerHale, the Securities and Exchange Commission, and as a federal magistrate judge.

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.

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?

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 to my knowledge.

15. Under current Supreme Court and Second Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?

Response: Yes. "All racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995).

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

Response: In *303 Creative v. Elenis*, the Supreme Court held that the First Amendment precludes the Government from compelling an individual to speak and convey a message "she does not wish to provide." 600 U.S. 570, 588 (2023).

17. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: "*If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein*."

Is this a correct statement of the law?

Response: Yes. This portion of *Barnette* was reaffirmed in *303 Creative v. Elenis*. *See* 600 U.S. 570, 585 (2023).

18. 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: In answering this question in the context of a particular case I would follow the governing precedent, which provides that:"[t]he principal inquiry in determining whether a regulation is content-based or content-neutral is whether the government has adopted a regulation of speech because of agreement or disagreement with the message it conveys. In making this determination, [the Court looks] . . . to the purpose behind the regulation. Typically, government regulation of expressive activity is content neutral so long as it is justified without reference to the content of the regulated speech . . . A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Clementine Co., LLC v. Adams*, 74 F.4th 77, 87 (2d Cir. 2023) (internal citations, quotations and emphasis removed); *see also Bartnicki v. Vopper*, 532 U.S. 514, 526 (2001); *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

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

Response: "True threats of violence . . . lie outside the bounds of the First Amendment's protection. And a statement can count as such a threat based solely on its objective content." *Counterman v. Colorado*, 600 U.S. 66, 72 (2023). And in a criminal case, to avoid infringement upon First Amendment rights, the government must prove that the defendant "had some understanding of his statements' threatening character" but need not "prove the defendant had any more specific intent to threaten the victim." *Id.* at 73.

20. Under Supreme Court and Second Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?

Response: The Supreme Court has noted that "the vexing nature of the distinction between questions of fact and questions of law." *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982) (citing *Baumgartner v. United States*, 322 U.S. 665, 671 (1944)); *see also Thompson v. Keohane*, 516 U.S. 99, 110–11 (1995) ("[T]he proper characterization of a question as one of fact or law is sometimes slippery."). Generally a fact is "[s]omething that actually exists" and "include[s] not just tangible things, actual occurrences, and relationships, but also states of mind such as intentions[.]" Black's Law Dictionary (11th ed. 2019). In making the distinction, courts consider among other things, whether the question involves "what happened," or the trial court's "appraisal of witness credibility and demeanor," *Thompson*, 516 U.S. at 111 (listing factual determinations) or in contrast, a "uniquely legal" issue, *id.* (listing legal determinations) (quotations omitted).

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

Response: 18 U.S.C. § 3553(a) requires a sentencing judge to consider each of these purposes, along with a number of other items, including, for example, the "nature and circumstances of the offense and the history and characteristics of the defendant," in imposing a sentence. The statute does not prioritize one of these factors over another. In sentencing any defendant in a case a case before me, I would faithfully consider each of these purposes, and the other factors set forth in this statute and the Federal Sentencing Guidelines.

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

Response: As a general matter, it is improper for a sitting federal magistrate judge (or a nominee for a district judge position) to render an opinion about whether a Supreme Court decision was correctly decided or well-reasoned. Doing so suggests that the judge is unwilling to follow legal precedent he disagrees with, or suggests that the judge has pre-determined or prejudged cases involving those precedents and could not fairly or impartially apply that ruling in such cases. The Code of Conduct for United States Judges precludes answering this question, other than to say that I would faithfully apply all binding Supreme Court precedent in any case before me.

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

Response: As a general matter, it is improper for a sitting federal magistrate judge (or a nominee for a district judge position) to render an opinion about whether a Court of Appeals decision was correctly decided or well-reasoned. Doing so suggests that the judge is unwilling to follow legal precedent he disagrees with, or suggests that the judge has pre-determined or prejudged cases involving those precedents and could not fairly or impartially apply that ruling in such cases. The Code of Conduct for United States Judges precludes answering this question, other than to say that I would faithfully apply all binding Second Circuit precedent in any case before me.

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

Response: 18 U.S.C. 1507 ("Picketing or parading") is a federal criminal statute that makes certain picketing activities illegal, if conducted in front of a court, residence of a judge, juror, or court employee, and if they are carried out with the intent to, among others, interfere with the administration of justice.

25. Is 18 U.S.C. § 1507 constitutional?

Response: I am not aware of any Second Circuit or Supreme Court decision ruling on the constitutionality of this statute, though a conviction under a similar provision under state law was found to pass constitutional muster. *E.g.*, *Cox v. Louisiana*, 379 U.S. 559 (1965) (upholding constitutionality of conviction for violating statute prohibiting picketing "near" a courthouse).

26. 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 general matter, it is improper for a sitting federal magistrate judge (or a nominee for a district judge position) to render an opinion about whether a Supreme Court decision was correctly decided. Doing so would suggest that the judge is unwilling to follow legal precedent he disagrees with, or suggests that the judge has pre-determined or prejudged cases involving that precedent and could not fairly or impartially apply the ruling in such cases. As a result, the Code of Conduct for United States Judges would typically preclude answering this question.

However, there are certain foundational decisions that are either so unlikely to be relitigated again or are so firmly ensconced in the constitutional framework that their validity is beyond dispute, such that this general principle of abstention is inapplicable. *Brown v. Board of Education* is one such decision. It is my opinion that *Brown* was correctly decided.

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

Response: As a general matter, it is improper for a sitting federal magistrate judge (or a nominee for a district judge position) to render an opinion about whether a Supreme Court decision was correctly decided. Doing so would suggest that the judge is unwilling to follow legal precedent he disagrees with, or suggests that the judge has pre-determined or prejudged cases involving that precedent and could not fairly or impartially apply the ruling in such cases. As a result, the Code of Conduct for United States Judges would typically preclude answering this question.

However, there are certain foundational decisions that are either so unlikely to be relitigated again or are so firmly ensconced in the constitutional framework that their validity is beyond dispute, such that this general principle of abstention is inapplicable. *Loving v. Virginia* is one such decision. It is my opinion that *Loving* 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 to items (c) through (m): As a general matter, it is improper for a sitting federal magistrate judge (or a nominee for a district judge position) to render an opinion about whether a Supreme Court decision was correctly decided. Doing so suggests that the judge is unwilling to follow legal precedent he disagrees with, or suggests that the judge has pre-determined or prejudged cases involving that precedent and could not fairly or impartially apply the ruling in such cases. The Code of Conduct for United States Judges precludes answering this question, other than to say that I would faithfully apply these cases as binding Supreme Court precedent in any case before me, except for *Roe v. Wade* and *Planned Parenthood v. Casey*, which were overruled by *Dobbs v. Jackson Women's Health*.

27. 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 by the Supreme Court in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*: "[T]he 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." 597 U.S. 1, 17 (2022) (quotations omitted).

28. 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.

29. **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.

30. **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: Not to my knowledge.

31. 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.

32. 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.

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

Response: In January 2021, I submitted an application to Senator Charles Schumer's Judicial Screening Committee. On March 31, 2021, I interviewed with the Committee. On December 22, 2023, I interviewed with Senator Schumer and members of his staff. On January 4, 2024, I was informed by Senator Schumer's staff that he would be recommending me to the White House for nomination for a position in the Eastern District of New York. On January 4, 2024, I interviewed with attorneys from the White House Counsel's office. Since that date, I have been in contact with officials from the

Office of Legal Policy at the Department of Justice. On February 7, 2024, the President announced his intent to nominate me.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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: In my discussions with the Office of Legal Policy, it noted that one of the cases that I had listed in my questionnaire was the follow-on case of another, and suggested that I should find a substitute case so that my answer to that question listed ten discrete litigation matters. That was the extent of any suggestion of what cases to include.

40. 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 33.

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

Response: I received these questions on the evening of March 13, 2024. I completed a draft of answers on my own. I provided the draft to an attorney from the Office of Legal Policy and had one conversation about my responses. I submitted my final answers to the Office of Legal Policy for transmission to the Senate Judiciary Committee.

Senate Judiciary Committee
Nominations Hearing
March 6, 2024
Questions for the Record
Senator Amy Klobuchar

For Sanket Jayshukh Bulsara, nominee to be United States District Court Judge for the Eastern District of New York

Since 2017, you have served as a U.S. Magistrate Judge in the U.S. District Court for the Eastern District of New York. You currently manage a docket of up to 450 civil cases and have presided over both civil and criminal trials.

- **How has your experience as a magistrate judge prepared you to serve as a federal district court judge?**

  Response: I believe that my time as a federal magistrate judge has provided an important foundation for appreciating the duties of a district judge. Currently, I manage a docket of approximately 350 to 450 civil cases, and conduct all non-dispositive activity in those cases, including holding initial scheduling conferences, conducting settlement conferences, resolving discovery disputes, and ensuring the progress of the case to dispositive motion practice or trial. A critical purpose of this work is to position the case in a way that the assigned district judge can efficiently move the case to final judgment. Separately, district judges will regularly refer dispositive motions to me, including motions to dismiss, for summary judgment, class certification and default judgment, and I issue reports and recommendations resolving the motions. In addition, I have a docket of civil cases where the parties have consented to my jurisdiction, and in those cases, in addition to managing the case progress, I rule on dispositive motions and preside over any bench or jury trial. In criminal cases, I regularly take pleas of defendants in felony criminal cases, including those taken pursuant to agreements reached between a defendant and the government. Finally, district judges routinely refer jury selection to me in both civil and criminal cases and I have conducted approximately two dozen such selections as a magistrate judge. I believe this comprehensive and diverse set of experiences will serve me well, should I be fortunate enough to be confirmed as a district judge.

- **How have you approached areas of the law that you were unfamiliar with, and what in your background has prepared you to serve on a federal district court?**

  Response: One of the features of a federal judge's job is to handle a diverse docket: cases that in the aggregate cover the entire spectrum of issues addressed by federal statutes; removed cases or those based on diversity jurisdiction that involve state law issues; and claims brought pursuant to the Constitution. And this breadth is compounded by the type and manner of party in federal court, from individual claims to class actions and multi-party litigation. As a result, a judge is unlikely to be familiar with all substantive areas of law for all the cases on his or her docket. When I have been faced with that situation as a

magistrate judge, I have attempted to leverage my broad civil experience—including as a generalist trial lawyer and commercial litigator and as deputy general counsel of the Securities and Exchange Commission—along with diligent study of the new area, to ensure that I am well prepared to address the case. If I am fortunate enough to be confirmed as a district judge, I would do the same, and also continue to leverage the vast experience and knowledge of my fellow judges, who have served for decades in our very busy District.

Senator Mike Lee
Questions for the Record
Sanket Jayshukh Bulsara, Nominee for District Court Judge for the Eastern District of New York

1. How would you describe your judicial philosophy?

Response: My judicial philosophy is captured in my oath, which I took when I became a magistrate judge, and which I would take again should I be confirmed: to "administer justice without respect to persons, and do equal right to the poor and to the rich[.]" 28 U.S.C § 453. And I carry out, and would carry out, these duties by faithfully and impartially applying the governing law as set forth by the United States Supreme Court and the Court of Appeals for the Second Circuit to each case before me.

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

Response: In interpreting a federal statute in a case before me, I would apply any Supreme Court or Second Circuit precedent interpreting the provision at issue. In the absence of any controlling precedent, I would interpret the provision consistent with its plain meaning. "When the statutory text is plain and unambiguous, [the Court's] . . . sole function is to enforce it according to its terms." *United States v. Bedi*, 15 F.4th 222, 226 (2d Cir. 2021) (quotations omitted). "If, upon examination, the text is ambiguous," I would "look to traditional canons of statutory construction, the broader statutory context, and the provision's history to help resolve the ambiguity." *MSP Recovery Claims, Series LLC v. Hereford Ins. Co*., 66 F.4th 77, 86 (2d Cir. 2023).

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

Response: In the absence of any precedent from the Supreme Court or any Court of Appeals, I would seek to interpret the provision by examination of its plain text, its location in the structure of the document, cases addressing analogous provisions, and historical sources elucidating its original meaning. *E.g.*, *Crawford v. Washington*, 541 U.S. 36, 42–43 (2004) ("The Constitution's text does not alone resolve this case . . . We must therefore turn to the historical background of the Clause to understand its meaning.").

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

Response: In multiple cases, the Supreme Court has held that constitutional provisions are to be interpreted consistent with their text and original meaning. *E.g.*, *Crawford v. Washington*, 541 U.S. 36, 42–43 (2004) ("The Constitution's text does not alone resolve this case . . . We must therefore turn to the historical background of the Clause to understand its meaning."); *D.C. v. Heller*, 554 U.S. 570, 592 (2008).

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: As the Supreme Court held in *Bostock v. Clayton County* a court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." 590 U.S. 644, 654 (2020).

7. What are the constitutional requirements for standing?

Response: "A plaintiff has standing only if he can 'allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *California v. Texas*, 593 U.S. 659, 668–69 (2021) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006)).

8. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: Beyond its enumerated powers, Congress has the power to "enact the laws, including 'all Laws which shall be necessary and proper for carrying into Execution' the powers of the Federal Government," *Zivotofsky v. Kerry*, 576 U.S. 1, 16 (2015) (quoting Art. I § 8); *see also Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 325 (2015) ("Article I vests Congress with broad discretion over the manner of implementing 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: To the extent that the parties in a case before me challenged the constitutionality of Congressional action, I would apply any relevant governing precedent on the extent and limits of Congressional power. *E.g.*, *United States v. Kebodeaux*, 570 U.S. 387, 394 (2013) ("The [Necessary and Proper] Clause allows Congress to adopt any means, appearing to it most eligible and appropriate, which are adapted to the end to be accomplished and consistent with the letter and spirit of the Constitution.") (quotations omitted); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 557 (2012) ("The Commerce Clause is not a general license to regulate an individual . . . Any police power to regulate individuals as such, as opposed to their activities, remains vested in the States."); *id.* at 559-60 (recounting limits on authority under Necessary and Proper Clause).

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

Response: The Ninth Amendment provides that the "enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Supreme Court has also held that the Due Process Clauses of the Fifth and Fourth Amendments provide "heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). These fundamental rights include, among others, "the rights to marry; to have children; to direct the education and upbringing of one's children; to marital privacy; to use contraception; [and] to bodily integrity," *id.* (internal citations omitted). *See also Lawrence v. Texas*, 539 U.S. 558 (2003) (rights related to intimate sexual conduct); *Obergefell v. Hodges*, 576 U.S. 644, 675 (2015) (right to same sex marriage).

11. What rights are protected under substantive due process?

Response: Please see my answer to Question 10.

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, but not economic rights such as those at stake in *Lochner* v. *New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: *Lochner v. New York* was overturned by *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). As explained in Response to Question 10, the Supreme Court has held that the Due Process Clauses of the Fifth and Fourteenth Amendments encompass certain substantive protections.

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

Response: "[T]here are three 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, even though the threat may come only from intrastate activities'; and (3) 'those activities having a substantial relation to interstate commerce, . . . *i.e.*, those activities that substantially affect interstate commerce.'" *Taylor v. United States*, 579 U.S. 301, 306 (2016) (quoting *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: "[W]hen a statute classifies by race, alienage, or national origin," the Supreme Court has held the classification is suspect, and the law is "subjected to strict scrutiny and will be sustained only if [it is] . . . suitably tailored to serve a compelling state interest." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). The Supreme Court has defined such classifications as suspect, because they are immutable and "so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy." *Id.*

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

Response: The Constitution provides for a tripartite system of government that divides power between the executive, legislative, and judicial branches. The ability of one branch to check and balance the power of another ensures that this separation of powers is maintained, a feature "critical to liberty." *Seila Law v. CFPB*, 140 S. Ct. 2183, 2202 (2020) (quotations 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 faithfully apply all relevant Supreme Court and Second Circuit precedent addressing the issue. *E.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952) (Jackson J., concurring). Please also see my response to Question 9.

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

Response: None. A judge's obligation is to decide cases impartially, and doing so requires faithful application of the law to the facts of any case and putting to the side any personal empathy towards a party.

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

Response: Both should be avoided, since either outcome results in a decision contrary to the Constitution and laws of the United States.

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: In my nearly seven years as a federal magistrate judge, I have not had any occasion to study this phenomenon nor has any party in any of the approximately 2300 civil cases over which I have presided sought to invalidate a federal statute as unconstitutional. Should I be confirmed as a federal district judge, I would faithfully apply all relevant Supreme Court and Court of Appeals precedent relevant to evaluating the constitutionality of a federal statute.

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

Response: "Judicial review," is the ability of a court to review statutes for their constitutionality. *See Moore v. Harper*, 600 U.S. 1, 20 (2023) (explaining *Marbury v.*

Madison). "Judicial supremacy" is 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." 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: Should I be confirmed as a federal district judge, and I were faced with litigation in which a party asserted that an elected official failed to follow the Constitution or duly rendered judicial decisions, I would faithfully apply all relevant Supreme Court and Court of Appeals precedent in resolving the case. *E.g.*, *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

22. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: A federal judge's obligation is to faithfully and impartially apply the law, and doing so is a vital and necessary component to the functioning of the rule of law.

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 federal judge is required to follow precedent of the Supreme Court and the Court of Appeals, regardless of any views about the validity or prudence of such precedent. To the extent that there is no relevant authority on the question presented, the judge should follow the precedent of these courts for resolving questions 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.

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. Should I be confirmed to be a federal district judge, to the extent that the definition of the term "equity" was relevant to any case before me, I would apply applicable Supreme Court and Second Circuit precedent defining the term.

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

Response: Equity is defined by the Oxford English Dictionary as "the quality of being equal or fair," and equality is defined as "the quality or state of being equal," by Merriam-Webster's Dictionary.

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

Response: I am not aware of any controlling Supreme Court or Second Circuit precedent defining "equity" as defined in Question 25, which is not a term in the 14th Amendment.

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

Response: In my nearly seven years as a Magistrate Judge in no case has a party advanced any argument on the basis of "systemic racism," and I have had no occasion to define the term. The Cambridge University Dictionary defines "systemic racism" as "policies and practices that exist throughout a whole society or organization, and that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others based on race."

29. Without citing Black's Law Dictionary, how do you define "Critical Race Theory?"

Response: In my nearly seven years as a Magistrate Judge in no case has a party advanced any argument on the basis of "critical race theory" and I have had no occasion to define the term. Merriam-Webster's 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[.]"

30. Do you distinguish "Critical Race Theory" from "systemic racism," and if so, how?

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

31. You worked as a research assistant for Professor Charles Ogletree, who is known for being closely associated with the evolution of Critical Race Theory. What did Professor Ogletree teach you about Critical Race Theory, and how much do you incorporate Critical Race Theory into your judicial philosophy?

Response: When I worked for Professor Ogletree as a research assistant, I worked on two discrete projects: research (1) related to extending internet access to rural and underserved communities; and (2) on the death penalty in China. I did not speak with him about Critical Race Theory; nor did he teach me anything about the subject. As discussed in response to Question 29, I have had no occasion to define the term in my time as a judge. Critical Race Theory has no role in my judicial philosophy. Please also see my response to Question 1.

32. The Legal Defense Fund describes Critical Race Theory as "an academic response to the erroneous notion that American society and institutions are 'colorblind.'" Do you agree with this definition? Do you believe that a judge should treat each litigant or defendant differently based on their race or should a federal judge be "colorblind" when approaching each case?

Response: Please see my response to Question 29. A judge should not treat a litigant or defendant differently based upon race.

33. Professor Ogletree long championed reparations for slavery, stating that they are a "moral necessity." He formed the Reparations Coordinating Committee in 2001—the same year you worked as his research assistant. At that time, the estimated cost for reparations varied between $1.7 trillion and $97 trillion. Do you believe that reparations are a moral necessity? If so, how much money is necessary to pay for those reparations?

Response: Please see my response to Question 31. I have not studied the question of reparations or Professor Ogletree's treatment of the subject. In any event, because reparations is the subject of potential policymaking in state and federal legislatures (*see, e.g.*, Commission to Study and Develop Reparation Proposals for African Americans Act, H.R. 40, 118th Congress (2023)), which raises the possibility of litigation challenges, I am precluded, as a sitting magistrate judge (and a nominee to be a district judge), under judicial ethics rules from providing my opinion on the subject.

34. During your time at Harvard, you also worked as a research assistant for Laurence Tribe. Professor Tribe co-founded the American Constitution Society ("ACS"), and you were a founding member of Harvard's ACS chapter. Today, ACS' website states that the judiciary should "interpret[] the U.S. Constitution through the lens of history and lived experience." Do you agree with this statement? If so, how do you apply lived experience to the rule of law?

Response: I have not been a member of ACS since 2002 and am not familiar with its position on constitutional interpretation. Please see my responses to Questions 3 and 4.

35. You have been a member of the National Asian Pacific American Bar Association ("NAPABA") since 2017. During that time, NAPABA has publicly taken many extreme, left-leaning positions. As a member of NAPABA, you may not necessarily agree with every position stated by the organization. However, you decided to maintain membership in this organization despite—or maybe because of—some of these stated positions. Do you agree with NAPABA that large domestic land purchases by Chinese nationals should not be reviewed for possible connections to the Chinese Communist Party? If you disagree, why did you maintain your membership in NAPABA?

Response: I am not familiar with this position taken by NAPABA and played no role in its formation or dissemination. Because the subject of barring foreign ownership of property in the United States is the subject the subject of potential policymaking in state and federal legislatures and ongoing litigation challenges (*see, e.g.*, "State lawmakers move to ban Chinese land ownership," Washington Post, Aug. 21, 2023), I am precluded, as a sitting magistrate judge (and a nominee to be a district judge), under judicial ethics rules from providing my opinion on this subject.

36. Do you agree with NAPABA in opposing H.R. 734, "Protection of Women and Girls in Sports Act of 2023," which would require school-age athletes to compete against members of their own biological sex? Do you believe that adolescent boys and girls should compete against members of the opposite sex in sports that are traditionally segregated by sex? If you disagree with NAPABA, why did you maintain your membership?

Response: I am not familiar with this position taken by NAPABA and played no role in its formation or dissemination. Because the subject of restricting sports participation by biological sex is the subject of potential policymaking in state and federal legislatures and ongoing litigation challenges, including in the Eastern District of New York (*see, e.g.*, "N.Y. County Order Targets Transgender Women and Girls in Sports," N.Y. Times, Feb. 22, 2024) I am precluded, as a sitting magistrate judge (and a nominee to be a district judge), under judicial ethics rules from providing my opinion on this subject.

37. NAPABA disagreed with the Supreme Court in *Students for Fair Admissions v. Harvard*, and went so far as to call the Supreme Court's holding in 303 *Creative LLC v. Aubrey Elenis* "misguided." In your nominations hearing last week, you indicated that you cannot comment on litigation that is pending. However, these cases are no longer being litigated. Do you agree with NAPABA's position in those two cases?

Response: I am not familiar with this position taken by NAPABA and played no role in its formation or dissemination. During my testimony, I indicated that I would not criticize any Supreme Court precedent as "misguided," in light of my obligation to faithfully apply all of the Court's precedents. That extends to *Students for Fair Admissions* and *303 Creative*, both of which I would faithfully apply in any case where those decisions are relevant.

38. NAPABA has stated that state and local governmental entities that refuse to honor ICE detainer requests and limit voluntary cooperation with federal immigration enforcement should be "support[ed]." Do you agree? Do you apply the law differently in cases involving immigration matters, or do you believe in applying the law as-written?

Response: I am not familiar with this position taken by NAPABA and played no role in its formation or dissemination. I do not apply the law differently in immigration matters. Please see my response to Question 1.

39. Both ACS and NAPABA have received large grants from the Open Society Foundation within the last five years, $2.5 million and $1.25 million, respectively. The Open Society Foundation is unashamedly funded by George Soros. How many Soros-funded organizations are you a member of?

Response: I am not currently a member of ACS. I am not familiar with the funding sources of NAPABA, including whether they receive funding from the Open Society Foundation. Nor am I aware of whether any of the other organizations I am a member of receives funding from the Open Society Foundation or George Soros.

Senator John Kennedy
Questions for the Record

Sanket J. Bulsara

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

   Response: In federal court, a judge may sentence a defendant to death, *see Gregg v. Georgia*, 428 U.S. 153 (1976), following (1) receipt of a jury's determination that the defendant is guilty of violating 18 U.S.C. § 794, 18 U.S.C. § 2391, or "any other offence for which" death is a penalty, if the jury also has determined one of the provisions of 18 U.S.C. § 3591(a)(2) has been proven beyond a reasonable doubt; and (2) receipt of a jury's determination that a death sentence is "justified," under the factors set forth in 18 U.S.C. § 3592.

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. A federal judge is required to apply sentencing law, including the law governing the death penalty, regardless of any moral views he may hold.

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, including your approach to constitutional and statutory interpretation. Be as specific as possible.**

   Response: My judicial philosophy is captured in my oath, which I took when I became a magistrate judge, and which I would take again should I be confirmed: to "administer justice without respect to persons, and do equal right to the poor and to the rich[.]" 28 U.S.C. § 453. And I carry out, and would carry out, these duties by faithfully and impartially applying the governing law as set forth by the United States Supreme Court and the Court of Appeals for the Second Circuit to each case before me.

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

   Response: Yes. *See, e.g.*, *D.C. v. Heller*, 554 U.S. 570, 592 (2008) ("Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the

historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right.") (emphasis removed); *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 585 U.S. 878, 904 (2018) ("The Union has also failed to show that, even if public employees enjoyed free speech rights, the First Amendment was nonetheless originally understood to allow forced subsidies like those at issue here.").

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: In the absence of any precedent from the Supreme Court or any Court of Appeals, I would seek to interpret the constitutional provision by examination of its plain text, its location in the structure of the document, cases addressing analogous provisions, and historical sources elucidating its original meaning. *E.g.*, *Crawford v. Washington*, 541 U.S. 36, 42–43 (2004) ("The Constitution's text does not alone resolve this case . . . We must therefore turn to the historical background of the Clause to understand its meaning.").

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

   Response: Yes. "When the statutory text is plain and unambiguous, [the Court's] . . . sole function is to enforce it according to its terms." *United States v. Bedi*, 15 F.4th 222, 226 (2d Cir. 2021) (quotations omitted); *see also Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020).

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

   Response: "Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *United States v. Bedi*, 15 F.4th 222, 226 (2d Cir. 2021) (*quoting Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005)).

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 meaning of the U.S. Constitution does not change absent either a formal amendment to the document, pursuant to Article V, or a recognition by the Supreme Court that an earlier decision of the Court was an erroneous interpretation of the relevant provision. *E.g.*, *Trump v. Hawaii*, 585 U.S. 667, 710 (2018) ("*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—has no place in law under the Constitution.").

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*, the Supreme Court applied the doctrine of qualified immunity—which protects an officer from Section 1983 claims absent a showing his conduct violated clearly established law that a reasonable officer would have known—to an allegation of excessive force. The Court held that the alleged conduct—the officer's placing of his knee on the respondent's back, while effectuating an arrest during a domestic violence incident—was not prohibited by any established precedent or case involving comparable facts. As such, the Supreme Court reversed the decision of the Ninth Circuit, which had denied immunity. 595 U.S. 1, 8 (2021) (per curiam).

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: It is my understanding that neither the Court of Appeals for the Second Circuit nor the Supreme Court has issued precedential opinions outlining the standards for nationwide injunctions. As such, for any such request, a district judge should consider the Rules of Civil Procedure that bear upon the question—including Rule 65(d)(2) ("Persons bound") and Rule 23 ("Class Actions")—the governing law applicable to cause of action that is the basis for the relief sought, and the standards for granting injunctive relief, *see eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006), while keeping in mind that federal courts are of limited jurisdiction.

13. Is there ever a circumstance in which a district judge may seek to circumvent, evade, or undermine a published precedent of the U.S. Court of Appeals under which the judge sits or the U.S. Supreme Court?

Response: No. A district judge is required to faithfully apply all applicable precedent from the United States Supreme Court and the Court of Appeals under which it sits.

14. Will you fully and faithfully apply all precedents of the U.S. Supreme Court and the U.S. Court of Appeals under which you would sit?

Response: Yes.

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

Response: A lower court must give deference to "language in Supreme Court opinions that contributes to the Court's reasoning, even if does not incorporate a precise holding," *Janese v. Fay*, 692 F.3d 221, 225 (2d Cir. 2012), and this requires careful consideration of "what the Supreme Court said in deciding those cases." *Id.*

16. As a magistrate judge, has an applicant's race, sex, or religion ever played any role in your decision to offer or refrain from offering the applicant an internship, externship, or clerkship? If so, please provide full details.

Response: No.

17. When reviewing applications from persons seeking to serve as an intern, extern, or law clerk in your chambers, what role would the race, sex, or religion of the applicants play in your consideration?

Response: None.

Questions from Senator Thom Tillis
for Sanket Jayshukh Bulsara, nominated to serve as U.S. District Judge for the Eastern District of New York

1. **Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?**

   Response: No. A judge's personal views are irrelevant to interpreting and applying the law. A judge's obligation is to faithfully and impartially apply the law, irrespective of any personal beliefs.

2. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is an expectation for a judge and central component of the oath taken by a federal judge.

3. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary defines the term as "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, . . . with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." (11th ed. 2019). I do not consider judicial activism appropriate.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: A district judge's obligation is to faithfully and impartially apply all precedent, irrespective of outcome. Doing so promotes confidence in the rule of law, demonstrating that decisions will be based on clear legal principles, not based on a jurist's view on the desirability of a particular result.

6. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: As I have done in my nearly seven years as a federal magistrate judge, I would faithfully apply all binding Supreme Court precedent, including those decisions regarding the Second Amendment. *E.g.*, *D.C. v. Heller*, 554 U.S. 570 (2008); *McDonald v.* Chicago, 561 U.S. 742 (2010); *New York State Rifle Association v. Bruen*, 597 U.S. 1 (2022).

7. **What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?**

Response: I would faithfully apply all relevant Second Circuit and Supreme Court precedent to the issue of qualified immunity in any case where this protection was relevant. This precedent provides, among other things, that a court must accord immunity to challenged conduct, if "a reasonable officer could have believed his action to be lawful, in light of clearly established law and the information he possessed." *Rupp v. Buffalo*, 91 F.4th 623, 642 (2d Cir. 2024) (quotations omitted; emphasis removed).

8. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: The scope of qualified immunity protection is a matter to be determined by Congress and state legislatures. A judge's obligation is to enforce those protections and immunize officers within the limits set by those bodies and as determined by the Court of Appeals and the Supreme Court.

9. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: Please see response to Question 8.

10. What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?

Response: Intellectual property is enshrined in the Constitution. *See* Art. I, § 8, cl. 8. And the Patent Clause and the federal statutes protecting intellectual property rights reflect the importance of encouraging innovation, among other purposes. *See Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 146 (1989). A judge's obligation to impartially and faithfully applying the law extends to all federal law, including those laws intended to encourage innovation, foster competition, and protect inventors.

11. In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"

Response: I am familiar with the practices of my court, the Eastern District of New York, which is not divided into divisions, and whose two court locations have multiple judges, making it impossible to pre-select the judge who will hear any case. I am not familiar enough with the practice of other districts to opine on the validity of their case assignment practices.

12. The Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in shambles. What are your thoughts regarding the Supreme Court's patent eligibility jurisprudence?

Response: As a sitting federal magistrate judge (and a nominee to be a district judge), I am prohibited on opining on the validity or coherence of the Supreme Court's jurisprudence in any area, including patent eligibility. I am obligated to faithfully apply all Supreme Court precedent and would continue to do in all patent matters should I be fortunate enough to be confirmed.