Senator Richard J. Durbin
Chair, Senate Judiciary Committee
Written Questions for Justice Julia Lipez
Nominee to be United States Circuit Judge for the First Circuit
June 27, 2024

1. **In the U.S. Attorney's Office for the District of Maine, your leadership roles included serving as the Human Trafficking Coordinator from 2014 to 2022 and as Leader of the District of Maine's Anti-Trafficking Coordination Team from 2015 to 2022.**

   a. **What did this work entail?**

   Response: As the Human Trafficking Coordinator at the U.S. Attorney's Office for more than seven years, I devoted significant time and energy to developing robust systems for identifying, investigating, and prosecuting human trafficking crimes. At the time I took on the role of Human Trafficking Coordinator, to my knowledge, the District of Maine had never prosecuted a crime under the Trafficking Victims Protection Act, which was enacted in 2000. That has since changed. I worked with an excellent team of investigators from multiple law enforcement agencies, partners at the U.S. Attorney's Office, state prosecutors, and devoted service providers from a variety of non-governmental organizations. As a reflection of our efforts, the District of Maine was selected through a competitive process in 2015 as one of only six federal Districts designated to participate in the Anti-Trafficking Coordination Team (ACTeam) Initiative, an interagency federal law enforcement initiative aimed at streamlining the investigation and prosecution of federal human trafficking offenses. In my time as Human Trafficking Coordinator and as leader of the District of Maine's ACTeam, my colleagues and I successfully prosecuted many cases involving sex trafficking and exploitation, as well as assisted with the investigation of sex trafficking cases being prosecuted in other federal districts. I personally prosecuted multiple cases involving juvenile victims of sex trafficking. My colleagues and I also participated in numerous trainings throughout Maine and nationally, and I co-authored an article for federal prosecutors nationwide that is designed to serve as a guide for others who seek to develop an anti-trafficking practice in their Districts.

   b. **What lessons have you learned from your work in these positions that you think are most relevant to the work of a circuit court judge?**

   Response: As a leader in this area, I was regularly called upon to run meetings and work with diverse groups of professionals to tackle difficult cases. Investigators and prosecutors working on these cases often had different opinions about the best way to proceed. My job was to listen carefully, collaborate, and try to find consensus to productively move an investigation or prosecution forward.

My listening and consensus-building skills would serve me well if I am fortunate enough to be confirmed to the First Circuit. The appellate ideal depends on a panel of judges working collaboratively to reach the correct outcome. I believe I have the right temperament and skillset to be an effective circuit court colleague.

In addition, the federal human trafficking statutes are legally complex, and because the prosecution of trafficking cases was relatively new in the District of Maine, I regularly confronted legal issues of first impression in my work. As a representative of the United States, I focused on ensuring that the cases we prosecuted and legal positions we took set appropriate precedent for the future. If confirmed to the First Circuit, I would not be in the position of advocate. However, my human trafficking work has aided my ability to address complex legal issues of first impression in a cogent and thoughtful manner.

2. **Over the course of your legal career, you argued approximately 15 cases before the First Circuit, in addition to serving as the Appellate Chief in the U.S. Attorney's Office for the District of Maine.**

    a. **How has your appellate experience as a litigator prepared you to serve on the First Circuit?**

    Response: I practiced in the First Circuit regularly from 2015 until 2022 and was Appellate Chief from 2019 to 2022. In addition to the approximately 15 cases I argued, I have personally briefed dozens of cases in the First Circuit as well as supervised other appellate attorneys as they drafted briefs and prepared for oral arguments in many more cases. I am well-versed in appellate principles and practices, and have extensive knowledge of federal criminal law. I understand the importance of writing clearly and cogently, and would endeavor to author opinions that are readable and clear for litigants and the public. I have enormous respect for the First Circuit as a court. It was a privilege to practice there and if I am fortunate enough to be confirmed, I will work my hardest to adhere to the standard that my predecessors have set.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Honorable Julia M. Lipez
Nominee to be a United States Circuit Judge for the First Circuit

1. **You presided over the sentencing in *State v. Malloy*—a case involving a mother who killed her baby by exposing him to enough fentanyl to kill four adults. The defendant-mother pled guilty to manslaughter as well as to drug trafficking.**

   According to the sentencing transcript and briefing, the defendant allowed her (and her baby's) home to be used to distribute fentanyl. The house, the baby's bedroom, and even the baby's pajamas were covered in fentanyl. Additionally, as you noted in the transcript:

   > **"*There is no doubt that the defendant was aware of and aided certain aspects of the drug trafficking organization. She would give [the traffickers] rides to pick up drugs and allow them to sell drugs from her apartment. And she perhaps went as far as help in weighing and package drugs given her DNA was on the digital scale*."**

   The Prosecution argued that the mother's conduct was "*at the very top of recklessness, … as close as we can get to a murder or a depraved indifference death*." Nevertheless, you rejected this view and reached the extraordinary conclusion that the "*defendant acted with criminal negligence but not recklessly.*" You ultimately sentenced the defendant to "*10 years with all but four years suspended and six years of probation*."

   a. **What was the maximum sentence the defendant could have received in this case?**

      Response: The statutory sentencing range for manslaughter is zero to 30 years. 17-A M.R.S. §§ 203(1)(A), 1604(1)(A) (2023). The statutory sentencing range for the Class B drug trafficking offenses in this case is zero to 10 years. 17-A M.R.S. § 1604(1)(B) (2023).

   b. **Did the prosecution request a sentence of 25 years, with all but 15 years suspended?**

      Response: Yes.

   c. **What sentence did the defense request?**

      Response: The defense requested a fully suspended sentence, specifically, 5 years fully suspended and 6 years of probation.

   d. **Did any victims of this crime make a request or recommendation for sentencing or punishment? If yes, what sentence did they request?**

Response: The child's grandmother spoke at sentencing but did not make a specific request or recommendation. She also read a letter on behalf of her son, the child's father, in which the father stated that he believed public execution was deserved, but since that is not permitted by Maine law, he believed the defendant should spend as long as possible in prison.

e. The low sentence in this case appears to flow from your conclusion that the mother acted with criminal negligence as opposed to criminal recklessness.

i. In hindsight, was your conclusion that the mother did not act recklessly reasonable considering the following facts presented by the Prosecution:

- **she allowed her home to be used to distribute an "astounding" amount of fentanyl;**
- **she facilitated a family member's introduction to drug traffickers and subsequent addiction;**
- **she helped transport and perhaps even package the drugs;**
- **she knew not to touch the drugs herself;**
- **she had another family member die of a drug overdose;**
- **she exposed her baby to a home completely covered in fentanyl, leading to enough fentanyl in his system to kill four adults?**

Response: As a trial judge, I am often called upon to consider competing evidence and to make factual determinations based on that evidence. *See United States v. Young*, 105 F.3d 1, 5 (1st Cir. 1997) ("Deference to the district court's findings of fact reflects our awareness that the trial judge, who hears the testimony, observes the witnesses' demeanor and evaluates the facts first hand, sits in the best position to determine what actually happened."). When the defendant in the *Malloy* case entered her guilty plea, she did so by agreeing only that the evidence demonstrated that she was criminally negligent. It was thus the State's burden at sentencing to prove any aggravating facts that would support a higher level of culpability. *See State v. De St. Croix*, 2020 ME 142, ¶ 11, 243 A.3d 880.

In determining the appropriate sentence in the *Malloy* case, I reviewed extensive sentencing memoranda and exhibits that had been submitted by the parties prior to the sentencing, additional exhibits admitted at the hearing, the parties' in-court presentations, and sentences imposed in similar cases in Maine. In reaching my factual conclusions, I considered evidence presented by both parties, as I am obligated to do. The totality of the evidence demonstrated that the defendant, a single mother with no criminal history who turned 21 years old the day before the offense date, had become involved for a brief period with violent drug traffickers who preyed on her vulnerabilities (including social isolation, lack of familial support, meager financial resources, and an abusive childhood that forced her out of her home at age 16) and threatened to harm her and her aunt unless the defendant let them use her apartment to distribute drugs. These men had instructed the defendant to leave her apartment on her birthday. When she returned late in the

evening, she found that the men had left drugs and other unknown substances in her bedroom. The defendant and her son slept in the bedroom that evening without incident. The next day, after the defendant placed her son in the bedroom for a nap, she returned to find him unresponsive. Emergency medical personnel were unable to revive him, and the State's experts ultimately concluded that he died from exposure to fentanyl powder.

Because the evidence showed, among other things, that the defendant aided, but was not an active participant in, the drug trafficking operation; was not an opioid user; and was not aware of the nature of the substances that were left in her bedroom or the risks they posed, I determined that the evidence supported a finding of criminal negligence but not recklessness. The State did not appeal this finding. I then conducted the three-part sentencing analysis required by Maine law to arrive at the appropriate sentence. The third step of the prescribed analysis directs the court to consider whether it is appropriate to suspend a portion of the maximum period of incarceration so that the defendant may serve a period of supervised probation. In the absence of such a suspension, there is no mechanism under Maine law to order a defendant convicted of these charges to serve a period of probation after release from incarceration. I determined that the defendant was a good candidate for rehabilitation and was not a threat to the public given her lack of criminal history, her acceptance of responsibility, her cooperation with law enforcement despite receipt of a death threat warning her against cooperating, and her compliance with bail conditions. Several months prior to the sentencing in this case, the Attorney General's Office reached a plea agreement in another case involving the drug overdose death of a toddler—*State v. Dobbins*—in which the defendant was sentenced to 12 years with all but 4 years suspended and 6 years of probation.

ii. How would the defendant's sentence have changed if you found that the defendant acted recklessly as opposed to negligently?

Response: The Maine manslaughter statute covers a wide range of conduct and carries a sentence of anywhere from zero to 30 years. *See* 17-A M.R.S. §§ 203(1)(A), 1604(1)(A). *Compare State v. Lowe*, 2015 ME 124, ¶¶ 2, 15, 34, 124 A.3d 156 (affirming sentence of 8 years with all but 18 months suspended, and 3 years of probation, for manslaughter where defendant-driver "consumed alcohol and drugs," "knew . . . she was too drunk to drive," "looked at a text message on her phone while she was driving," and was traveling 75 mph in the dark on a two-lane road with a speed limit of 50 mph when she ultimately crashed and killed two teenage victims) *with State v. Dalli*, 2010 ME 113, ¶¶ 3, 7, 8 A.3d 632 (2010) (affirming sentence of 30 years with all but 20 years suspended and 4 years of probation for manslaughter where the defendant, armed with a butcher knife, "slashed [the victim] several times" and then "purposely stabb[ed the victim] deep in the chest with a knife").

Judges in Maine are required to "appropriately individualize each sentence[.]" *State v. Hewey*, 622 A.2d 1151, 1154 (Me. 1993) (citation and quotation marks omitted). To do so, they must follow the three-part sentencing procedure set forth by Maine statute:

> [A] First, the court shall determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual.
>
> [B] Second, the court shall determine the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case. Relevant sentencing factors include, but are not limited to, the character of the individual, the individual's criminal history, the effect of the offense on the victim and the protection of the public interest.
>
> [C] Third, the court shall determine what portion, if any, of the maximum term of imprisonment under paragraph B should be suspended and, if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension.

17-A M.R.S. § 1602(1) (2023); *see Hewey*, 622 A.2d at 1154-55 (setting forth required three-part sentencing analysis). They must also consider the general purposes of sentencing as set forth in 17-A M.R.S. § 1501(1), which include to "[p]revent crime through the deterrent effect of sentences, the rehabilitation of persons and the restraint of individuals when required in the interest of public safety[.]" In this case, and consistent with the requirements of Maine law, I determined the basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the defendant. 17-A M.R.S. § 1602(1) (2023). My role as a trial court judge is to evaluate the evidence that is before me. I cannot perform a counterfactual or speculate as to the effect of evidence that was not before me.

iii. Please define recklessness under Maine law.

Response: Under Maine law, "[a] person acts recklessly with respect to a result of the person's conduct when the person consciously disregards a risk that the person's conduct will cause such a result." 17-A M.R.S. § 35(3)(A). "A person acts recklessly with respect to attendant circumstances when the person consciously disregards a risk that such circumstances exist." *Id.* § 35(3)(B). "[T]he disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation." *Id.* § 35(3)(C).

iv. **Please describe what other facts would have been necessary for you to conclude that the mother acted recklessly.**

Response: My role as a trial court judge is to evaluate the evidence that is before me. I cannot perform a counterfactual or speculate as to the effect of evidence that was not before me.

v. **Please explain "depraved indifference" murder under Maine law.**

Response: Under Maine Law, a person is guilty of "depraved indifference" murder if the person "[e]ngages in conduct that manifests a depraved indifference to the value of human life and that in fact causes the death of another human being[.]" 17-A M.R.S. § 201(1)(B). The defendant in the *Malloy* case was not charged with depraved indifference murder.

2. **You prosecuted a man who pled guilty to a conspiracy involving sex trafficking a 15-year-old girl in *United States v Suero*. According to the sentencing transcript, the defendant facilitated the child's engagement in commercial sex acts for payment. Additionally, while the defendant was out on bail—and after he pled guilty to the original sex trafficking charges—he contacted and had sexual relations with a different 15-year-old teenage girl, just like the victim in his original case. Nevertheless, you still recommended a below-guideline sentence even after you knew that the defendant sexually exploited a minor while on bail for sexually exploiting a different minor.**

a. **What was the maximum sentence the defendant was eligible for?**

Response: The defendant pleaded guilty to one count of conspiracy to commit sex trafficking of a minor, in violation of 18 U.S.C. § 1594(c). The statutory range of penalties for that offense is zero to life. However, the plea agreement, which was negotiated pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), precluded the government from asking for or the court from imposing a sentence of more than 120 months. Pursuant to U.S. Attorney's Office policy, all plea agreements required supervisory approval, including in some cases up to the level of the U.S. Attorney.

b. **What was the sentencing guideline range for the crime the defendant pled guilty to?**

Response: On behalf of the government, I argued that the sentencing guidelines range as initially calculated by the U.S. Probation Office in the presentence report was incorrect as a matter of law and was too low. The district court agreed with my arguments and concluded that the higher guideline range the government was advocating for was correct. The court calculated the advisory guideline range as 121 to 151 months.

c. **What sentence did you recommend to the court?**

Response: As an Assistant U.S. Attorney, I could not ask for a sentence outside the guidelines range without supervisory approval. In this case, the government recommended 108 months (9 years) after considering all the sentencing factors set forth in 18 U.S.C. § 3553(a).

d. Why did you recommend a sentence below even the lowest end of the sentencing guidelines?

Response: The plea agreement and sentencing recommendation in this case, which were authorized by supervisors in the U.S. Attorney's Office, were reached after close consultation with the victim and were consistent with the victim's wishes. At the time the plea agreement was negotiated, the expectation was that the defendant would receive credit for acceptance of responsibility and that the advisory guidelines range would be lower. Although I objected to the defendant's release on bail pending trial, as well as his continued release on bail after he entered a guilty plea, in each circumstance, a judge ordered the defendant released. As a result of the defendant's further conduct on bail, the defendant lost credit under the guidelines for acceptance of responsibility. That resulted in an advisory guidelines range that was just above the maximum sentence authorized by the plea agreement. As I stated at sentencing, the government chose to recommend a sentence slightly below the bottom of the advisory guidelines range because the defendant had entered a guilty plea and accepted responsibility for his conduct, thus sparing the victim from having to testify at trial. While I cannot disclose the nature of confidential conversations with a victim, I can state that one of the government's primary motivating factors in reaching the plea agreement was the avoidance of a public trial at which the minor victim would have to testify. The victim chose not to appear in person at the sentencing.

e. The presiding judge at sentencing noted the following:

> **"*The most concerning fact to me is that you were engaged in a sexual relationship with another 15-year-old girl while you were on pretrial release. This heightens my concern for protection of the public. Particularly young female members of the public.***
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> ***I also note that while on bail you were directed to get a psychological exam, and you failed to show for that exam and you expressed that you were not interested in mental health treatment.***
>
> ***When you were interviewed by the probation officer you indicated that you did not feel that you needed substance abuse treatment to stop using drugs or alcohol, but then you used, and this is while you were on bail. And instead of admitting to the use, and seeking help, you tampered with the drug test by trying to offer someone else's urine or something else in a bottle that was on your leg.***

When you were bailed, the hope was that you would try to set your life on a different path. I would have expected to see gainful employment, participation in mental health treatment, participation in evaluation at the very least, and participation in substance abuse treatment.

Instead I see someone who refused to do that. Refused to participate in mental health evaluation, no attendance in substance abuse treatment, tampering with a drug test, violating rules pertaining to electronic devices, and having a sexual relationship with a 15 year old when you were about to come to me to be sentenced on this charge.

It is, to me, shocking that you engaged in that behavior."

Is this conduct consistent with a defendant who deserves a below-guideline sentence for sex trafficking a minor?

Response: Please see my response to Question 2(d). As previously noted, I repeatedly objected to the defendant's release on bail in this case.

f. Why did you honor the plea deal with the defendant after he engaged in sexual relations with a minor while on bail for sex trafficking a different minor?

Response: If the government had withdrawn from the agreement, the case would have been placed back on the docket for trial. Important considerations in this case, as in many cases involving minor victims of sex trafficking, were the litigation risks of trial as well as the trauma that public testimony could cause to a victim. In this case, those factors counseled strongly in favor of honoring the plea agreement, which held the defendant accountable for his crimes, protected the public, and avoided a trial. The plea agreement and sentencing recommendation in this case, which were authorized by supervisors in the U.S. Attorney's Office, were reached after close consultation with the victim and were consistent with the victim's wishes.

g. As a prosecutor, did you ever recommend a below-guidelines sentence in any other case involving sexual violence, sexual exploitation, sex trafficking, or child sex abuse material? If yes, please provide citations to the cases.

Response: My reputation as a federal prosecutor for more than a decade was one of zealous advocacy on behalf of victims of crime. This reputation is reflected in the many public letters of support I received from those who worked with me as a prosecutor. My job as an Assistant United States Attorney was to represent the United States and, per policy, I was not authorized to ask for a sentence outside the sentencing guidelines range without supervisory approval. In every case, the sentencing recommendation I made reflected the position of the U.S. Attorney's

Office. In all cases involving victims, I closely consulted with the victims at every stage of the process, up to and including sentencing.

I can recall that in two cases I prosecuted, the government reached plea agreements under Federal Rule of Criminal Procedure 11(c)(1)(C) that capped the court's sentencing authority at a level below the advisory guidelines range. In each case, the plea agreement was reached after close consultation with the victim or victims and was designed primarily to avoid the possible trauma that would result from the victim or victims having to testify at trial. Per U.S. Attorney's Office policy, plea agreements under Rule 11(c)(1)(C) required supervisory approval, including in some cases up to the level of the U.S. Attorney. In each case, as in all cases I prosecuted, I was representing the position of the government.

In *United States v. Henry*, No. 2:14-cr-64-JDL (D. Me. 2014), the government and the defendant reached a plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) that capped the court's sentencing authority at 15 years, or 180 months. The advisory guidelines range was 210 to 262 months. The defendant, who was 24, filmed himself having sex with a 15-year-old girl on two occasions. He entered a guilty plea to production of child pornography. Prior to entering into the plea agreement, the defendant filed a motion in limine asking for permission to present evidence at trial that he did not know the victim was underage.

I successfully argued, in a matter of first impression in the First Circuit, that the law does not allow for a mistake-of-age defense in a prosecution for production of child pornography. The First Circuit affirmed the district court's ruling on appeal. *See United States v. Henry*, 827 F.3d 16 (2016). As I stated at sentencing, "[T]his plea agreement does prevent a trial and obviates the need for the victim . . . to have to come in and testify about these events, which in our view could lead to additional trauma." The district court accepted the plea agreement, noting that the way the defendant committed the crimes was "toward the lower end of seriousness" and that a variance below the guidelines was justified in the case.

In *United States v. Sabree*, No. 2:17-cr-158-JDL (D. Me. 2017), the government and the defendant reached a plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) that capped the court's sentencing authority at 17 years, or 204 months, and required the government to recommend a sentence of no more than 180 months. The advisory guidelines range was 210 to 262 months. The defendant entered a guilty plea to two counts of sex trafficking in a case involving adult victims. The district court accepted the plea agreement and sentenced the defendant to 204 months. This case was prosecuted jointly by the U.S. Attorney's Office and the Human Trafficking Prosecution Unit of the Civil Rights Division at the Department of Justice. As a result, the plea agreement required approval of both the U.S. Attorney and the Civil Rights Division.

h. In hindsight, do you believe you recommended an appropriate sentence?

Response: The government's sentencing recommendation in the *Suero* case was appropriate under all the facts and circumstances of the case and was accepted by the court. The resolution of the case was consistent with the victim's wishes and spared the minor victim the trauma of having to testify publicly at trial.

3. **According to public reporting, you presided over *State v. Smith* as a Maine Superior Court Justice. In that case, a man was charged with 12 counts of unlawful sexual conduct for molesting two young girls (aged 4 and 9) for a period of years. This abuse included the defendant violating these young girls while they bathed so often that one of the victims, despite describing the abuse as physically painful, thought it was "normal." According to public reporting, at sentencing, you said that the case was "a very tragic situation of a person who has a lot of good in him having done a very reprehensible thing to two young children." According to public reporting you sentenced the defendant to 12 years, with all but six years suspended.**

   a. **Please explain the underlying facts that led to this conviction.**

      Response: Two victims testified at trial that when they were children, the defendant had abused them through hand-to-genital contact. The defendant was convicted of multiple counts of unlawful sexual contact under Maine law.

   b. **What was the maximum sentence available for this defendant under Maine law?**

      Response: One of the counts of conviction, which was a Class A offense, carried a sentencing range of zero to 30 years. 17-A M.R.S. § 1604(1)(A) (2023). The other counts of conviction, which were Class B offenses, carried sentencing ranges of zero to 10 years. 17-A M.R.S. § 1604(1)(B) (2023).

   c. **What was the state's recommended sentence?**

      Response: The State recommended a sentence of 12 years with all but 6 years suspended and 4 years of probation. I imposed the sentence the State recommended: 12 years with all but 6 years suspended and 4 years of probation.

   d. **What was the sentence recommended by the defense?**

      Response: The defendant recommended a sentence of 5 years with all but 1 year suspended and 4 years of probation.

   e. **Did any victims request or recommend a sentence in this case? If so, what did they ask for?**

      Response: At sentencing, a victim advocate read statements from the victims. The victims did not make any particular sentencing recommendations or indicate any objections to the State's recommendation.

f. Did the victims have to testify at trial?

Response: Both victims testified at trial. To my knowledge, they participated voluntarily and did not appear under subpoena.

g. What sentence did you impose? Please explain your rationale.

Response: I imposed the exact sentence the State requested, which was 12 years with all but 6 years suspended and 4 years of probation. All but one of the charges of conviction carried a statutory maximum sentence of 10 years. The probation conditions I imposed included a requirement to participate in sex offender treatment as well as a prohibition on any contact with the victims and female children under the age of 16. By law, the defendant will also be required to register as a sex offender.

The victims did not indicate any objection to the State's request. I have in the past rejected a State sentencing recommendation upon learning that a victim objected. In the *Smith* case, the State recommended suspending 6 years of the sentence so that the defendant would be required to participate in sex offender treatment while on probation, with the threat of 6 more years of incarceration hanging over his head if he did not comply. The defendant sought a sentence of 5 years with all but 1 year suspended and 4 years of probation. As a basis for the recommendation, he argued that he had no criminal history, had a consistent employment history, including several years in law enforcement, and had the support of many family members and friends who attested to his positive qualities. In imposing a sentence, a Maine judge is required to provide a "clear articulation" that she has followed the three-part sentencing methodology set forth by law and that she has considered the statutory sentencing factors. *State v. Hewey*, 622 A.2d 1151, 1155 (Me. 1993).

In keeping with the prescribed practice, I considered the mitigating information the defendant presented and articulated on the record that I had considered it. After doing so, I rejected the mitigation arguments and imposed the sentence the State requested.

h. Did you impose the sentences on the multiple counts to run consecutively or concurrently? Were you required to do so?

Response: I imposed concurrent sentences, consistent with the State's recommendation.

i. In hindsight, do you believe you imposed an appropriate sentence?

Response: Please see my response to Question 3(g). I followed the sentencing methodology prescribed by Maine law and ultimately concluded that the State's recommendation was an appropriate application of that methodology.

4. If a law clerk applicant publicly wrote that Harvey Weinstein "has a lot of good in him" would you consider that 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: A Los Angeles jury convicted Harvey Weinstein of several counts of sexual assault and a judge sentenced him to 16 years in prison. As a former federal prosecutor who worked directly with victims of sex crimes, I expect anyone who works in my chambers to take those alleged crimes especially seriously and approach each case with diligence and care. I could not evaluate the suitability of a law clerk applicant without knowing when and why such a statement was made, and what specifically the applicant was speaking about.

In the *Smith* case, I rejected the mitigation arguments presented by the defense and imposed the sentence the State requested. Before doing so, I considered the mitigating information the defendant had presented to me, as I am required to do by Maine law, and articulated on the record that I had considered that information. *State v. Hewey*, 622 A.2d 1151, 1155 (Me. 1993). This is a practice that is regularly employed by trial judges. For example, in the case of *United States v. Suero*, referenced above, the federal district court judge noted at sentencing that she had received letters in which the defendant was described "as a lost soul, someone who has a very loving heart, someone who is a good and patient father, someone who would always help out a friend in need." In the case of *United States v. Henry*, referenced above, the federal district court judge described the defendant as "a person of great potential."

5. **According to public reporting you presided over *State v. Every* for sentencing. In that case, a man broke into a woman's home and threatened to kill her with her daughter in the home. According to public reporting, the defendant pointed a gun at the victims and pulled the trigger, but the pistol misfired.**

    a. **What was the defendant convicted of in this case?**

    Response: The defendant was convicted after trial of burglary, domestic violence reckless conduct with a dangerous weapon, domestic violence criminal threatening with a dangerous weapon, domestic violence terrorizing with a dangerous weapon, and obstructing report of a crime. The jury found the defendant not guilty of attempted murder.

    b. **What was the state's recommended sentence?**

    Response: Prior to trial, the State had offered a plea agreement that would have required the defendant to serve only 3 years and 8 months at the outset. After trial, the State recommended a sentence of 22 years with all but 8 years suspended and 4 years of probation. The State's post-trial sentencing recommendation relied heavily on conduct of which the defendant had been acquitted.

    c. **What was the defense's recommended sentence?**

Response: The defendant recommended a sentence of 10 years with all but 20 months suspended and 4 years of probation.

d. **Did any victims request or recommend a sentence in this case? If so, what did they request?**

Response: I do not recall if the victims made a specific recommendation at sentencing and I do not have access to a transcript of the sentencing in this matter.

e. **What was the maximum sentence the defendant was eligible for?**

Response: The statutory range for the burglary offense was zero to 30 years. 17-A M.R.S. § 1604(1)(A) (2022). The statutory range for each of the domestic violence offenses was zero to 5 years. 17-A M.R.S. § 1604(1)(C) (2022). The statutory range for the obstructing offense, which was a misdemeanor, was zero to 364 days. 17-A M.R.S. § 1604(1)(D) (2022). I do not believe that consecutive sentences were authorized under Maine law given that the convictions all arose from one criminal episode. *See* 17-A M.R.S. § 1608 (2022). The State did not request consecutive sentences.

f. **Were you obligated to accept the state's recommendation in this case?**

Response: No.

g. **Were you obligated to accept the defense's recommendation in this case?**

Response: No.

h. **What sentence did you impose in this case?**

Response: I imposed an overall sentence of 15 years with all but 6 years suspended and 4 years of probation on the burglary charge and concurrent 5-year sentences (the statutory maximum) on each of the domestic violence offenses. The State did not request consecutive sentences and I do not believe that they would have been authorized under Maine law given that the convictions all arose from one criminal episode. *See* 17-A M.R.S. § 1608 (2022).

i. **What discouraged you from imposing a longer basic sentence, a longer suspended sentence, or both?**

Response: The State charged the defendant with attempted murder, burglary, and other offenses. Prior to trial, the State offered the defendant a plea deal that would have required him to serve 3 years and 8 months at the outset. The defendant rejected this offer and proceeded to trial. The jury found the defendant not guilty of attempted murder but convicted him of burglary and domestic terrorizing, threatening, and reckless conduct offenses.

In light of the jury's verdict, I had no authority to impose a sentence for attempted murder and doing so would have been a violation of my obligations as a judge.

The State's sentencing recommendation relied heavily on conduct of which the defendant had been found not guilty. The only domestic violence offenses of conviction carried 5-year statutory maximum sentences. The 6-year unsuspended portion of the sentence that I imposed for the burglary conviction was substantially longer than the 3 years and 8 months the State had offered the defendant before trial. I determined that the statutory factors supported suspending a portion of the sentence because the defendant's only criminal history consisted of some old driving offenses; his former partner testified at trial that there was no history of domestic violence in their relationship; the defendant was an alcoholic who had been extremely intoxicated on the night of the crime; and since he had been bailed pending trial (by another judge), he had complied with all bail conditions, remained sober, and engaged in extensive treatment.

j. **Is there a transcript available of the sentencing proceeding in this case? If so, please provide a copy?**

Response: I checked with the clerk's office and was told that no sentencing transcript of the sentencing proceedings in this case has been prepared.

6. Were you the Appellate Chief for the District of Maine while *Carson v. Makin* was being litigated?

Response: Yes, but I was not involved with this case. As Appellate Chief for the District of Maine, I had supervisory authority over the office's criminal appellate matters. The Civil Chief retained supervisory authority over the office's civil appellate matters and I did not regularly work on those matters, although I did on occasion review a draft brief or help with a moot court prior to oral argument. In addition, it appears from the docket in this case that the United States was represented primarily by the Civil Rights Division at the Department of Justice, and not by the U.S. Attorney's Office.

In matters involving the United States, the First Circuit would often list me on the docket as a person to be noticed, but that does not mean I worked on the case.

a. **If yes, why is your name not listed on any briefing?**

Response: Please see my response to Question 6. I was not involved with this case.

b. **Did you ever request to be left off the briefing? If yes, please explain why.**

Response: Please see my response to Question 6. I was not involved with this case.

c. **If you requested to be left off the briefing in this case, please list any additional cases (and provide citations) of any other cases where you requested to be left off the briefing.**

Response: Please see my response to Question 6. I do not recall ever requesting to be left off briefing in a case that fell within my area of responsibility.

7. **In your hearing, you testified that under Maine law there is a three-part, statutory sentencing methodology. According to your testimony, as a part of this methodology, judges must determine "whether to suspend a portion of the sentence so that the defendant can be on probation conditions. The Maine system does not have supervised release for most crimes … the only way to place an offender on probation conditions after release and to supervise them in the community is to suspend a portion of the sentence."**

   a. **Is suspending of a portion of a sentence always required?**

      Response: No, but a court is required to consider whether to suspend a portion of the sentence in most felony cases, except those involving murder and gross sexual assault. 17-A M.R.S. § 1602 (2024). Maine's sentencing statute requires courts to "determine what portion, if any, of the maximum term of imprisonment . . . should be suspended and, if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension." *Id*. § 1602(1)(C); *see Hewey*, 622 A.2d at 1154-55 (setting forth required three-part sentencing analysis). Apart from cases of murder and gross sexual assault, which are subject to a different sentencing scheme, there is no mechanism under Maine law to place a defendant on a period of supervised probation upon release from incarceration unless a portion of the sentence is suspended. *See* 17-A M.R.S. § 1602 (2024). By statute, in determining whether a period of probation is warranted, the court is directed to consider whether "the person is in need of the supervision, guidance, assistance or direction that probation can provide." 17-A M.R.S. § 1802(2) (2024). The Maine Supreme Judicial Court has explained that the court may choose to suspend a portion of the sentence if it determines that "society will better be protected by affording a period of supervised probation of an offender." *Hewey*, 622 A.2d at 1155.

   b. **Is suspending a portion of a sentence ever forbidden?**

      Response: Yes. In cases of murder and gross sexual assault. *See* 17-A M.R.S. § 1602 (2024).

   c. **What factors must a judge consider when determining to suspend any portion of a sentence?**

      Response: Please see my response to Question 7a. By statute, in determining whether a period of probation is warranted, the court is directed to consider whether "the person is in need of the supervision, guidance, assistance or direction that probation can provide." 17-A M.R.S. § 1802(2) (2024).

   d. **In your testimony, you stated that a suspended sentence was the only mechanism under Maine law to provide for supervised release of a defendant. Please explain the difference under Maine law between a suspended portion of a sentence and probation.**

Response: For all felony offenses other than murder and gross sexual assault, the only way to ensure that a defendant is subject to supervision and possible penalty for failure to comply with that supervision after release from incarceration is to suspend a portion of the sentence. 17-A M.R.S. § 1602. The authorized period of probation for each class of crime is set forth by statute in 17-A M.R.S. § 1804 (2024). The suspended portion of a sentence and the period of probation are often not the same. The period of probation is the length of time that the person is required to abide by court-imposed probation conditions under the supervision of the probation office. The suspended portion of the sentence is the amount of additional time the person could be required to spend in custody if they violate their probation conditions. Under Maine law, "[u]pon a finding of a violation of probation, the court may vacate all, part or none of the suspension of execution as to imprisonment . . . The remaining portion of the sentence for which suspension of execution is not vacated upon the revocation of probation remains suspended and is subject to revocation at a later date." 17-A M.R.S. § 1812(6) (2024). For example, in a case where the court imposed a sentence of 10 years with all but 5 years suspended and 3 years of probation, the defendant would serve 5 years in prison at the outset, and then be required to abide by probation conditions and supervision for 3 years upon release. If the person violated the terms of his probation, he could be required by the court to spend an additional 5 years in prison, up to the full 10-year sentence.

8. **As a part of your confirmation to the Maine Superior Court, you testified that "there is the possibility that a mandatory sentencing regime could lead to unfair results by preventing judges from calibrating the punishment appropriately to the defendant and the crime."**

   a. **Do you agree that mandatory minimums reflect the judgment of the legislature that certain crimes are particularly worthy of condemnation in the form of a minimum level of punishment?**

      Response: Yes.

   b. **Do you believe that judges are better situated to exercise this judgment than legislatures?**

      Response: No. In the quoted portion of my application to the Maine Superior Court, I was simply reflecting my knowledge of a policy debate regarding mandatory minimum sentences. I further stated in my application that "this is a policy question that should be addressed by the legislative and executive branches." As a prosecutor, I regularly sought indictments for charges that carried mandatory minimum sentences. As a judge, I faithfully apply mandatory minimum sentences set forth by Maine law. If confirmed to the First Circuit, I will follow all applicable law and precedent regarding mandatory minimum sentences.

9. Are you a citizen of the United States?

Response: Yes.

10. 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.**

11. **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.

12. **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.

13. **Is it ever appropriate to consider foreign law in constitutional interpretation? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: Generally, no. The U.S. Supreme Court has occasionally considered English common law as it existed at the time of the founding in interpreting constitutional provisions. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 39 (2022) (explaining that "'[t]he language of the Constitution cannot be interpreted safely except by reference to the common law and to British institutions *as they were when the instrument was framed and adopted*,' not as they existed in the Middle Ages") (quoting *Ex parte Grossman*, 267 U.S. 87, 108-09 (1925) (emphasis in original)). If confirmed, I would faithfully follow all applicable Supreme Court and First Circuit precedent in matters of constitutional interpretation.

14. **Please explain whether you agree or disagree with the following statement: "The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach."**

Response: I am not familiar with this statement, and I disagree with it. A judge's "independent value judgments" should play no role in matters of constitutional interpretation. If I am confirmed, I will carefully consider the factual record in each case

and faithfully and impartially apply the law and all relevant precedents to the facts of the case.

15. **In a concurrence in the denial of rehearing en banc in *Al–Bihani v. Obama* then-Judge Kavanaugh wrote: "international-law norms are not domestic U.S. law in the absence of action by the political branches to codify those norms." Is this a correct statement of law?**

    Response: Yes. If confirmed, I would interpret the laws of the United States in accordance with Supreme Court and First Circuit precedent.

16. **Please define the term "prosecutorial discretion."**

    Response: Black's Law Dictionary (11th ed. 2019) defines "prosecutorial discretion" as "[a] prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court."

17. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's response was: "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?**

    Response: I am not familiar with this statement. To the extent it means that judges should disregard precedent and hope that a reviewing court does not notice the error, I disagree with it. Circuit court judges are bound by both Supreme Court and circuit precedent. *United States v. Barbosa*, 896 F.3d 60, 74 (1st Cir. 2018); *United States v. Perez*, 89 F.4th 247, 250 (1st Cir. 2023). If I am confirmed, I will carefully consider the factual record in each case and faithfully and impartially apply the law and all relevant precedents to the facts of the case.

18. **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.

19. **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.

20. **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 federal prisoner may receive relief from a sentence by: (1) filing a direct appeal pursuant to 28 U.S.C. § 1291; (2) filing a motion to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255; (3) seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2241; (4) filing a motion to modify a term of imprisonment pursuant to 18 U.S.C. § 3582(c); or (5) seeking executive clemency, *see* U.S. Const. art. II, § 2.

21. **Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.**

    Response: In these two cases, the Supreme Court considered whether the admissions systems used by Harvard College and the University of North Carolina were lawful under the Equal Protection Clause of the Fourteenth Amendment. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 190-91 (2023). Each university took race into account in making admissions decisions. *Id.* at 195-97. After applying strict scrutiny to the universities' admissions programs, the Supreme Court held that the programs violated the Equal Protection Clause because they "lack[ed] 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." *Id.* at 230.

22. **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. At WilmerHale, I participated in summer associate and associate hiring decisions. At the U.S. Attorney's Office, I participated in the hiring process for Assistant U.S. Attorneys as well as for certain staff positions, such as paralegals. Currently, I participate in law clerk hiring decisions for the Maine Superior Court.

23. **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, sex, sexuality, or gender identity?**

    Response: No.

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

    Response: No.

25. **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, sex, sexuality, or gender identity?

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: To my knowledge, no.

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

    Response: Yes. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206-07 (2023); *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 56 (1st Cir. 2023).

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

    Response: In *303 Creative LLC v. Elenis*, the Supreme Court held that Colorado may not use its public accommodations law to compel a website designer to produce messages she disagrees with, as such compulsion violates the Free Speech Clause of the First Amendment. 600 U.S. 570, 577-82, 602-03. (2023).

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

    Is this a correct statement of the law?

    Response: Yes. The Supreme Court continues to cite with approval this passage from *Barnette*. *See, e.g.*, *303 Creative LLC v. Elenis*, 600 U.S. 570, 584-85, 603 (2023) ("[A]s this Court has long held, the opportunity to think for ourselves and to express those thoughts freely is among our most cherished liberties and part of what keeps our Republic strong."); *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 892 (2018) ("Compelling individuals to mouth support for views they find objectionable violates th[e] cardinal constitutional command [of *Barnette*], and in most contexts, any such effort would be universally condemned.").

29. **How would you determine whether a law that regulates speech is "content-based" or "content-neutral"? What are some of the key questions that would inform your analysis?**

Response: A law regulating speech is content-based if it "'on its face' draws distinctions based on the message a speaker conveys." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). The Supreme Court has further explained that this description applies to a law that "singles out specific subject matter for differential treatment." *Id.* at 169. For example, "a law banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed." *Id.* In addition, "the fact that a distinction is speaker based does not … automatically render the distinction content neutral." *Id.* at 170. The Supreme Court has held that "'laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference.'" *Ibid.* (quoting *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 658 (1994)).

The Supreme Court has also recognized a separate category of laws that, "though facially content neutral, will be considered content-based regulations of speech: laws that 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 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

30. **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)). The Supreme Court has further explained that "[t]he existence of a threat depends not on 'the mental state of the author,' but on 'what the statement conveys' to the person on the other end." *Id.* (quoting *Elonis v. United States*, 575 U.S. 723, 733 (2015)). In a criminal prosecution premised on true threats, the prosecuting authority must prove, at a minimum, that the speaker acted recklessly. *Id.* at 79-80.

31. **Under Supreme Court and First 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 "the vexing nature of the distinction between questions of fact and questions of law." *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982). Generally, factual determinations involve "addressing questions of who did what, when or where, how or why." *U.S. Bank Nat'l Ass'n v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 394 (2018). Questions of law, by contrast, require courts to "expound on the law, particularly by amplifying or elaborating on a broad legal standard." *Id.* at 396. "[T]he fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Miller v. Fenton*, 474 U.S. 104, 114 (1985).

32. **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 federal district courts to impose sentences that are "sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection." Those purposes are: "(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2). The statute does not elevate any purpose over another, and also directs sentencing courts to consider additional factors, including but not limited to "the nature and circumstances of the offense and the history and characteristics of the defendant," "the kinds of sentences available," "any pertinent policy statement" issued by the Sentencing Commission," "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," and "the need to provide restitution to any victims of the offense." *Id.* § 3553(a).

The First Circuit reviews district court sentencing decisions for both "procedural soundness" and "substantive reasonableness." *United States v. Contreras-Delgado*, 913 F.3d 232, 238 (1st Cir. 2019). The first layer of review involves an examination of whether the district court committed any procedural errors, such as improperly calculating the Sentencing Guidelines range, failing to consider the 18 U.S.C. § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the sentence. *Id.* At this phase, the court of appeals applies clear error review to factual findings, de novo review to interpretation and application of the Guidelines, and abuse of discretion review to the trial court's judgment calls. *Id.* In evaluating the substantive reasonableness of a sentence, the First Circuit applies a deferential standard of review, the "linchpin" of which is whether the sentence reflects "'a plausible sentencing rationale and a defensible result.'" *Id.* at 239 (quoting *United States v. Pol-Flores*, 644 F.3d 1, 4-5 (1st Cir. 2011)). If confirmed, I will carefully examine the factual record in each case and faithfully apply all relevant precedent in reviewing a district court's sentencing decisions.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a First Circuit decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent.

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

Response: 18 U.S.C. § 1507 provides for criminal penalties for anyone who, "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 . . . ."

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

Response: I am not aware of any Supreme Court or First Circuit precedent addressing the constitutionality of this statute. As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from opining on an issue that may come before me. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent. I am aware that the Supreme Court has upheld a similarly-worded state statute. *See Cox v. Louisiana*, 379 U.S. 559 (1965).

37. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**

    a. **Was *Brown v. Board of Education* correctly decided?**

    Response: Yes. As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. However, consistent with the past practice of other judicial nominees, I have concluded that I can opine on the decision in *Brown v. Board of Education* because it addresses an issue, namely the constitutionality of *de jure* segregation, that is unlikely to be relitigated. Accordingly, yes, I believe *Brown v. Board of Education* was correctly decided.

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

Response: Yes. As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. However, consistent with the past practice of other judicial nominees, I have concluded that I can opine on the decision in *Loving v. Virginia* because it addresses an issue, namely the constitutionality of restrictions on interracial marriage, that is unlikely to be relitigated. Accordingly, yes, I believe *Loving v. Virginia* was correctly decided.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *Griswold v. Connecticut*.

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

Response: The Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *Dobbs*.

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

Response: The Supreme Court overturned *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *Dobbs*.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court

Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *Gonzales v. Carhart*.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *District of Columbia v. Heller*.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *McDonald v. City of Chicago*.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *New York State Rifle & Pistol Association v. Bruen*.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or

correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *Dobbs v. Jackson Women's Health*.

l. Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *303 Creative LLC v. Elenis*.

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

Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), the Supreme Court held that when a firearm regulation is challenged under the Second Amendment, the government must show that the restriction "is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24. This analysis "involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *United States v. Rahimi*, 602 U.S. ---, --- S. Ct. ---, 2024 WL 3074728 at *6 (June 21, 2024) (citing *Bruen*, 597 U.S. at 26-31). "A court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Id.* (quoting *Bruen*, 597 U.S. at 29 and n.7).

39. **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, including Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,

requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?

Response: No.

c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?

Response: No.

40. **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, including, but not limited to, Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris, requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with the Alliance for Justice including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?

Response: No.

c. Have you ever been in contact with anyone associated with Alliance for Justice, including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?

Response: No.

41. **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?

i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund.**

Response: No.

b. **Are you currently in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**
   i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

   Response: No.

c. **Have you ever been in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**
   i. **Please include in this answer anyone associated with Arabella's subsidiaries, such as the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

   Response: No.

42. **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, including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

Response: No.

d. Have you ever received any funding, or participated in any fellowship or similar program affiliated with the Open Society network?

Response: No.

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

a. Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

b. Are you currently in contact with anyone associated with Fix the Court, including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?

Response: No.

c. Have you ever been in contact with anyone associated with Fix the Court including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?

Response: No.

44. **The Raben Group is a lobbying group that "champions diversity, equity, and justice as core values that ignite our mission for impactful change in corporate, nonprofit, government and foundation work." The group prioritizes judicial nominations and its list of clients have included the Open Society Foundations, the American Civil Liberties Union, the New Venture Fund, the Sixteen Thirty Fund, and the Hopewell Fund. It staffs the Committee for a Fair Judiciary.**

a. Has anyone associated with The Raben Group 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 Raben Group, including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff and/or Katherine Huffman? If so, who?

Response: No.

c. Have you ever been in contact with anyone associated with The Raben Group including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff, and/or Katherine Huffman? If so, who?

Response: No.

d. Has anyone associated with the Raben Group offered to assist you with your nomination, including but not limited to organizing letters of support?

Response: No.

45. **The Committee for a Fair Judiciary "fights to confirm diverse and progressive federal judges to counter illegitimate right-wing dominated courts" and is staffed by founder Robert Raben.**

a. Has anyone associated with the Committee for a Fair Judiciary requested that you provide 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 Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?

Response: No.

Have you ever been in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?

Response: No.

46. **The American Constitution Society is "the nation's foremost progressive legal organization" that seeks to "support and advocate for laws and legal systems that redress the founding failures of our Constitution, strengthen our democratic legitimacy, uphold the role of law, and realize the promise of equality for all, including people of color, women, LGBTQ+ people, people with disabilities, and other historically excluded communities."**

a. Has anyone associated with the American Constitution Society, 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 American Constitution Society including, but not limited to Russ Feingold? If so, who?

Response: No.

c. Have you ever been in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?

Response: As a law student 20 years ago, I believe I may have attended speaker event(s) sponsored by the Stanford chapter of the American Constitution Society, but I do not recall any details of these events.

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

Response: On December 13, 2023, I submitted an application by e-mail to the Advisory Committee on the Appointment of Federal Judges, which was convened by Senator Angus King and Representatives Chellie Pingree and Jared Golden. On January 4, 2024, I interviewed with the Committee. On January 15, 2024, I was interviewed by attorneys from the White House Counsel's Office. Since that date, I have been in contact with attorneys from the White House Counsel's Office. On January 19, 2024, I spoke by telephone with Senator King and a staff member. On February 28, 2024, I had a follow-up conversation with a staff member from Senator King's Office. Since March 19, 2024, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 23, 2024, the President announced his intent to nominate me.

48. **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: To my knowledge, no.

49. **During your selection process, did you talk with any officials from or anyone directly associated with Alliance for Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: To my knowledge, no.

50. **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, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: To my knowledge, no.

51. **During or leading up to 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: To my knowledge, no.

52. **During or leading up to 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: To my knowledge, no.

53. **During or leading up to your selection process, did you talk with any officials from or anyone directly associated with The Raben Group or the Committee for a Fair Judiciary, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: To my knowledge, no.

54. **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: To my knowledge, no.

55. **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: I received general advice from the Office of Legal Policy to include cases that demonstrated the full scope of my past legal work.

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

Response: On January 15, 2024, I was interviewed by attorneys from the White House Counsel's Office. Since that date, I have been in contact with attorneys from the White House Counsel's Office. Since March 19, 2024, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 23, 2024, the President announced his intent to nominate me.

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

Response: On June 27, 2024, I received Questions for the Record from the Office of Legal Policy at the Department of Justice. I drafted the answers to the questions myself after reviewing my records and conducting legal research. I submitted my draft responses to the Office of Legal Policy on June 30, 2024. After receiving limited feedback from the Office of Legal Policy, I finalized and submitted my answers.

Senator Hirono Questions for the Record for the June 20, 2024, Hearing in the Senate Judiciary Committee entitled "Nominations."

QUESTIONS FOR JULIA M. LIPEZ

Sexual Harassment

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

QUESTIONS:

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

Response: No.

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

Response: No.

Senator Mike Lee
Questions for the Record
Julia Lipez, Nominee to be United States Circuit Judge for the First Circuit

1. How would you describe your judicial philosophy?

Response: In each case, I strive to ensure a fair process, which requires remaining impartial, keeping an open mind, maintaining civility, giving the parties an adequate opportunity to be heard, and carefully reviewing the factual record and the parties' arguments. I then faithfully apply all relevant laws and precedents to the claim before me. Finally, I aim for transparency and clarity in my written opinions.

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

Response: If confirmed, I would first determine whether there was any binding Supreme Court or First Circuit precedent addressing the statutory provision at issue. If so, I would faithfully apply that precedent to the claim before me. In the absence of such precedent, I would consider the plain text of the statute, including by looking to dictionary definitions, the structure of the statute, applicable canons of statutory interpretation, and precedent involving analysis of analogous statutes. I would also consider persuasive authority from other Circuits. If true ambiguity remained at that point, the Supreme Court has said that courts may look at legislative history as an interpretive tool of last resort. *See Burlington N. R.R. Co. v. Okla. Tax Comm'n*, 481 U.S. 454, 461 (1987) (noting that although "[l]egislative history can be a legitimate guide to a statutory purpose obscured by ambiguity, . . . when we find the terms of a statute unambiguous, judicial inquiry is complete." (citation and quotation marks omitted) (alterations in original)).

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

Response: If confirmed, I would first determine whether there was any binding Supreme Court or First Circuit precedent addressing the constitutional provision at issue. If so, I would faithfully apply that precedent to the claim before me. In the absence of such precedent, I would consider the plain text of the provision and employ the method of interpretation that the Supreme Court and First Circuit had used in analogous contexts. I would also consider persuasive authority from other Circuits.

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

Response: If confirmed, I would follow Supreme Court precedent regarding the role of the text and its original meaning when interpreting a constitutional provision. The Supreme Court has looked to the text of a constitutional provision as well as its original meaning in several contexts. *See, e.g.*, *New York State Rifle & Pistol Ass'n,*

Inc. v. Bruen, 597 U.S. 1 (2022); *Gamble v. United States*, 587 U.S. 678 (2019); *Crawford v. Washington*, 541 U.S. 36 (2004).

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

Response: Please see my response to Question 2.

a. Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: The "plain meaning" of a statute or constitutional provision refers to the public understanding of the relevant language at the time of enactment. *See, e.g.*, *Bostock v. Clayton Cnty.*, 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."); *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (explaining that "the examination of a variety of legal and other sources to determine *the public understanding* of a legal text in the period after its enactment or ratification" is "a critical tool of constitutional interpretation." (emphasis in original)).

6. What are the constitutional requirements for standing?

Response: The Constitution gives federal courts the power to adjudicate only genuine "Cases" and "Controversies." U.S. Const. art. III, § 2. The Supreme Court directs that to have Article III standing, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) (citation and quotation marks omitted); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

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

Response: In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court recognized that the Necessary and Proper Clause of Article I, Section 8 of the Constitution gives Congress implied powers beyond those that are specifically enumerated in the Constitution so long as its actions are taken to execute its enumerated powers. *Id.* at 421 ("Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.").

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

Response: If confirmed, I would apply relevant Supreme Court and First Circuit precedent to determine whether the law falls within Congress's Constitutional power to legislate. *See, e.g.*, *Nat'l Fed'n of Indep. Bus. 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." (citation and quotation marks omitted)).

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

Response: Yes. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that the Due Process Clause protects those rights that are "deeply rooted in this Nation's history and tradition, . . . and implicit in the concept of ordered liberty . . . ." *Id.* at 720-21 (citations and quotation marks omitted). Examples of such rights include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); 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); and to marital privacy and contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

10. What rights are protected under substantive due process?

Response: Please see my response to Question 9.

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

Response: The Supreme Court held in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 231 (2022), that there is no substantive due process right to abortion. The Court has also declared that the doctrine of *Lochner* has "long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). If confirmed, I will faithfully apply Supreme Court and First Circuit precedent.

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

Response: The Supreme Court has identified three broad categories of activity that Congress may regulate under its Commerce Clause power: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce; and (3) activities that substantially affect interstate commerce. *United States v. Morrison*, 529 U.S. 598, 609 (2000).

13. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has identified suspect classes as those groups "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). The Court has identified race, religion, alienage, and national origin as suspect classes. *See City of New Orleans v. Dukes,* 427 U.S. 297, 303 (1976); *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971).

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

Response: The system of checks and balances and separation of powers set forth in Articles I, II, and III—by which the legislative, executive, and judicial powers are vested in separate branches—is a fundamental component of our Constitutional structure, designed to "erect enduring checks on each Branch and to protect the people from the improvident exercise of power[.]" *I.N.S. v. Chadha*, 462 U.S. 919, 957 (1983).

15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: If confirmed, I would consider the text of the Constitution as well as relevant Supreme Court and First Circuit precedent in any case in which it was claimed that one branch assumed an authority not granted it by the Constitution. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: A judge's decision should be based on an impartial application of the facts and the law, not on empathy. A judge should also maintain civility and respect at all times.

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Both are improper and should be avoided.

18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not studied historical judicial trends, and so do not have a basis for evaluating any changes in the Court's activities over time. In addition, as a judicial

nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on Supreme Court trends. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent to the question of the constitutionality of a federal statute.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial review" as "[a] court's power to review the actions of other branches or levels of government, especially, the courts' power to invalidate legislative and executive actions as being unconstitutional." Black's Law Dictionary (11th ed. 2019) defines "judicial supremacy" as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, especially U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

20. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Article VI requires that all members of the legislative, executive, and judicial branches "shall be bound by Oath or Affirmation, to support this Constitution[.]" U.S. Const. art. VI. In the seminal case of *Marbury v. Madison*, the Supreme Court held that, "[i]t is emphatically the province and duty of the judicial department to say what the law is." 5 U.S. 137, 177 (1803). As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from opining on how elected officials should conduct their affairs. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice.

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

Response: This is a reminder that under our Constitutional structure, courts neither make nor enforce laws. Instead, judges should exercise restraint. This is demonstrated both by rigorous adherence to law and precedent and taking care to decide only the issues necessary for resolution of a particular case.

22. As a circuit court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: If confirmed, I would faithfully apply Supreme Court and First Circuit precedent to the issue before me. If "a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions." *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (citation and quotation marks omitted).

23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: None. *See* United States Sentencing Commission, Guidelines Manual, §5H1.10 (Nov. 2011) (providing that race, sex, national origin, creed, religion, and socioeconomic status "are not relevant in the determination of a sentence").

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

Response: I am not familiar with this statement or the context in which it was made. Black's Law Dictionary (11th ed. 2019) defines "equity" as "[f]airness; impartiality; evenhanded dealing[.]" As a current judge, I strive to be fair, impartial, and evenhanded in each case, and would do the same in confirmed to the First Circuit.

25. Is there a difference between "equity" and "equality?" If so, what is it?

Response: Black's Law Dictionary (11th ed. 2019) defines "equity" as "[f]airness; impartiality; evenhanded dealing[.]" Black's Law Dictionary (11th ed. 2019) defines "equality" as "[t]he quality, state, or condition of being equal[.]"

26. **Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?**

Response: The Equal Protection Clause of the 14th Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

27. How do you define "systemic racism?"

Response: I have not studied this concept and do not have a personal definition of it.

28. How do you define "critical race theory?"

Response: I have not studied this concept and do not have a personal definition of it.

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

Response: Please see my responses to Questions 27 and 28. Because I have not studied and do not have personal definitions of these concepts, I am unable to address if or how they are distinct from one another.

30. In local Maine media, there has been local criticism about your sentencing practices. You were the only named judge in an opinion piece for the Bangor Daily News entitled, "*Light Sentences Send Message That Domestic Violence Does Not Matter*." I must say, after a review of your record, I share the same concerns. Please explain how "light" sentences send the message to our communities and to would-be offenders that crime *does* matter. For examples of "light" sentences for egregious crimes, please consider the sentences you gave to a woman convicted of killing her one-year-old baby, the case of Harry Every (specifically named in the op-ed), and a case in which you released two defendants on bail *without* house arrest who were charged with drug trafficking.

Response: As a former federal prosecutor and sitting state court judge, public safety is a paramount concern in every case that comes before me. Judges in Maine are required to "appropriately individualize each sentence," *State v. Hewey*, 622 A.2d 1151, 1154 (Me. 1993) (citation and quotation marks omitted), and consistent with this requirement, I have a history of imposing sentences based on the law and facts of each case. As a result, none of my sentencing decisions have been reversed. The Maine Legislature has set forth a statutory range of sentences for each crime and requires individualization in each case, even for the most heinous offenses. When I impose a sentence in a felony matter, I follow the three-part sentencing procedure set forth by Maine statute:

> [A] First, the court shall determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual.
>
> [B] Second, the court shall determine the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case. Relevant sentencing factors include, but are not limited to, the character of the individual, the individual's criminal history, the effect of the offense on the victim and the protection of the public interest.
>
> [C] Third, the court shall determine what portion, if any, of the maximum term of imprisonment under paragraph B should be suspended and, if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension.

17-A M.R.S. § 1602(1) (2023); *see Hewey*, 622 A.2d at 1154-55 (setting forth required three-part sentencing analysis). I also consider the general purposes of sentencing as set forth in 17-A M.R.S. § 1501(1), which include to "[p]revent crime through the deterrent effect of sentences, the rehabilitation of persons and the restraint of individuals when required in the interest of public safety[.]" This process necessarily dictates that the sentence in each case will be different. I have imposed sentences that are at the statutory maximum and sentences that are not. I have imposed sentences that the State has asked for and, at other times, have imposed something different than what the State has requested when warranted under the statutory factors. Under Maine law, if the court suspends a portion of the sentence in order to place a defendant on probation conditions upon release from incarceration, and the defendant violates the terms of his probation, then, depending on the nature of the violation, he could be required to spend a portion or all of the unsuspended term of the sentence in custody. *See* 17-A M.R.S. § 1812(6).

I am aware of one opinion piece in the *Bangor Daily News* from the summer of 2022 that called for harsher sentences for domestic violence offenses in Maine and was addressed to "Maine district attorneys and judges." That column referenced the sentence I imposed in the *Every* case along with several other domestic violence cases for which I was not the judge. It appeared to cite public news reporting about testimony from the first day of the jury trial in the *Every* case, during which the State offered testimony in support of an attempted murder charge. The piece reflects a fundamental misunderstanding of the history of that case—namely, the column did not account for the fact that the jury found the defendant *not guilty* of attempted murder, rejecting the State's arguments on the conduct that was described in the opinion piece.

In light of the jury's verdict, I had no authority to impose a sentence for attempted murder and doing so would have been a violation of my obligations as a judge. I imposed a sentence of 15 years with all but 6 years suspended and 4 years of

probation on the burglary charge and concurrent 5-year sentences (the statutory maximum) on each of the domestic violence offenses. Prior to trial, the State had offered the defendant a plea agreement that included an unsuspended term of imprisonment of 3 years and 8 months. The sentence I imposed thus contained a substantially longer unsuspended portion of imprisonment than what the State had offered the defendant prior to trial.

I have received letters of support from the Maine Attorney General, whose office prosecutes some of the criminal cases I have handled, as well as from District Attorney Maeghan Maloney, whose office prosecutes most of the criminal cases I have handled. DA Maloney wrote in her letter to the Senate Judiciary Committee that I am "one of the most talented, intelligent, fair-minded, ethical, and diligent judges in the State of Maine." She further wrote that she had "questioned the prosecutors in [her] office and everyone feels the same way: with Justice Lipez we know that justice will prevail." Finally, she noted the particular concern I show to victims of domestic violence, explaining that I "listen[] deeply to the words of victims." I have also received public support from the Maine Coalition to End Domestic Violence, which wrote in its letter to this Committee that as a judge I "hold high-risk perpetrators of domestic violence and abuse accountable," as well as the Maine Coalition Against Sexual Assault and Preble Street Anti-Trafficking Services.

31. As a prosecutor you requested a sentence for a sex-trafficker well below the guidelines, despite verbally acknowledging the defendant immediately violated the provisions of his conditional release by having "repeatedly had contact with a teenage girl, a 15-year-old, just like the victim in this case, and of most concern [] had a sexual relationship with her."

You even told the court, "I would submit to you that [his actions] suggest he has not at all come to grips with the harm that he has caused or perhaps doesn't care, I don't know; but the sentence we suggest, Your Honor, should take into account some of his conduct." And yet, even after this recognition of his lack of accountability and his immediate desire to reoffend, you asked for a sentence below the recommended range. It is almost as if the defendants in this cases had two advocates, and the victims had none.

What message are you sending to victims and to other would-be perpetrators of crime when you give astonishingly light sentences to those convicted of terrible crimes?

Response: My reputation as a federal prosecutor for more than a decade was one of zealous advocacy on behalf of victims of crime. This reputation is reflected in the many letters of support I have received. For example:

- My former supervisors at the U.S. Attorney's Office wrote: "Justice Lipez was a superb federal prosecutor who exemplified the highest ideals of the United States Department of Justice in every case she prosecuted in the District Court and the Court of Appeals. We witnessed that Justice Lipez's relationship with our law enforcement partners at all levels was one of mutual respect and admiration arising out of the leadership she demonstrated with those partners. To the countless victims of crime whose causes she championed, Justice Lipez's steady hand and calm presence were, to be sure, enormously comforting."
- Retired federal agents with whom I worked, including the agents in charge of the Maine FBI and Homeland Security Investigations offices, wrote: "Justice Lipez was a tireless advocate for victims of crime, including women who suffered abuse and exploitation."
- The former National Domestic Violence Coordinator at the Department of Justice, with whom I worked closely, wrote: "Ms. Lipez was always cognizant of the impact of domestic violence on victims and their families. She was sensitive to these concerns and approached victims with empathy and compassion. She also was instrumental in forging appellate decisions that helped USAOs around the country prosecute domestic violence offenders and hold them accountable for their crimes. . . . Ms. Lipez was also a leader in the USAO efforts to combat human trafficking, especially when it involved minor victims. She worked closely with the victims, the Office's Victim Witness Coordinator, law enforcement agents, and advocates - all of whom were dedicated to helping trafficking victims and doing their best to ensure that the emotional and physical needs of the victims are met. . . . Ms. Lipez approached each case with concern for the victim's well-being and hopes that prosecution of traffickers will prevent future Maine minors from a similar fate."
- The Deputy Director of Preble Street Anti-Trafficking Services, the only service provider in Maine offering comprehensive services to survivors of human trafficking, wrote that as a prosecutor, "Justice Lipez consistently demonstrated a victim-centered approach to engaging victims and worked collaboratively to develop state-wide initiatives to strengthen and enhance Maine's infrastructure to respond to human trafficking. Justice Lipez's commitment to the needs and healing of victims resulted in prosecutions that were victim-centered and trauma-informed. Her thoughtful, fair, and smart leadership has had a lasting and positive impact on the pursuit of justice for crime victims."
- The former District Attorney of Cumberland County, Maine's most populous county, with whom I worked on human trafficking matters, wrote that I was "always supportive of human trafficking victims and ma[de] sure that their safety was paramount" and "worked with law enforcement to put together a very thorough and grounded criminal prosecution that would hold perpetrators accountable for these heinous crimes."

I believe the specific case the question refers to is *United States v. Suero*, where the defendant pleaded guilty to one count of conspiracy to commit sex trafficking of a minor, in violation of 18 U.S.C. § 1594(c). The plea agreement and sentencing recommendation in this case, which were authorized by supervisors in the U.S. Attorney's Office, were reached after close consultation with the victim and were consistent with the victim's wishes. While I cannot disclose the nature of confidential conversations with a victim, I can state that one of the government's primary motivating factors in reaching the plea agreement was the avoidance of a public trial at which the minor victim would have to testify. The victim chose not to appear in person at the sentencing.

In this case, I objected to the defendant's release on bail pending trial, as well as his continued release on bail after he entered a guilty plea. In each circumstance, a judge ordered the defendant released over my objection. The defendant ultimately entered a guilty plea to conspiracy to commit sex trafficking of a minor. On behalf of the government, I argued that the sentencing guidelines range as initially calculated by the U.S. Probation Office in the presentence report was incorrect as a matter of law and was too low. The district court agreed with my arguments and concluded that the higher guideline range the government was advocating for was correct. The court ultimately calculated the advisory guideline range as 121 to 151 months. The defendant was sentenced to 108 months in prison, which was only slightly below the advisory guidelines range. The plea, which was negotiated pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), precluded the government from asking for a sentence of more than 120 months. Pursuant to U.S. Attorney's Office Policy, all plea agreements required supervisory approval, including in some cases up to the level of the U.S. Attorney. In addition, as an Assistant U.S. Attorney, I could not ask for a sentence outside the guidelines range without supervisory approval. In this case, the government recommended 108 months (9 years) after considering all the sentencing factors set forth in 18 U.S.C. § 3553(a).

32. One of the most disturbing cases in which you handed down an astonishingly light sentence was the case of a man repeatedly sexually assaulting two young girls—a four-year-old and a nine-year-old. The victims submitted heart-wrenching impact statements to the court. One of the girls wrote the defendant "took the color out of a child's world, then turned it black and white…the pleasant memories of my childhood have been replaced with tragic, painful ones."

Despite these impact statements and the terrible crimes which inspired them, you sentenced the defendant to just a 12-year sentence, with six years suspended—which means he would only serve 6 years for destroying the childhood of two young girls. In your sentencing hearing you said, "People are complicated. . . . What I can say is that this is a very tragic situation of a person who has a lot of good in him having done a very reprehensible thing to two young children…causing extreme damage."

- **What does such a sentence teach these young girls about their autonomy over their own bodies?**
- **What do your words about the abuser teach these girls about justice? Do you think it inspires them to have faith in the system?**
- **What message does it send to other victims who are reluctant about reporting or testifying against their abusers?**

Response: Please see my response to Question 30 for my general approach to sentencing as well as my reputation for taking great care with cases involving victims.

In the particular case referenced in this question, *State v. Michael Smith*, I imposed the exact sentence the State requested, which was 12 years with all but 6 years suspended and 4 years of probation. All but one of the charges of conviction carried a statutory maximum sentence of 10 years. The probation conditions I imposed included a requirement to participate in sex offender treatment as well as a prohibition on any contact with the victims and with female children under the age of 16. By law, the defendant will also be required to register as a sex offender.

At sentencing, a victim advocate read statements from the victims. The victims did not make any particular sentencing recommendations or indicate any objections to the State's recommendation. I have in the past rejected a State sentencing recommendation upon learning that a victim objected. In the *Smith* case, the State recommended suspending 6 years of the sentence so that the defendant would be required to participate in sex offender treatment while on probation, with the threat of 6 more years of incarceration hanging over his head if he did not comply. The defendant sought a sentence of 5 years with all but 1 year suspended and 4 years of probation. As a basis for the recommendation, he argued that he had no criminal history, had a consistent employment history, including several years in law enforcement, and had the support of many family members and friends who attested to his positive qualities. In imposing a sentence, a Maine judge is required to provide a "clear articulation" that she has followed the three-part sentencing methodology set forth by law and that she has considered the statutory sentencing factors. *State v. Hewey*, 622 A.2d 1151, 1155 (Me. 1993).

In keeping with the prescribed practice, I considered the mitigating information the defendant presented and articulated on the record that I had considered it. After doing so, I rejected the mitigation arguments and imposed the sentence the State requested.

33. While in law school, you authored a paper titled, "*A Return to the World of Work: An analysis of California's Prison Job Training Programs and Statutory Barriers to Ex-Offender Employment.*" In this article you suggested that employment "discrimination against ex-offenders by employers needs to be diminished". You wrote that legislatures should "make clear that an extremely close nexus is required between the crime of conviction and the qualities required for the license being sought."

- **Has your opinion on this matter changed after having served as an AUSA and a state court judge?**

  Response: I wrote the referenced paper for a class assignment nearly 20 years ago while a student at Stanford Law School. At the time, I was taking a class taught by Joan Petersilia, a well-regarded criminologist who was advising then-California Governor Arnold Schwarzenegger on efforts to restructure California's adult and juvenile corrections systems. The thesis of the paper was that California should more closely tailor its prison job training programs to the labor market so that inmates were more likely to obtain employment upon release, thereby reducing rates of recidivism and enhancing public safety. After examining available data about the California labor market as well as laws restricting employment for individuals with criminal records, the paper recommended that the California prison system focus on training inmates to work as office clerks, receptionists and information clerks, carpenters, landscapers, and construction laborers. I am not a criminologist and have not studied or considered this issue since law school. In addition, as a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on matters of policy. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice.

- **How would you define an extremely close nexus? Would it be an extremely close nexus to say that someone convicted of selling fentanyl should not get a license to teach schoolchildren?**

  Response: In drafting the referenced paper as a law student nearly 20 years ago, I did not spend significant time on the question of "nexus" or take a position on what constitutes a "close nexus." I also never took the position that someone convicted of a crime—let alone drug trafficking—should get a license to teach schoolchildren. In the paper, I wrote that "[e]x-offenders will almost never be hired as nurses, security guards, teachers, or teacher assistants." As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on matters of policy. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice.

- **Is it your position that employers should not have a right to prefer to hire those who have not been convicted of crimes?**

  Response: I did not take that position in the referenced paper, which I wrote as a law student nearly 20 years ago. As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on matters of policy. I face similar restrictions under the Maine Code of

Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice.

- **Is it your position that employers should not have any right to understand a person's criminal record before extending an offer of employment?**

  Response: I did not take that position in the referenced paper, which I wrote as a law student nearly 20 years ago. As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on matters of policy. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice.

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

Questions for the Record for Julia M. Lipez, nominated to be United States Circuit Judge for the United States Court of Appeals for the First Circuit

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Is racial discrimination wrong?**

Response: Yes. Congress has passed laws prohibiting racial discrimination in many contexts, such as in employment and housing.

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

Response: If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the Supreme Court's decision in *Washington v. Glucksberg*, 521 U.S. 702 (1997), which sets forth the test for finding an unenumerated right in the Constitution: those rights that are "deeply rooted in this Nation's history and tradition, . . . and implicit in the concept of ordered liberty . . . ." *Id.* at 721 (citations and quotation marks omitted). The Supreme Court further requires "a careful description of the asserted fundamental liberty interest." *Id.* (citations and quotation marks omitted). As a judicial nominee, I am precluded by the Code of Conduct for United States Judges from pre-judging issues that may come before me if I am confirmed. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice.

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

Response: In each case, I strive to ensure a fair process, which requires remaining impartial, keeping an open mind, maintaining civility, giving the parties an adequate opportunity to be heard, and carefully reviewing the factual record and the parties' arguments. I then faithfully apply all relevant laws and precedents to the claim before me. Finally, I aim for transparency and clarity in my written opinions. I have not studied the philosophies of the Courts described above and do not have an opinion about their respective philosophies. If confirmed, I will follow all Supreme Court and First Circuit precedent.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "originalism" as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect." If confirmed, I would faithfully apply Supreme Court and First Circuit precedent to any claim that came before me, including precedent regarding the appropriate way to interpret a specific constitutional provision. For this reason, I do not subscribe to a particular label of constitutional interpretation. The Supreme Court has adopted an originalist approach when analyzing certain constitutional

provisions, such as the Second Amendment, *see New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), and the Sixth Amendment's Confrontation Clause, *see Crawford v. Washington*, 541 U.S. 36 (2004).

5. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?**

Response: Black's Law Dictionary (11th ed. 2019) defines "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." If confirmed, I would faithfully apply Supreme Court and First Circuit precedent to any claim that came before me, including precedent regarding the appropriate way to interpret a specific constitutional provision. For this reason, I do not subscribe to a particular label of constitutional interpretation. I am not aware of any Supreme Court or First Circuit decision adopting "living constitutionalism" as an approach.

6. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: In the unlikely event that I were to be presented with a constitutional issue of true first impression, I would consider the text of the constitutional provision at issue as well as binding Supreme Court and First Circuit precedent in analogous contexts. If the meaning of the relevant text was unambiguous, I would be bound by that meaning. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022).

7. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: If confirmed, I would faithfully apply Supreme Court and First Circuit precedent regarding the meaning of the Constitution or a statute. In matters of constitutional interpretation, the Supreme Court has stated that "the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning," and that "[n]ormal meaning . . . excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation." *District of Columbia v. Heller*, 554 U.S 570, 576-77 (2008) (citations and quotation marks omitted). Similarly, the Supreme Court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020).

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

Response: If confirmed, I would faithfully apply Supreme Court and First Circuit precedent regarding the meaning of the Constitution. The Supreme Court has explained that, although the Constitution's "meaning is fixed according to the understandings of

those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022); *see also District of Columbia v. Heller*, 554 U.S. 570, 582 (2008) ("Just as the First Amendment protects modern forms of communications, . . . and the Fourth Amendment applies to modern forms of search, . . . the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.").

9. **Is the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* settled law?**

Response: The Supreme Court's ruling in *Dobbs* is binding precedent that lower courts are obligated to follow.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision, or from pre-judging issues that may come before me if I am confirmed. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *Dobbs*.

10. **Is the Supreme Court's ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: The Supreme Court's ruling in *Bruen* is binding precedent that lower courts are obligated to follow.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision, or from pre-judging issues that may come before me if I am confirmed. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *Bruen*.

11. **Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?**

Response: The Supreme Court's ruling in *Brown* is binding precedent that lower courts are obligated to follow.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision, or from pre-judging issues that may come before me if I am confirmed. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. However, consistent with the past practice of other judicial nominees, I have concluded that I can opine on the decision in *Brown v. Board of Education* because it addresses an issue, namely the constitutionality of *de jure* segregation, that is unlikely to be relitigated. Accordingly, yes, I believe *Brown v. Board of Education* was correctly decided.

12. **Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?**

Response: The Supreme Court's ruling in *Students for Fair Admissions* is binding precedent that lower courts are obligated to follow.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision, or from pre-judging issues that may come before me if I am confirmed. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent, including the decision in *Students for Fair Admissions*.

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

Response: The Supreme Court's ruling in *Gibbons v. Ogden* is binding precedent that lower courts are obligated to follow.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning in or correctness of a Supreme Court decision, or from pre-judging issues that may come before me if I am confirmed. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit

precedent, including the decision in *Gibbons v. Ogden*.

14. **What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: 18 U.S.C. § 3142(e) sets forth those offenses for which there is a rebuttable presumption in favor of pretrial detention, including drug offenses carrying possible penalties of 10 years or more in prison, certain violent offenses, and certain offenses involving minor victims.

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

Response: To my knowledge, the Bail Reform Act does not set forth any policy rationale underlying such a presumption, nor does any Supreme Court or First Circuit precedent. The Bail Reform Act directs courts to consider in each case whether there are release conditions that can reasonably assure the defendant's appearance as required and the safety of any person and the community. 18 U.S.C. § 3142.

15. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?**

Response: There are both constitutional and statutory limits to what government may impose on or require of private institutions. As a constitutional matter, government regulations burdening the free exercise of religion that are not neutral and generally applicable trigger strict scrutiny under the Free Exercise Clause of the First Amendment. *See, e.g.*, *Tandon v. Newsom*, 593 U.S. 61 (2021) (per curiam) (granting application to preliminarily enjoin California law imposing COVID restrictions on at-home religious gatherings where law treated comparable secular activities more favorably and did not satisfy strict scrutiny); *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021) (holding that contractual non-discrimination provision that burdened foster agency's religious exercise was not generally applicable and failed strict scrutiny where contract allowed for discretionary exemptions). In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held that Colorado may not use its public accommodations law to compel a website designer to produce messages she disagrees with, as such compulsion violates the Free Speech Clause of the First Amendment. *Id.* at 577-82, 602-03. The Supreme Court has also held that the "ministerial exception" to the First Amendment bars certain employment discrimination claims against religious institutions. *See, e.g.*, *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732 (2020) (holding that ministerial exception, grounded in the First Amendment, barred employment discrimination claims of teachers at religious schools).

As a statutory matter, both the Religious Freedom Restoration Act ("RFRA") and the Religious Land Use and Institutionalized Persons Act impose limits on the manner in which the federal government may burden a person's exercise of religion. The Supreme Court has interpreted RFRA to apply to a federal regulation's restriction on the activities

of a for-profit closely held corporation. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 707-08 (2014).

If confirmed, I will faithfully apply relevant Supreme Court and First Circuit precedent to all matters that come before me.

16. **Is it ever permissible for the government to discriminate against religious organizations or religious people?**

Response: The First Amendment "guarantee[s] that our laws be applied in a manner that is neutral toward religion." *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 584 U.S. 617, 640 (2018). Thus, government regulations burdening the free exercise of religion that are not neutral and generally applicable trigger strict scrutiny. *See, e.g.*, *Tandon v. Newsom*, 593 U.S. 61 (2021) (per curiam) (granting application to preliminarily enjoin California law imposing COVID restrictions on at-home religious gatherings where law treated comparable secular activities more favorably and did not satisfy strict scrutiny); *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021) (holding that contractual non-discrimination provision that burdened foster agency's religious exercise was not generally applicable and failed strict scrutiny where contract allowed for discretionary exemptions). To satisfy strict scrutiny, a law must "further interests of the highest order by means narrowly tailored in pursuit of those interests." *Tandon*, 593 U.S. at 64-65 (citation and quotation marks omitted).

If confirmed, I will faithfully apply relevant Supreme Court and First Circuit precedent to all matters that come before me.

17. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020), the Supreme Court preliminarily enjoined the enforcement of a New York executive order that imposed attendance restrictions on religious services. *Id.* at 15-16. The Court reasoned first that the applicants had demonstrated a likelihood of success on the merits of their free exercise claims. Because the regulations "single[d] out houses of worship for especially harsh treatment," they were not neutral and therefore had to satisfy strict scrutiny, a test that New York failed because the regulations were not narrowly tailored despite the compelling interest of "[s]temming the spread of COVID-19." *Id.* at 16-18. Second, enforcement of the regulations, which precluded individuals from personal attendance at religious services, would cause irreparable harm. *Id.* at 19. Finally, the state had not demonstrated that granting the injunction would harm the public. *Id.* at 19-

20.

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

Response: In *Tandon v. Newsom*, 593 U.S. 61 (2021), the Supreme Court preliminarily enjoined a California law that imposed COVID restrictions on at-home religious gatherings. *Id.* at 64. Because the law treated certain comparable secular activities more favorably than at-home religious exercise, the law was not neutral and generally applicable and thus triggered strict scrutiny. *Id.* at 62-63. The Court concluded that the applicants were likely to succeed on the merits of their free exercise claim because, among other things, the California law was not narrowly tailored in pursuit of compelling government interests. *Id.*at 64-65. The Court further determined that an injunction was warranted because the applicants were irreparably harmed by the loss of free exercise rights for even short periods of time and the state had not demonstrated that public health would be harmed by employing less restrictive measures. *Id.* at 64.

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

Response: Yes.

20. **Explain your understanding of the U.S. Supreme Court's holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission.***

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018), the Supreme Court held that the Colorado Civil Rights Commission violated the free exercise rights of a baker when it ordered him to cease and desist from discriminating against a same-sex couple for whom he had refused to bake a wedding cake. *Id.* at 621-25. The Court reasoned that in evaluating the case, the Commission had demonstrated hostility to the baker's sincerely-held religious beliefs, and that such "hostility was inconsistent with the First Amendment's guarantee that our laws be applied in a manner that is neutral toward religion." *Id.* at 634-36, 640.

21. **Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: The Supreme Court has held that "[t]he determination of what is a 'religious' belief or practice" does not "turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). To invoke the protections of the Free Exercise Clause, a person need not be "responding to the commands of a particular religious organization" so long as his beliefs are "sincerely held[.]" *Frazee v. Ill. Dept. of Emp. Sec.*, 489 U.S. 829, 834.

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

Response: The Supreme Court has held that "only beliefs rooted in religion are protected by the Free Exercise Clause[; p]urely secular views do not suffice." *Frazee v. Ill. Dept. of Emp. Sec.*, 489 U.S. 829, 833. It is not for a court to say whether religious beliefs "are mistaken or insubstantial[;]" a court's "narrow" function in this context is to determine whether the asserted religious belief reflects "an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (citations and quotation marks omitted). If confirmed, I would faithfully apply Supreme Court and First Circuit precedent on this issue.

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

Response: The Supreme Court has held that "only beliefs rooted in religion are protected by the Free Exercise Clause[; p]urely secular views do not suffice." *Frazee v. Ill. Dept. of Emp. Sec.*, 489 U.S. 829, 833. It is not for a court to say whether religious beliefs "are mistaken or insubstantial[;]" a court's "narrow" function in this context is to determine whether the asserted religious belief reflects "an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (citations and quotation marks omitted). If confirmed, I would faithfully apply Supreme Court and First Circuit precedent on this issue.

c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: I am unfamiliar with the official position of the Catholic Church on abortion, but I do not understand it to be that abortion is acceptable and morally righteous.

22. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732 (2020), the Supreme Court held that the "ministerial exception" to the First Amendment's Religion Clauses barred employment discrimination claims brought by two teachers at Catholic schools. *Id.* at 738. Under the "ministerial exception" rule, "courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." *Id.* at 746. The Court explained that the key question in determining whether the ministerial exception applies is "what an employee does," and that "educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very

core of the mission of a private religious school." *Id.* at 753-54. Because the record evidence showed that both teachers involved in these cases "performed vital religious duties," *id.* at 756, the First Amendment prohibited "judicial intervention into disputes between" the schools and the teachers, *id.* at 762.

23. **In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.**

Response: In *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), the Supreme Court held that the City of Philadelphia violated the free exercise rights of a state-licensed Catholic foster care agency by refusing to contract with the agency unless it agreed to certify same-sex couples as foster parents. *Id.* at 526-28, 543. The City's contracting policy, which allowed for discretionary exceptions to its non-discrimination provisions, was not neutral or generally applicable, and failed strict scrutiny. *Id.* at 533, 536, 541-42.

24. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Carson v. Makin*, 596 U.S. 767 (2022), the Supreme Court invalidated Maine's tuition-assistance program, which contained a requirement that aid flow only to "nonsectarian" schools, on free exercise grounds. *Id.* at 789. The Court reasoned that the program triggered strict scrutiny because it excluded schools from a public benefit solely on the basis of their religious character, and that the state had not articulated a compelling basis for such exclusion. *Id.* at 780-81. The Court also reiterated its prior holdings that "a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause." *Id.* at 781.

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

Response: In *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), the Supreme Court held that a public school district's decision to discipline a high school football coach for kneeling at midfield to offer a personal prayer violated the coach's free exercise and free speech rights. *Id.* at 512-14. The district's challenged policies, which were neither neutral nor generally applicable, failed strict scrutiny under the Free Exercise Clause, *id.*at 526-27, and could not be justified by "phantom" Establishment Clause concerns, as "the Constitution neither mandates nor tolerates" religious discrimination, *id.* at 543-44.

26. **Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.**

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021) (Mem.), the Supreme Court granted certiorari, vacated the lower court's decision, and remanded for further consideration in light of *Fulton v. Philadelphia*, 593 U.S. 522 (2021). *Mast* involved a state declaratory judgment action brought by an Amish community alleging that a county's septic-system mandate violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). *Id*. at 2431 (Gorsuch, J., concurring). Justice Gorsuch authored a concurrence to the Court's decision setting forth his view that the county and the lower courts misapprehended RLUIPA's requirement that government land-use regulations imposing a substantial burden on the exercise of religion satisfy strict scrutiny. *Id.* at 2432. First, Justice Gorsuch explained that strict scrutiny, as described in *Fulton*, requires a "precise analysis," and that the courts below erred in treating the county's "*general* interest in sanitation regulations as 'compelling' without reference to the *specific* application of those rules to *this* community." *Id.* (citations and quotation marks omitted) (emphasis in original). In Justice Gorsuch's view, the lower courts also "erred by failing to give due weight to exemptions other groups enjoy" and "failed to give sufficient weight to rules in other jurisdictions." *Id.* at 2432-33. Finally, he expressed concern that the county had been allowed to rely on supposition and had not been required to prove with evidence that its rules were narrowly tailored. *Id.* at 2433.

27. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from opining on an issue that may come before me. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. I am not aware of any Supreme Court or First Circuit precedent addressing the question of how 18 U.S.C. § 1507 should be interpreted in the context of protests in front of the homes of U.S. Supreme Court Justices. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent.

28. **Would it be appropriate for the court to provide its employees trainings which include the following:**

a. **One race or sex is inherently superior to another race or sex;**

Response: No.

b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

Response: No.

c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

Response: No.

d. **Meritocracy or related values such as work ethic are racist or sexist?**

Response: No.

29. **Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?**

Response: Yes.

30. **Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?**

Response: Yes.

31. **Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from opining on an issue that may come before me. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent to any claim of discrimination in the making of political appointments that came before me.

32. **If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from opining on an issue that may come before me. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedent to any claim that came before me alleging that a racially disparate outcome in a program or policy was evidence of racial discrimination.

33. **Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: As a judicial nominee, I am precluded by the Code of Conduct for United States Judges from opining on a policy question reserved to the legislative and executive branches. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. No matter how many Justices are on the U.S. Supreme Court, if confirmed, I would faithfully apply all relevant Supreme Court precedent to any claim that came before me.

34. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: No.

35. **What do you understand to be the original public meaning of the Second Amendment?**

Response: The Supreme Court has held that the Second Amendment protects an individual right to keep and bear arms for self-defense both inside and outside the home. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 8-10 (2022).

36. **What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that a District of Columbia law prohibiting possession of handguns in the home violated the Second Amendment. *Id.* at 635. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court invalidated a similar handgun ban in Chicago, holding that the Second Amendment is incorporated against the States by the Fourteenth Amendment. In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), the Court concluded that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home. The Court further explained that when a firearm regulation is challenged under the Second Amendment, the government must show that the restriction "is consistent with the Nation's historical tradition of firearm regulation." 597 U.S. at 24. This analysis "involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *United States v. Rahimi*, 602 U.S. ---, --- S. Ct. ---, 2024 WL 3074728 at *6 (June 21, 2024) (citing *Bruen*, 597 U.S. at 26-31). "A court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Id.* (quoting *Bruen*, 597 U.S. at 29 and n.7) (emphasis in original)).

37. **Is the ability to own a firearm a personal civil right?**

Response: Yes. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *New York*

State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022).

38. **Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?**

Response: No. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022) ("The constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules that the other Bill of Rights guarantees.'" (quoting *McDonald v. Chicago*, 561 U.S. 742, 780 (2010))).

39. **Does the right to own a firearm receive less protection than the right to vote under the Constitution?**

Response: No.

40. **Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.**

Response: The Constitution requires the President to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. In the context of the criminal justice system, the Supreme Court has held that prosecutorial discretion is "broad" but not "unfettered," and is "subject to constitutional constraints." *Wayte v. United States*, 470 U.S. 598, 608 (1985) (citation and quotation marks omitted). As a judicial nominee, I am precluded by the Code of Conduct for United States Judges from opining on a policy question reserved to the executive branch. I face similar restrictions under the Maine Code of Judicial Conduct, which applies to me as a sitting Maine Superior Court Justice. If confirmed, I would faithfully apply all relevant Supreme Court and First Circuit precedents to any claim that came before me raising this issue.

41. **Explain your understanding of what distinguishes an act of mere 'prosecutorial discretion' from that of a substantive administrative rule change.**

Response: Black's Law Dictionary (11th ed. 2019) defines "prosecutorial discretion" as "[a] prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." An "administrative rule" is "[a]n officially promulgated agency regulation that has the force of law." *Id.*

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

Response: No.

43. **Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS*.**

Response: In *Alabama Association of Realtors v. HHS*, 594 U.S. 758 (2021), the

Supreme Court concluded that the district court had correctly vacated the CDC's nationwide COVID-19 moratorium on the evictions of tenants who met certain criteria because the applicants were "virtually certain to succeed" on the merits of their argument that the CDC had exceeded its statutory authority. *Id.* at 759.

44. **Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?**

Response: To my knowledge, when I served as a federal prosecutor, the U.S. Attorney's Office did not publicly announce prosecutions until after charges had been filed.

45. **In *State v. Malloy*, where a mother, Ms. Malloy, killed her fourteen month old baby by exposing the child to massive amounts of fentanyl in her living environment, you explained that Ms. Malloy actively participated in facilitating drug trafficking. But you sentenced her to four years in jail, six years of a suspended sentence, six years' probation, and a $565 fine. Your ruling resulted in a notably light sentence considering the fact that manslaughter, as a Class A crime in Maine, could carry a thirty year maximum sentence.**

a. Given the statement from the victim's father expressing a desire for the harshest possible punishment, the death penalty, how did you determine that four years was sufficient justice for the death of a fourteen-month-old baby from fentanyl ingestion?

Response: Judges in Maine are required to "appropriately individualize each sentence[.]" *State v. Hewey*, 622 A.2d 1151, 1154 (Me. 1993) (citation and quotation marks omitted). The Maine Legislature has set forth a statutory range of sentences for each crime and requires individualization in each case, even for the most heinous offenses. When I impose a sentence in a felony matter, I follow the three-part sentencing procedure set forth by Maine statute:

> [A] First, the court shall determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual.
>
> [B] Second, the court shall determine the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case. Relevant sentencing factors include, but are not limited to, the character of the individual, the individual's criminal history, the effect of the offense on the victim and the protection of the public interest.
>
> [C] Third, the court shall determine what portion, if any, of the maximum term of imprisonment under paragraph B should be suspended and, if a suspension order is to be entered, determine the appropriate period of

probation or administrative release to accompany that suspension.

17-A M.R.S. § 1602(1) (2023); *see Hewey*, 622 A.2d at 1154-55 (setting forth required three-part sentencing analysis). I also consider the general purposes of sentencing as set forth in 17-A M.R.S. § 1501(1), which include to "[p]revent crime through the deterrent effect of sentences, the rehabilitation of persons and the restraint of individuals when required in the interest of public safety[.]" This process necessarily dictates that the sentence in each case will be different. I have imposed sentences that are at the statutory maximum and sentences that are not. I have imposed sentences that the State has asked for and, at other times, have imposed something different than what the State has requested when warranted under the statutory factors. Under Maine law, if the court suspends a portion of the sentence in order to place a defendant on probation conditions upon release from incarceration, and the defendant violates the terms of probation, then, depending on the nature of the violation, the defendant could be required to spend a portion or all of the unsuspended term of the sentence in custody. See 17-A M.R.S. § 1812(6).

In *State v. Malloy*, a mother was charged with manslaughter in connection with the fentanyl overdose death of her toddler son. The Maine manslaughter statute covers a wide range of conduct and carries a sentence of anywhere from zero to 30 years. *Compare State v. Lowe*, 2015 ME 124, ¶¶ 2, 15, 34, 124 A.3d 156 (affirming sentence of 8 years with all but 18 months suspended, and 3 years of probation, for manslaughter where defendant-driver "consumed alcohol and drugs," "knew . . . she was too drunk to drive," "looked at a text message on her phone while she was driving," and was traveling 75 mph in the dark on a two-lane road with a speed limit of 50 mph when she ultimately crashed and killed two teenage victims) *with State v. Dalli*, 2010 ME 113, ¶ 3, ¶ 7, 8 A.3d 632 (2010) (affirming sentence of 30 years with all but 20 suspended and 4 years of probation for manslaughter where the defendant, armed with a butcher knife, "slashed [the victim] several times" and then "purposely stabb[ed the victim] deep in the chest with a knife"). The death penalty is not authorized by Maine law. P.L. 1887, ch. 133.

In determining the appropriate sentence in the *Malloy* case, I reviewed extensive sentencing memoranda and exhibits that had been submitted by the parties prior to the sentencing, additional exhibits admitted at the hearing, the parties' in-court presentations, and sentences previously imposed in similar cases in Maine. I concluded that the evidence demonstrated that the defendant, a single mother with no criminal history who turned 21 years old the day before the offense date, had become involved for a brief period with violent drug traffickers who preyed on her vulnerabilities (including social isolation, lack of familial support, meager financial resources, and an abusive childhood that forced her out of her home at age 16) and threatened to harm her and her aunt unless the defendant let them use her apartment to distribute drugs. These men had instructed the defendant to leave her apartment on her birthday. When she returned late in the evening, she found that the men had left drugs and other unknown substances in her bedroom. The defendant and her son slept in the bedroom that evening without incident. The next day, after the

defendant placed her son in the bedroom for a nap, she returned to find him unresponsive. Emergency medical personnel were unable to revive him, and the State's experts ultimately concluded that he died from exposure to fentanyl powder.

Because the evidence showed, among other things, that the defendant aided, but was not an active participant in, the drug trafficking operation; was not an opioid user; and was not aware of the nature of the substances that were left in her bedroom or the risks they posed, I determined that the evidence supported a finding of criminal negligence but not recklessness. The State did not appeal this finding. I then conducted the three-part sentencing analysis required by Maine law to arrive at the appropriate sentence. The third step of the prescribed analysis directs the court to consider whether it is appropriate to suspend a portion of the maximum period of incarceration so that the defendant may serve a period of supervised probation. In the absence of such a suspension, there is no mechanism under Maine law to order a defendant convicted of these charges to serve a period of probation after release from incarceration. I determined that the defendant was a good candidate for rehabilitation and was not a threat to the public given her lack of criminal history, her acceptance of responsibility, her cooperation with law enforcement despite receipt of a death threat warning her against cooperating, and her compliance with bail conditions.

I imposed a sentence of 10 years, with all but 4 years suspended, and 6 years of probation on the manslaughter charge, and three years concurrent on each of the drug trafficking charges. After serving the 4-year unsuspended portion of the sentence, the defendant will be subject to strict probation conditions for 6 years. If she is found to have violated the probation conditions, the court has the authority to order her to serve the remainder of the 10-year sentence in jail. The State did not appeal the sentence but the defendant did. The Maine Supreme Judicial Court exercised its discretion to dismiss the defendant's appeal.

b. How do you justify your decision to classify Ms. Malloy's actions as merely criminal negligence rather than recklessness, despite overwhelming evidence that every surface in her home, including her baby's pajamas, was coated with drug paraphernalia, and the jarring fact that her baby had ingested enough fentanyl to kill four adults?

Response: Please see my response to Question 45a for a summary of the evidence I considered in determining that this was a case involving criminal negligence not recklessness. For purposes of manslaughter, a person acts with "criminal negligence" under Maine law "when the person fails to be aware of a risk that the person's conduct will cause" death or "when the person fails to be aware that . . . circumstances" exist that could cause death. 17-A M.R.S. § 35(4)(A), (B). "[T]he failure to be aware of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation." *Id.* § 35(4)(C). By contrast, a person acts

"recklessly" under Maine law "when the person consciously disregards a risk that the person's conduct will cause" death. 17-A M.R.S. § 35(3)(A).

As a trial judge, I am often called upon to consider competing evidence and to make factual determinations based on that evidence. *See United States v. Young*, 105 F.3d 1, 5 (1st Cir. 1997) ("Deference to the district court's findings of fact reflects our awareness that the trial judge, who hears the testimony, observes the witnesses' demeanor and evaluates the facts first hand, sits in the best position to determine what actually happened."). When the defendant in the *Malloy* case entered her guilty plea, she did so by agreeing only that the evidence demonstrated that she was criminally negligent. It was thus the State's burden at sentencing to prove any aggravating facts that would support a higher level of culpability. *See State v. De St. Croix*, 2020 ME 142, ¶ 11, 243 A.3d 880. The State's evidence did not meet the requirement of "conscious[] disregard" under the recklessness standard.

c. What specific local cases did you rely on to justify Ms. Malloy's sentence, and how do they compare to the severity and circumstances of her case?

Response: Prior to sentencing, I was provided with two possible comparable cases involving children who overdosed on fentanyl. In *State v. Dobbins*, the defendant pleaded guilty to manslaughter after her 14-month-old child was found to have overdosed on fentanyl. The State and the defendant reached a plea agreement to 12 years with all but 4 years suspended and 6 years of probation. In *State v. Goding*, the defendant was originally charged with depraved indifference murder after her 3-year-old child overdosed on fentanyl and norfentanyl. The facts showed that the defendant knew her child might have ingested illegal drugs and was acting unwell, but did not call 911 or seek medical attention for over 24 hours. As part of a plea agreement, the State reduced the murder charge to manslaughter for a jointly recommended sentence of 26 years with all but 19 years suspended.

Under Maine law, however, the court is not permitted to consider final sentences in other cases for purposes of comparison. Comparable cases can only be considered at the first step of the three-step sentencing process, when the court is determining the basic sentence based on the manner in which the crime was committed. *See State v. Nichols*, 2013 ME 71, ¶¶ 20-21, 72 A.3d 503 (explaining that "[w]hile it is permissible for the sentencing court to consider comparable sentences at the first step [of the sentencing analysis] if appropriate, neither the statute nor our case law mandate it," and noting the "inherent difficulty in collecting, compiling, and comparing cases involving identical charges but vastly differing facts and surrounding circumstances").

46. **In the case of Harry Every, who held a gun to a woman's head and threatened to kill her and a 14-year-old girl, how did you justify suspending nine years of his 15-year sentence?**

Response: The State charged Every with attempted murder and other offenses. Prior to trial, the State offered the defendant a plea deal that would have required him to serve 3 years and 8 months at the outset. The defendant rejected this offer and proceeded to trial. The jury found the defendant not guilty of attempted murder but convicted him of burglary and domestic terrorizing, threatening, and reckless conduct offenses.

In light of the jury's verdict, I had no authority to impose a sentence for attempted murder and doing so would have been a violation of my obligations as a judge. The State's sentencing recommendation relied heavily on conduct of which the defendant had been found not guilty. The only domestic violence offenses of conviction carried 5-year statutory maximum sentences. I imposed an overall sentence of 15 years with all but 6 years suspended and 4 years of probation on the burglary charge and concurrent 5-year sentences (the statutory maximum) on each of the domestic violence offenses. The 6-year unsuspended portion of the sentence that I imposed for the burglary conviction was substantially longer than the 3 years and 8 months the State had offered the defendant before trial.

a. **After the victim in this case warned you that it was "not a matter of if he will attack me again, but when," how did you justify reducing the criminal defendant's effective prison time to about four years?**

   Response: Please see my response to Question 46. I was not the factfinder at trial and imposed a sentence that reflected the jury's verdict. The sentence was 15 years with all but 6 years suspended and 4 years of probation. The defendant will have to serve 6 years before release on probation conditions, and, like all criminal defendants in Maine, will receive credit for time spent in custody prior to trial. 17-A M.R.S. § 2305(1) (2023). I determined that the statutory factors supported suspending a portion of the sentence because the defendant's only criminal history consisted of some old driving offenses; his former partner testified at trial that there was no history of domestic violence in their relationship; the defendant was an alcoholic who had been extremely intoxicated on the night of the crime; and since he had been bailed pending trial (by another judge), he had complied with all bail conditions, remained sober, and engaged in extensive treatment.

b. **Given that Mr. Every faced forty-five years in prison for his heinous actions, what rationale did you have for a sentence that ultimately means he serves less than a tenth of that time?**

   Response: Please see my response to Questions 46 and 46a for my sentencing rationale. The defendant faced at most thirty years in prison, which was the maximum possible sentence for the burglary conviction. I do not believe that consecutive sentences were authorized under Maine law given that the convictions all arose from one criminal episode. *See* 17-A M.R.S. § 1608 (2022). The State did not request consecutive sentences.

c. **In light of the severe nature of Every's crimes, including attempting to fire a gun**

at his victim multiple times, how do you explain your decision to prioritize his rehabilitation over the safety and justice for his victims?

Response: Please see my response to Questions 46 and 46a for my sentencing rationale. I did not prioritize the defendant's rehabilitation over the safety of and justice for his victims. The testimony about the defendant firing a gun at the victim was offered at trial in support of the charge of attempted murder. The jury found the defendant not guilty of that offense.

d. **How exactly does suspending substantial portions of sentences for violent offenders align with the principles of justice and public safety?**

Response: Maine's sentencing statute requires courts to "determine what portion, if any, of the maximum term of imprisonment . . . should be suspended, and if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension." 17-A M.R.S. § 1602(1)(C); *see Hewey*, 622 A.2d 1151, 1154-55 (setting forth required three-part sentencing analysis). Apart from cases of murder and gross sexual assault, which are subject to a different sentencing scheme, there is no mechanism under Maine law to place a defendant on a period of supervised probation upon release from incarceration unless a portion of the sentence is suspended. *See* 17-A M.R.S. § 1602. By statute, in determining whether a period of probation is warranted, the court is directed to consider whether "the person is in need of the supervision, guidance, assistance or direction that probation can provide." 17-A M.R.S. § 1802(2). The Maine Supreme Judicial Court has explained that the court may choose to suspend a portion of the sentence if it determines that "society will better be protected by affording a period of supervised probation of an offender." *Hewey*, 622 A.2d at 1155.

e. **How do you address the public perception, fueled by cases like Harry Every's, that your sentencing practices are overly lenient and fail to adequately punish violent offenders?**

Response: As a former federal prosecutor and sitting state court judge, public safety is a paramount concern in every case that comes before me. Judges in Maine are required to "appropriately individualize each sentence," *State v. Hewey*, 622 A.2d 1151, 1154 (Me. 1993) (citation and quotation marks omitted), and consistent with this requirement, I have a history of imposing sentences based on the law and facts of each case. As a result, none of my sentencing decisions have been reversed.

As reflected in the public support I have received, discussed in the next paragraph, my sentencing practices are fair and account for the need to punish violent offenders. I am aware of one opinion piece in the *Bangor Daily News* from the summer of 2022 that called for harsher sentences for domestic violence offenses in Maine and was addressed to "Maine district attorneys and judges." That column referenced the sentence I imposed in the *Every* case along with several other domestic violence cases for which I was not the judge. It appeared to cite public news reporting about

testimony from the first day of the jury trial in the *Every* case during which the State offered testimony in support of an attempted murder charge. The piece reflects a fundamental misunderstanding of the history of that case—namely, the column did not account for the fact that the jury found the defendant *not guilty* of attempted murder, rejecting the State's arguments on the conduct that was described in the opinion piece.

I have received letters of support from the Maine Attorney General, whose office prosecutes some of the criminal cases I have handled, including the *Malloy* case, as well as from District Attorney Maeghan Maloney, whose office prosecutes most of the criminal cases I have handled. DA Maloney wrote in her letter to the Senate Judiciary Committee that I am "one of the most talented, intelligent, fair-minded, ethical, and diligent judges in the State of Maine." She further wrote that she had "questioned the prosecutors in [her] office and everyone feels the same way: with Justice Lipez we know that justice will prevail." Finally, she noted the particular concern I show to victims of domestic violence, explaining that I "listen[] deeply to the words of victims." I have also received public support from the Maine Coalition to End Domestic Violence, which wrote in its letter to this Committee that as a judge I "hold high-risk perpetrators of domestic violence and abuse accountable," as well as the Maine Coalition Against Sexual Assault and Preble Street Anti-Trafficking Services.

f. **What specific factors did you consider in Mr. Every's case that led you to believe a suspended sentence and probation were appropriate for someone who showed such a blatant disregard for human life?**

Response: The defendant is currently serving 6 years in custody and faces an additional 9 years if he violates his probation conditions upon release. Please see my response to Questions 46, 46a, and 46c for the factors I considered at sentencing.

47. **In the case of *United States v. Suero*, how do you justify recommending only 108 months for a defendant who violated his bail conditions and directly facilitated child prostitution?**

Response: My reputation as a federal prosecutor for more than a decade was one of zealous advocacy on behalf of victims of crime. In *United States v. Suero*, a case that I prosecuted, the defendant pleaded guilty to one count of conspiracy to commit sex trafficking of a minor, in violation of 18 U.S.C. § 1594(c). The plea agreement and sentencing recommendation in this case, which were authorized by supervisors in the U.S. Attorney's Office, were reached after close consultation with the victim and were consistent with the victim's wishes. While I cannot disclose the nature of confidential conversations with a victim, I can state that one of the government's primary motivating factors in reaching the plea agreement was the avoidance of a public trial at which the minor victim would have to testify. The victim chose not to appear in person at the sentencing.

In this case, I objected to the defendant's release on bail pending trial, as well as his continued release on bail after he entered a guilty plea. In each circumstance, a judge ordered the defendant released over my objection. The defendant ultimately entered a guilty plea to conspiracy to commit sex trafficking of a minor. On behalf of the government, I argued that the sentencing guidelines range as initially calculated by the U.S. Probation Office in the presentence report was incorrect as a matter of law and was too low. The district court agreed with my arguments and concluded that the higher guideline range the government was advocating for was correct. The court ultimately calculated the advisory guideline range as 121 to 151 months. The defendant was sentenced to 108 months in prison, which was only slightly below the advisory guidelines range. The plea, which was negotiated pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), precluded the government from asking for a sentence of more than 120 months. Pursuant to U.S. Attorney's Office Policy, all plea agreements required supervisory approval, including in some cases up to the level of the U.S. Attorney. In addition, as an Assistant U.S. Attorney, I could not ask for a sentence outside the guidelines range without supervisory approval. In this case, the government recommended 108 months (9 years) after considering all the sentencing factors set forth in 18 U.S.C. § 3553(a).

a. **Why did you advocate for a below-guideline sentence for Isaac Suero, a convicted human trafficker who continued to exploit minors even while on bail?**

Response: Please see my response to Question 47. My reputation as a federal prosecutor for more than a decade was one of zealous advocacy on behalf of victims of crime. My job as an Assistant United States Attorney was to represent the United States and, per policy, I was not authorized to ask for a sentence outside the sentencing guidelines range without supervisory approval. In every case, the sentencing recommendation I made reflected the position of the U.S. Attorney's Office. In all cases involving victims, I closely consulted with the victims at every stage of the process, up to and including sentencing.

The plea agreement and sentencing recommendation in the *Suero* case, which were authorized by supervisors in the U.S. Attorney's Office, were reached after close consultation with the victim and were consistent with the victim's wishes. At the time the plea agreement was negotiated, the expectation was that the defendant would receive credit for acceptance of responsibility and that the advisory guidelines range would be lower. Although I objected to the defendant's release on bail pending trial, as well as his continued release on bail after he entered a guilty plea, in each circumstance, a judge ordered the defendant released. As a result of the defendant's further conduct on bail, the defendant lost credit under the guidelines for acceptance of responsibility. That resulted in an advisory guidelines range that was just above the maximum sentence authorized by the plea agreement. As I stated at sentencing, the government chose to recommend a sentence slightly below the bottom of the advisory guidelines range because the defendant had entered a guilty plea and accepted responsibility for his conduct, thus sparing the victim from having to testify at trial. While I cannot disclose the nature of confidential conversations

with a victim, I can state that one of the government's primary motivating factors in reaching the plea agreement was the avoidance of a public trial at which the minor victim would have to testify. The victim chose not to appear in person at the sentencing.

b. **Given your role as the Human Trafficking Coordinator, how do you explain your decision to request lenient sentences for human traffickers instead of seeking maximum penalties to protect victims?**

Response: My reputation as a federal prosecutor for more than a decade was one of zealous advocacy on behalf of victims of crime. My job as an Assistant United States Attorney was to represent the United States and, per policy, I was not authorized to ask for a sentence outside the sentencing guidelines range without supervisory approval. In every case, the sentencing recommendation I made reflected the position of the U.S. Attorney's Office. In all cases involving victims, I closely consulted with the victims at every stage of the process, up to and including sentencing. My reputation as a prosecutor is reflected in the many letters of support I have received. For example:

- My former supervisors at the U.S. Attorney's Office wrote: "Justice Lipez was a superb federal prosecutor who exemplified the highest ideals of the United States Department of Justice in every case she prosecuted in the District Court and the Court of Appeals. We witnessed that Justice Lipez's relationship with our law enforcement partners at all levels was one of mutual respect and admiration arising out of the leadership she demonstrated with those partners. To the countless victims of crime whose causes she championed, Justice Lipez's steady hand and calm presence were, to be sure, enormously comforting."
- Retired federal agents with whom I worked, including the agents in charge of the Maine FBI and Homeland Security Investigations offices, wrote: "Justice Lipez was a tireless advocate for victims of crime, including women who suffered abuse and exploitation."
- The former National Domestic Violence Coordinator at the Department of Justice, with whom I worked closely, wrote: "Ms. Lipez was always cognizant of the impact of domestic violence on victims and their families. She was sensitive to these concerns and approached victims with empathy and compassion. She also was instrumental in forging appellate decisions that helped USAOs around the country prosecute domestic violence offenders and hold them accountable for their crimes. . . . Ms. Lipez was also a leader in the USAO efforts to combat human trafficking, especially when it involved minor victims. She worked closely with the victims, the Office's Victim Witness Coordinator, law enforcement agents, and advocates - all of whom were dedicated to helping trafficking victims and doing their best to ensure that the emotional and physical needs of the victims are met. . . . Ms. Lipez approached

each case with concern for the victim's well-being and hopes that prosecution of traffickers will prevent future Maine minors from a similar fate."

- The Deputy Director of Preble Street Anti-Trafficking Services, the only service provider in Maine offering comprehensive services to survivors of human trafficking, wrote that as a prosecutor, "Justice Lipez consistently demonstrated a victim-centered approach to engaging victims and worked collaboratively to develop state-wide initiatives to strengthen and enhance Maine's infrastructure to respond to human trafficking. Justice Lipez's commitment to the needs and healing of victims resulted in prosecutions that were victim-centered and trauma-informed. Her thoughtful, fair, and smart leadership has had a lasting and positive impact on the pursuit of justice for crime victims."
- The former District Attorney of Cumberland County, Maine's most populous county, with whom I worked on human trafficking matters, wrote that I was "always supportive of human trafficking victims and ma[de] sure that their safety was paramount" and "worked with law enforcement to put together a very thorough and grounded criminal prosecution that would hold perpetrators accountable for these heinous crimes."

c. **How do you reconcile your lenient sentencing recommendations with your stated commitment to combating human trafficking and protecting vulnerable minors?**

Response: My reputation as a federal prosecutor for more than a decade was one of zealous advocacy on behalf of victims of crime. Please see my response to Question 47b.

d. **Do you believe that your repeated advocacy for light sentences for human traffickers reflects a disregard for the severity of their crimes and the lasting harm inflicted on their victims?**

Response: My reputation as a federal prosecutor for more than a decade was one of zealous advocacy on behalf of victims of crime. Please see my response to Question 47b.