Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for María del R. Antongiorgi
Nominee to be United States District Judge for the District of Puerto Rico
July 20, 2022

1. **Virtually all judicial nominees bring with them to the bench expertise in certain areas of the law. And all of these nominees, once confirmed, must consider and rule on a host of legal issues they have not personally confronted beforehand.**

    a. **What steps would you take to familiarize yourself with legal issues that you have not previously encountered in your career?**

    Response: In my 23 years of legal experience, I have represented a wide range of civil litigation subject matters and I have tried 42 cases to verdict or judgment in federal and state courts. It is my hope that these experiences along with my expose to all the innerworkings of the U.S. District Court for the District of Puerto Rico as the Clerk of Court for the last three years, will allow me to hit the ground running as a U.S. district judge. Nevertheless, if confirmed, I will take full advantage of the Sentencing Commission trainings on the Sentencing Guidelines; all educational opportunities offered by the Federal Judicial Center, and other legal education programs offered by private institutions and the First Circuit. I will also consult with other district judges to learn from their experiences. Finally, I will devote all necessary time to study, and research matters and substantive issues that I have not previously encountered on my career. Throughout my professional career, I have demonstrated to be a quick learner that remains committed to hard work. I am confident that I will quickly get up to speed.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Ms. Maria Antongiorgi-Jordan
Judicial Nominee to the U.S. District Court for the District of Puerto Rico

1. **In the context of federal case law, what is super precedent?**

   Response: Super precedent is a term commonly used by scholars to describe those constitutional decisions in which public institutions have heavily invested, repeatedly relied, and consistently supported over a significant period of time. Nonetheless, the United States Supreme Court has never used the term "super precedent", nor it has referred to a case as a "super precedent." If confirmed, I will be bound by all Supreme Court and First Circuit Precedent.

2. **Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

   Response: I am not familiar with Justice Brown Jackson's comments. I believe that the Constitution is the supreme law of the land, and that it has an enduring fixed quality to it. The Supreme Court has also said that "our understanding of particular constitutional provisions has evolved over times." *Gonzales v. Raich*, 545 U.S. 1, 15 (2005). If confirmed, I will faithfully apply all binding Supreme Court precedent.

3. **Should judicial decisions take into consideration principles of social "equity"?**

   Response: Judicial decisions should be based solely on the rule of law and applicable precedent. If confirmed, I will faithfully apply all binding precedent from the Supreme Court and the First Circuit to all cases before me.

4. **Is threatening Supreme Court Justices right or wrong? Please explain your answer.**

   Response: Judicial independence is one of the pillars of our democracy. Judges are the protectors of the rule of law. Judicial independence must be respected, and judges must be free to perform their duties without fear of harm or reprisals.

5. **Under what circumstances can federal judges add to the list of fundamental rights the Constitution protects?**

   Response: When considering whether an unenumerated right must receive constitutional protection, the Supreme Court has held that the Due Process Clauses of the Fifth and Fourteen Amendments protect those rights that are "deeply rooted in the Nation's history and traditions" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997).

6. **What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?**

   Response: In *New York State Rifle & Pistol Assoc. v. Bruen*, 2022 WL 2251305 (June 23, 2022), the Supreme Court held that courts must assess whether firearms regulations are consistent with Second Amendment text and historical understanding (tradition) of firearm regulation. If confirmed, I would apply Supreme Court and First Circuit precedent in evaluating a question under the Second Amendment.

7. **As a general matter, if a judge encounters unsettled Supreme Court precedent, should she anticipate where the Supreme Court will end up, or simply do her best to apply what the Supreme Court has already held?**

   Response: Lower courts are bound to follow Supreme Court precedent. Courts are not to "guess" where the Supreme Court will end-up when deciding a matter. Applying precedent enhances trust and confidence in the judiciary. If confirmed, I will faithfully follow Supreme Court and First Circuit precedent.

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

   Response: Section 1507 of Title 18 (picketing or parading) makes it a crime (misdemeanor), for picketing or parading in or near a courthouse, or near the residence of a judge, juror, witness or court officer, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent to influence any judge, juror, witness or court officer in the discharge of their duties. If confirmed, I would follow Supreme Court and Court of Appeals precedent if confronted with a case of this nature.

9. **Under Supreme Court precedent, is 18 USC § 1507 constitutional on its face?**

   Response: I have not found Supreme Court or First Circuit precedent regarding the constitutionality of 18 U.S.C. § 1507. As a judicial nominee, I am bound by the Code of Conduct for United States Judges. This precludes me from opining on issues that may come before me. Therefore, it would be inappropriate for me to opine as to the constitutionality of 18 U.S.C. § 1507.

10. **Do parents have a constitutional right to direct the education of their children?**

    Response: Yes, the Supreme Court reaffirmed so in *Washington v. Glucksberg*, 521 U.S. 702 (1997). *See also Pierce v. Soc. Of Sisters*, 268 U.S. 510 (1925).

11. Do Blaine Amendments violate the Constitution?

Response: Blaine Amendment was a failed amendment to the Constitution that would have prohibited direct government aid to educational institutions that had a religious affiliation. In *Espinoza v. Montana Department of Revenue,* 140 S. Ct. 2246 (2020) and *Trinity Lutheran Church of Columbia, Inc. v. Comer,* 137 S. Ct. 2012 (2017), the Supreme Court considered the constitutionality of state laws that prohibited the spending of public monies to aid religious institutions or education. In these cases, the Supreme Court held that *Blaines* were unconstitutional under the Free Exercise Clause and could not be used to exclude religious groups from government programs.

12. Would you describe a method of interpreting enumerated individual constitutional rights that depends on their original public meaning at the time of their enumeration as "rigid"?

Response: I am not aware of any Supreme Court opinion describing a constitutional interpretation as "rigid." I am not sure about the meaning of the word "rigid" for purposes of this question.

13. Would you describe a method of interpreting unenumerated individual constitutional rights that depends on them being "deeply rooted in the nation's history" as "rigid"?

Response: Please see my answer to question 12.

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

a. **Was *Brown v. Board of Education* correctly decided?**
b. **Was *Loving v. Virginia* correctly decided?**
c. **Was *Griswold v. Connecticut* correctly decided?**
d. **Was *Roe v. Wade* correctly decided?**
e. **Was *Planned Parenthood v. Casey* correctly decided?**
f. **Was *Gonzales v. Carhart* correctly decided?**
g. **Was *District of Columbia v. Heller* correctly decided?**
h. **Was *McDonald v. City of Chicago* correctly decided?**
i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**

Response: As a judicial nominee, I am bound by the Code of Conduct for United States Judges, which precludes me from commenting or giving my personal opinion as to the correctness (or lack thereof) of Supreme Court opinions and/or issues that might come before me. Since issues relating to de jure racial segregation in public schools and inter-racial marriages are unlikely to come before me, I am comfortable saying that *Brown v. Board of Education* and *Loving v. Virginia* were correctly decided. I must also note that *Roe v. Wade* and *Planned Parenthood v. Casey* were overruled by the Supreme Court

decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. _____ (2022). If confirmed, I will apply binding Supreme Court and First Circuit precedent to all cases before me.

15. **Would you agree that exceeding jurisdictional limitations to opine on questions of substantive law is a form of judicial activism?**

    Response: Judicial activism is defined as "a philosophy of judicial decision-making or by judges allow their personal views about public policy, among other factors, to guide their decisions." Judicial activism, Black's Law Dictionary (11th ed. 2019).

    Regardless of whether exceeding jurisdictional limitations is properly defined as judicial activism, it is something federal judges should avoid. Federal judges must assure themselves that every case that comes before them is properly justiciable including that federal courts have jurisdiction to consider the issues in the case.

16. **In a case of first impression should the Constitution be interpreted according to how it was understood by the public at the time of enactment? If not, how do you think it should be interpreted?**

    Response: If confirmed, I will follow Supreme Court guidance and precedent when faced with a constitutional issue of first impression. There are certain cases in which the Supreme Court has looked at the original public meaning of a constitutional provision. For example, in *District of Columbia. v. Heller*, 1554 U.S. 570 (2008), the Supreme Court looked at the original public meaning of the Second Amendment.

17. **What role should empathy play in interpreting the law?**

    Response: Judges should treat all parties appearing before them with respect and civility. Nonetheless, judges' decision-making should be guided only by the rule of law and binding Supreme Court precedent and not by personal beliefs, emotions or opinions.

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

    Response: No.

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

    Response: No.

20. 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, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

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

Response: No.

22. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**
c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

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

a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
b. **Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**
c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

24. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**
    a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
    b. **Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**
    c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**
    d. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No.

25. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**
    a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
    b. **Are you currently in contact with anyone associated with the Open Society Foundations?**
    c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

    Response: No.

26. **Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."**
    a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
    b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

27. **The Raben Group is "a national public affairs and strategic communications firm committed to making connections, solving problems, and inspiring change across the corporate, nonprofit, foundation, and government sectors." It manages the Committee for a Fair Judiciary.**
    a. **Has anyone associated with The Raben Group or the Committee for a Fair Judiciary requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
    b. **Are you currently in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**
    c. **Have you ever been in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

    Response: No.

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

    Response: On November 10, 2021, I was interviewed by the Hon. Pedro Pierluisi, Governor of Puerto Rico, for a judicial vacancy in the District of Puerto Rico. On January 23, 2022, I was contacted by an attorney from the White House Counsel's Office to schedule an interview, which took place on January 24, 2022. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 15, 2022, my nomination was submitted to the Senate.

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

    Response: I received the questions for the record on July 20, 2022. I personally answered each question. For some questions, I relied on my own analysis, the Senate Judiciary Questionnaire, and legal research. I received feedback on some responses from the Office of Legal Policy.

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

<u>Questions for the Record for María Antongiorgi-Jordán, Nominee for the United States District Court for the District of Puerto Rico</u>

I. Directions

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

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

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

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

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

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

II. Questions

1. Is racial discrimination wrong?

Response: Yes. The Supreme Court has said that race is a "suspect classification" subject to a strict scrutiny standard. *Graham v. Richardson,* 403 U.S. 365 (1971). Additionally, there are federal statutes prohibiting racial discrimination in employment, public accommodations, 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: The Supreme Court held in *Washington v. Glucksberg*, 521 U.S. 702 (1997), that new unenumerated rights receive constitutional protection only if they are "deeply rooted in the Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed."

As a judicial nominee, I am bound by the Code of Conduct for United States Judges that precludes me from opining as to whether there are other enumerated rights that should receive constitutional protection.

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: Having appeared before a large number of state and federal judges, I can attest to the value of an impartial judge that applies the law and precedent even handedly. To be able to do that, a judge must appear at all times "prepared", knowing the relevant facts of the case and applicable legal principles. This will enable the judge to question the parties properly, clarify or solve controversies. In turn, this requires that the judge gives the parties an opportunity to be heard, present his/her evidence while listening carefully and soberly evaluating the issues. During the process, I understand the judge must set the example as it relates to timeliness, respect for the parties, preparedness and civility. In rendering a decision, I will strive for the parties to know and understand the legal basis for the final determination and the reasoning that led to the same, which must be based on law and precedent.

Although I have not studied the judicial philosophies of Supreme Court Justices, I will always be bound by 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 defines "originalism" as a "doctrine that words of a legal instrument are to be given the meaning they had when they were adopted.

Originalism, Black's Law Dictionary (11th ed. 2019). If confirmed, I would be guided by Supreme Court and First Circuit precedent, as well as the methods of interpretation they have used for a particular question. The Supreme Court has applied originalism in many cases including *District of Columbia v. Heller*, 554 U.S. 570 (2008).

5. **For the past four years, you have served in an administrative position as Clerk of Court for the District Court of Puerto Rico. Your duties, in your own words are: "Drafting of the Court's Reconstitution Plan, the Court's Trial Protocol, and the Court's In-Person Proceedings Protocol, and other human resources protocols during the COVID-19 pandemic in Puerto Rico; Responsible for conducting jury orientations and qualification sessions; and Serving as a member of the Local Rules, Criminal Justice Act, Space and Facilities, Security, and Jury Services Court Committees."**

Response: I respectfully submit that the description of my duties as stated above does not reflect the totality and complexity of the duties of Clerk of Court.

a. **Have you argued a case within the past four years?**

Response: In my 23 years of complex civil litigation practice prior to becoming the Clerk of Court, I handled hundreds of cases in federal and state court and was the lead attorney in 42 trials (with 91% success rate) and many evidentiary hearings. I also have six (6) years of criminal practice experience, having been a member of the Criminal Justice Act panel of attorneys providing legal representation to indigent defendants criminally charged in federal court. Although I have not argued a case since joining the court, I have had close contact with the legal field, including but not limited to researching issues on Fourth, Fifth and Sixth Amendments rights; participated in the review of the Local Rules of the Court that do mirror the Federal Rules of Civil Procedure, as amended; presided over jury orientations and qualifications reviewing the Jury Plan for the district, and working closely with jury matters, among others.

b. **Does the position of Clerk of Court require a law degree?**

Response: Possessing a law degree is a preferred qualification for the position of Clerk of Court. Historically, all Clerks of Court in the District of Puerto Rico have had a law degree.

c. **Do you believe the COVID-19 pandemic is rampant today?**

Response: That is a policy question that I must refrain from answering. As of July 24, 2022, official data indicates that there have been approximately 866,900 reported COVID-19 cases in Puerto Rico since the beginning of the pandemic, and approximately 2,700 cases per day in the last week.

6. 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 defines "living constitution" as a doctrine in which "the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Black's Law Dictionary (11th ed. 2019). I characterized myself as someone who would always follow and apply binding precedent from the Supreme Court and First Circuit.

7. 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 such instances, I would interpret the text in a manner consistent with the methods of interpretation that the Supreme Court has used. For example, in *District of Columbia. v. Heller*, 554. U.S. 570 (2008), the Supreme Court looked at the original public meaning of the Second Amendment.

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

Response: The general rule is that when interpreting a constitutional or statutory provision, judges should rely on the plain language of the provision and precedent. Should I be confirmed, I would follow Supreme Court and First Court precedent when interpreting a constitutional or statutory provision. See *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

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

Response: Please see my answer to question number 6.

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

Response: *Dobbs v. Jackson* is binding precedent. If confirmed, I will be bound by all binding precedent from the Supreme Court and the First Circuit.

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

Response: *New York Rifle & Pistol Association v. Bruen* is binding precedent. If confirmed, I will be bound by this and all Supreme Court and First Circuit precedent.

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

Response: Under 18 U.S.C. § 3142 (e)(3), a rebuttable presumption arises favoring detention in cases where the judicial officer finds that probable cause exists to believe that the person has committed one of the following offenses:

(a) An offense under the Controlled Substances Act (21 U.S.C. § 801 et seq.) carrying a maximum penalty of 10 years or more;

(b) an offense under § 924 (c) (use of weapons in furtherance of crimes of violence or drug trafficking), conspiracies to kill, kidnap, maim or injure persons or damage property in a foreign country or § 2232 (6) (regarding acts of terrorism transcending national boundaries);

(c) offenses listed under Section 23326(g)(5)(b) (offenses relating destruction of aircrafts, violence at international airports, use of biological weapons, etc.);

(d) offenses under Chapter 77 of Tittle 18 (peonage, slavery and trafficking of persons) where the maximum penalty is 20 years of imprisonment or more, or

(e) offenses involving minor victims.

In such cases, subject to rebuttal, it should be presumed that no condition or combination of conditions will reasonably assure the future appearance of the defendant (flight risk) or the safety of the community (danger prong).

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

Response: The purpose of preventive detention is to assure the defendant's future presence in court while ensuring public safety, and that of witnesses and/or jurors.

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

Response: Yes. As per the Supreme Court's decision in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the government cannot impose burdens on religious beliefs protected by the Religious Clauses of the First Amendment. These clauses generally limit government imposition on private institutions. Strict scrutiny applies where the government treats any secular activity more favorably than religious activities. *Id*. See also *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021); *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018); and *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014).

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

Response: Religion is considered a suspect classification which a court will review subject to a strict scrutiny standard. This means that laws that discriminate on the basis of religion or are not neutral to religion must be justified by a compelling governmental interest and must be narrowly tailored to that interest. *Church of the Lukimi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

15. 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 this case, in seeking injunctive relief, the plaintiffs showed that their First Amendment claims were likely to prevail, that denying them relief would lead to irreparable injury, and that granting relief would not harm the public interest. *Roman Catholic v. Cuomo*, 141 S. Ct. 63 (2020).

In asserting the likelihood of success, the Supreme Court said that the Governor's order violated "the minimum requirements of neutrality", which made it unlikely to survive the strict scrutiny standard that courts apply to fundamental rights in the First and Fourteenth Amendments. Id., at 66-67.

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

Response: In *Tandon v. Newsom,* 141 S. Ct. 1294 (2021), the U.S. Supreme Court granted injunctive relief against a California regulation that restricted at-home Bible studies and prayers meetings by limiting all gatherings in private homes. The Court concluded that the California regulation was "not neutral and generally applicable" and therefore, triggered strict scrutiny under the Free Exercise Clause. The Court also concluded that California's regulation treated "comparable secular activity more favorably than religious exercise." Id.

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

Response: Yes.

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

Response: In *Masterpiece Cakeshop v. Colorado*, 138 S. Ct. 1719 (2018), the Supreme Court held that the Colorado Civil Rights Commission treatment of the cakeshop owner showed "elements of clear and impermissible hostility towards the sincere religious beliefs" that motivated respondent's refusal to prepare a wedding cake for a same-sex couple. The Court also concluded that the Commission's treatment of Phillip's case (respondent) violated the State's duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint.

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

Response: Yes. Sincerely held beliefs are protected. *See, Frazee v. Illinois Department of Employment Security*, 489 U.S. 829 (1989) and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

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

Response: In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court ruled that courts are not to decide whether religious beliefs are substantial, but rather if they represent an honest conviction. The Court's role is to determine whether the religious belief is sincerely held.

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

Response: The role of the courts is to decide whether religious believes represent an honest conviction and if that religious belief is sincerely held. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

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

Response: As a judicial nominee, I would not want to speak about whether a particular viewpoint represents the official position of a particular religious faith.

20. 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 this case, the Supreme Court extended the "ministerial exception" to be more encompassing and include other individuals, aside from those designated as *Id* "ministers". The key inquiry is "what the employee does". *Id*. Based on this principle, the Supreme Court applied the "ministerial exception" to laws governing the employment relationship between a religious institution (Catholic School) and key employees (religion teachers).

21. 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.____ (2021), the Supreme Court held that the refusal of Philadelphia to contract with Catholic Social Services unless it agreed to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. *Id* at 13. The Supreme Court also ruled that the city burdened Catholic Social Services' religion exercise through policies that did not satisfy the threshold requirement of being neutral and generally applicable. Because the provision in question was not generally applicable, the Court applied strict scrutiny, and concluded that the city did not articulate a compelling interest that was narrowly tailored to achieve those interests. *Id* at 15.

22. 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 this case, Maine enacted a program of tuition assistance, but limited tuition assistance payments to "nonsectarian schools." In holding that Maine's "nonsectarian" requirement for otherwise generally available tuition assistance payments violated the Free Exercise Clause, the Supreme Court held that "indirect coercion or penalties on the free exercise of religion" is not protected under the Free Exercise Clause First Amendment. The Court applied strict scrutiny and reaffirmed its holdings in *Trinity Lutheran Church of Columbia, Inc. v. Comer,* 137 S. Ct. 2012 (2017) and *Espinoza v. Montana Department of Revenue,* 140 S. Ct. 2246 (2020).

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

Response: In this case, Mr. Kennedy lost his job after he knelt at midfield after football games to offer a quiet personal prayer. The Supreme Court held that the Free Exercise and Free Speech Clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress such religious expressions. *Kennedy v. Bremerton School District,* 2022 WL 2295034 (2022) at 11-32. The Supreme Court also held that the government had burden Mr. Kennedy's sincere religious practice pursuant to a policy that was not "neutral" or "generally applicable". Failing either the neutrality or general applicability test is sufficient to trigger strict scrutiny, which the government did not survive.

24. 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), a group of Amish people challenged Minnesota's decision requirement to install a septic system. They objected to installing the system on religious grounds.

In his concurrent opinion, Justice Gorsuch outlined what he believed should become a roadmap for the analysis of Free Exercise Clause cases: (i) that the government must establish its compelling interest with specificity. This analysis must be "precise", rather than "broadly formulated"; (ii) consideration of the sorts of exemptions the state gives to other groups; and (iii) the State most demonstrate that its policy is narrowly tailored "with evidence", not "supposition."

25. 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 bound by the Code of Conduct for United States Judges which precludes me from commenting on matters that may come before me.

26. 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;

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

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

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

Response: I am not aware that any such trainings are provided by the Administrative Office of the United States Courts, the First Circuit or by the District of Puerto Rico. In general, trainings should be consistent with the Constitution and federal laws.

27. **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, I am not aware of any such trainings in the First Circuit or the District of Puerto Rico.

28. **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.

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

Response: I am not aware of any Supreme Court or First Circuit decision that addresses this particular question. Presidential appointments are within the purview of the Executive and Legislative branches, and as a judicial nominee, it would not be appropriate for me to comment on policy issues.

30. **Is the criminal justice system systemically racist?**

Response: I have not studied this important issue. Nonetheless, as to the District of Puerto Rico, there has never been an allegation of such nature. If confirmed, I will abide the principle of equal justice under the law, and everyone appearing before me will be treated with respect and afforded due process.

31. **President Biden has created a commission to advise him on reforming the U.S. Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: As a judicial nominee, it would not be appropriate to comment on policy issues or to answer hypotheticals.

32. **What is your stance on Puerto Rico becoming a state instead of maintaining its territorial status?**

Response: As a judicial nominee, I am bound by the Code of Conduct for United States Judges, which precludes me from commenting on political issues. Regardless of any personal beliefs I may have on this or any other issue, if confirmed my decisions would be based on the biding precedent of the Supreme Court and the First Circuit.

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

Response: As a judicial nominee, I am bound by the Code of Conduct for United States Judges, which preclude me from commenting on the legitimacy, or lack thereof, of sitting members of the Supreme Court.

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

Response: The Second Amendment protects an individual right to keep and bear arms (unconnected with service in the militia). *District of Columbia. v. Heller,* 554 U.S. 570 (2008); *New York State Rifle & Pistol Association v. Bruen,* 2022 WL 2251305 (June 23, 2022).

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

Response: In *Heller*, the Supreme Court held that handguns were "arms" for purposes of the Second Amendment. The Court also struck down Second Amendment grounds, the portion of the Regulations Act that required that all firearms, including rifles and shotguns, be kept unloaded and disassembled or bound by a trigger lock. The Supreme Court also ruled that the Second Amendment protects an individual's right to bear arms for self-defense in the home.

In *McDonald*, the Supreme Court held that the right of the people to keep and bear arms applied to state and local governments, as well as the federal government.

In *Bruen,* the Supreme Court ruled New York's concealed carry law unconstitutional, extending the right to own a gun for self-defense to outside the home (public areas).

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

Response: Yes, in *District of Columbia. v. Heller,* 554 U.S. 570 (2008), the Supreme Court held that the right to own a firearm is a personal civil right.

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

Response: No. *New York State Rifle & Pistol Association v. Bruen,* 2022 WL 2251305 (June 23, 2022).

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

Response: No. *New York State Rifle & Pistol Association v. Bruen,* 2022 WL 2251305 (June 23, 2022).

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

Response: If a case came before me, were litigants challenged a particular action or non-action by the executive branch to properly enforce a law, I would carefully study the facts of the case and any Supreme Court ant First Circuit precedent.

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

Response: My understanding of prosecutorial discretion is the power to determine what, if any charges will be filed against an accused offender, and how to pursue that case. In contrast, a substantive administrative rule change is defined as the agency's power to implement, interpret or prescribe law. 5 U.S.C. §551 (4).

41. Does the President have the authority to abolish the death penalty?

Response: No. Only Congress has that power.

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

Response: In *Alabama Association of Realtors v. Department of Health and Human Services,* 141 S. Ct. 2485 (2021), the Supreme Court nullified a nationwide residential eviction moratorium imposed by the Centers for Disease Control and Prevention ("CDC") during the COVID-19 pandemic.

In its ruling, the Supreme Court found that the CDC's broad interpretation of its mandate could permit dramatic administrative overreach. It went on to say that "it was up to Congress, not the CDC, to decide whether public interest furthers action." Id. at 2490.

Senator Josh Hawley
Questions for the Record

Maria del Rocio Antongiorgi
Nominee, U.S. District Court for the District of Puerto Rico

1. **Then-Judge Ketanji Brown Jackson made a practice of refusing to apply several enhancements in the Sentencing Guidelines when sentencing child pornography offenders. Please explain whether you agree with each of the following Guidelines enhancements and whether, if you are confirmed, you intend to use them to increase the sentences imposed on child pornography offenders.**

    a. **The enhancement for material that involves a prepubescent minor or a minor who had not attained the age of 12 years**

    b. **The enhancement for material that portrays sadistic or masochistic conduct or other depictions of violence**

    c. **The enhancement for offenses involving the use of a computer**

    d. **The enhancements for the number of images involved**

    Response: I have not studied Justice Brown Jackson's sentencing philosophy. However, if confirmed, when sentencing child pornography offenders and in all cases, I would follow all sentencing factors set in 18 U.S.C. § 3553 and the Sentencing Guidelines. The above listed factors constitute specific offense characteristics that do enhance the base offense level for the offense of conviction. When supported by the evidence, its consideration leads to the proper computation of the level of seriousness of the offense.

2. **Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's 0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.**

    a. **Do you agree that the penalties should be aligned?**

    b. **If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?**

    Response: This is a policy matter that is better left to Congress to decide. If confirmed, my sentencing philosophy would be sentencing individuals according to the penalties set forth in federal law pursuant to the criteria established in 18 U.S.C. § 3553 and the Sentencing Guidelines.

3. **Do you believe that the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* is settled law?**

Response: *Dobbs v. Jackson Women's Health Organization* is binding precedent. If confirmed, I will be bound by all binding precedent from the Supreme Court and the First Circuit.

4. **Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."**

   a. **Do you agree with that philosophy?**

   b. **If not, do you think it is a violation of the judicial oath to hold that philosophy?**

Response: I have not studied Justice Marshall's judicial philosophy. Having appeared before a large number of state and federal judges, I can attest to the value of an impartial judge that applies the law and precedent even handedly. To be able to do that, a judge must appear at all times "prepared", knowing the relevant facts of the case and applicable legal principles. This will enable the judge to question the parties properly, clarify or solve controversies. In turn, this requires that the judge gives the parties an opportunity to be heard, present his/her evidence while listening carefully and soberly evaluating the issues. During the process, I understand the judge must set the example as it relates to timeliness, respect for the parties, preparedness and civility. In rendering a decision, I will strive for the parties to know and understand the legal basis for the final determination and the reasoning that led to the same, which must be based on law and precedent.

5. **What is the standard for each kind of abstention in the court to which you have been nominated?**

Response: The abstention doctrines are based on the principles of federalism. These are doctrines in which a federal court, including the District of Puerto Rico, decides not to exercise jurisdiction and leaves the matter (issue) to the consideration of the state courts.

Younger doctrine: This doctrine named for *Younger v. Harris,* 401 U.S. 37 (1971), mandates that federal courts must abstain from hearing cases already pending and being litigated in state forums. Although *Younger* was decided in the context of a criminal case, in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.,* 544 U.S. 280 (2005), the Supreme Court held that when there is parallel litigation in state and federal court, the federal court may be bound to recognize the preclusive effect of a state judgment. In *Rio Grande Community Health Center v. Rullan,* 397 F.3d 56, 69-70 (1st Cir. 2005), the First Circuit held that *"Younger* abstention has been appropriate where the fundamental workings of a state's judicial system (like its contempt process of method of enforcing judgments) are put at risk by the relief asked of the federal court." Id. at 70. "*Younger* applies … when

the relief asked of the federal court interfere[s] with the state court proceedings … and interference is thus usually expressed as a proceeding that either enjoins the state proceeding or has the practical effect of doing so. Id. 70. *See also Rossi v. Gemma,* 489 F.3d 26 (1st Cir. 2007); *Sirva Relocation, LLC v. Richie,* 794 F.3d 185 (1st Cir. 2015).

Burford doctrine: This doctrine is named after *Burford v. Sun Oil Co.,* 319 U.S. 315 (1943). Under this doctrine, federal courts, through an exercise of equitable discretion, could abstain from asserting subject matter jurisdiction over challenges to state administrative agency orders. This means, that federal courts should defer to state court to review the state agencies.

In *Forty-Six Hundred LLC v. Cadence Edu., LLC,* 15 F. 4th 70 (1st Cir. 2021), the First Circuit held that "abstention in the Burford line of cases rested upon … the threat … that the federal court might, in the context of the state regulatory scheme, create a parallel, additional, federal, 'regulatory review' mechanism, the existence of which would significantly increase the difficulty of administering the state regulatory scheme. *Bath Memorial Hospital v. Maine Health Care Finance Commission,* 853 F.2d 1007, 1013 (1st Cir. 1988).

"The fundamental concern in *Burford* is to prevent federal courts from bypassing a state administrative scheme and resolving issues of state law and policy that are committed in the first instance to expert administrative resolution." Forty-Six Hundred at 10. Instead, *Burford* abstention applies only in "unusual circumstances", when the federal court risks usurping the state's role as the "regulatory decision making." Id. at 10.

Pullman doctrine: This abstention doctrine states that federal courts should exercise its discretion to stay away from a case, where constitutional considerations are at play, when state court proceedings can resolve the issue. This doctrine evolved from the case namely, *Railroad Comm'n of Texas v. Pullman Co.,* 312 U.S. 496 (1941).

The First Circuit considers two factors in determining whether *Pullman* abstention is appropriate: (1) whether there is substantial uncertainty over the meaning of the state law at issue; and (2) whether a state court's clarification of the law would obviate the need for a federal constitutional ruling." *Ford Motor Co. v. Meredith Motor Co.,* 257 F.3d 67, 71 (1st Cir. 2001).

Colorado River doctrine: Under this abstention-doctrine, only exceptional circumstances, beyond the mere pendency or a parallel state case, will permit a federal court to relinquish jurisdiction in favor the state action. This doctrine was named after *Colorado River Conservation District v. United States,* 424 U.S. 800 (1976).

In considering whether *Colorado River* abstention warranted, the First Circuit looks at the following factors: (1) whether either court has assumed jurisdiction or a res; (2) the [geographical] inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether state or federal law controls; (6) the adequacy of the state forum to protect the parties'

interests; (7) the vexatious or contrived nature of the federal claim; and (8) respect for the principles underlying removal jurisdiction. *Rio Grande Community Health Center v. Rullan,* 397 F.3d 56, 71-72 (1st Cir. 2005).

The Rooker-Feldman doctrine: This is a doctrine of Civil Procedure enunciated by the Supreme Court in two cases: *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983). This doctrine hold that lower federal courts may not review the constitutionality of state promulgated statutes and rules, they may not review holdings of the state's Supreme Court pertaining to those policies. This authority is reserved for the U.S. Supreme Court.

Rooker-Feldman applies "whether or not the federal and state causes of action are technically the same for purposes of claim preclusion, or whether all of the familiar conditions for issue preclusion are met." *Sheeham v. Marr,* F. 3d 35, 40 (1st Cir. 2000); *Federación de Maestros v. Junta de Relaciones del Trabajo,* 410 F. 3d 17 (1st Cir. 2005).

6. **Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?**

   a. **If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.**

      Response: I have never worked on such cases.

7. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

   Response: If confirmed, I would follow Supreme Court guidance and precedent when faced with this issue. There are certain constitutional provisions in which the Supreme Court has looked at the original public meaning. For example, in *District of Columbia. v. Heller,* 554 U.S. 570 (2008), the Supreme Court looked at the original public meaning of the Second Amendment.

8. **Do you consider legislative history when interpreting legal texts?**

   Response: If the text is clear, I would consider the plain text of the statute, followed by Supreme Court and First Circuit precedent. *Bostock v. Clayton Cty.,* 140 S. Ct. 1731 (2022). In case of ambiguous statutes, and no binding precedent, I would consider statutory definitions, rules of construction, persuasive precedent from other circuits and some legislative history to interpret the text. *See Exxon Mobil Corp. v. Allapattah Services, Inc.,* 545 U.S. 546 (2005).

   a. **If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?**

Response: The Supreme Court has held that not all legislative history is persuasive, and some legislative history is more persuasive than others. For example, the Supreme Court has found that Committee reports are the most reliable form of legislative history. *Garcia v. U.S.,* 459 U.S. 70, 76 (1984). Repealed legislation is not persuasive. *United States v. Craft,* 535 U.S. 274 (2002).

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: The United States Constitution is a domestic document. It is never appropriate to consult on a foreign document when interpreting the Constitution.

9. Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?

Response: To claim Eighth Amendment protection, an inmate challenging his execution must show: (i) that the method of execution presents a substantial risk of severe pain; and (ii) there is an alternative that is feasible, readily implemented and that reduces the risk of severe pain. *Baze v. Rees,* 553 U.S. 35 (2008). If upon confirmation I were to confront such a claim, I will apply Supreme Court and First Circuit precedent.

10. Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?

Response: An inmate seeking Eight Amendment protection must prove that the available method will significantly reduce substantial risk of severe pain. The *Glossip* Court also stated that prisoners cannot successfully challenge a state's method of execution merely by showing a slightly or marginally safer alternative. Instead, prisoners must identify an alternative that is feasible, readily implemented and that in fact significantly reduces a substantial risk of severe pain.

11. Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?

Response: The Supreme Court has not recognized a right to access a state's DNA testing. I am not aware of any First Circuit precedent providing such a right.

12. **Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

    Response: No.

13. **Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.**

    Response: In *Tandon v. Newsom,* 141 S. Ct. 1294 (2021), the Supreme Court held that governmental regulations "are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." *See also Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520 (1993). The government has the burden to satisfy strict scrutiny: narrow tailoring requires the government to show that the less restrictive means would not address the government's compelling interest. *Fulton v. City of Philadelphia,* 593 U.S. ___ (2021).

14. **Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.**

    Response: Under the Free Exercise Clause, religious discrimination is not permitted, unless the discriminatory regulation is narrowly tailored to achieve a compelling state interest. Government actions that regulate religious activities are subject to strict scrutiny unless there are neutral and generally applicable. *Tandon v. Newsom,* 141 S. Ct. 1294 (2021). Please see my response to question number 13.

15. **What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?**

    Response: The role of the Court is to decide whether religious beliefs represent an "honest conviction." *See Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014). A sincerely held religious belief need not to be based on a "tenet, belief or teaching of an established religious body"; *Frazee v, Illinois Department of Employment Security,* 489 U.S. 829, 831 (1989).

16. **The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."**

    a. **What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?**

       Response: In *Heller*, the Supreme Court held that handguns are "arms" for purposes of the Second Amendment. The Court also struck down the portion of the Regulations Act that required that all firearms, including rifles and shotguns, be kept unloaded and disassembled or bound by trigger lock. Finally, the Supreme Court also held that the Second Amendment protects an individual's right to self-defense in the home.

    b. **Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.**

       Response: No.

17. **Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).**

    a. **What do you believe Justice Holmes meant by that statement, and do you agree with it?**

       Response: I understand Justice Holmes' statement as not favoring one economic theory versus another.

    b. **Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?**

       Response: Considering that in *Ferguson v. Skrupa,* 372 U.S. 726 (1963), the Supreme Court overturned *Lochner*, it will not be proper for me to analyze the wisdom or correctness of said case. Rather, I remain bound to apply precedent.

18. **Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?**

    a. **If so, what are they?**

       Response: I have not studied this issue. If confirmed, I will be bound to follow Supreme Court precedent.

b. **With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?**

Response: Yes.

19. **Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not."** ***United States v. Aluminum Co. of America*****, 148 F.2d 416, 424 (2d Cir. 1945).**

a. **Do you agree with Judge Learned Hand?**

Response: My role as a trial judge would be to follow precedent. If confirmed, I will be bound by Supreme Court and First Circuit precedent when determining what constitutes a monopoly.

b. **If not, please explain why you disagree with Judge Learned Hand.**

Response: Not applicable.

c. **What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.**

Response: I am not aware of any Supreme Court cases that have set an absolute minimum percentage of market shares needed to constitute a monopoly, although it has found that a party with more than 80% share of the product market was enough to support a finding of monopoly. Therefore, it is my understanding that such determination shall be made considering the totality of circumstances.

20. **Please describe your understanding of the "federal common law."**

Response: Black's Law Dictionary defines federal common law as "the body of decisional law derived from federal courts when adjudicating federal questions and other matters of federal concern, such as disputes between the states and foreign relations, but excluding all cases governed by state law." Black's Law Dictionary (11th Ed. 2019). The Supreme Court has held that "there is no federal general common law." *Erie Railroad Co. v. Tompkins,* 304 U.S. 64 (1938).

21. **If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?**

Response: I would interpret the state constitutional right based on how it has been interpreted by the State's highest court. In other words, I would defer to the highest state's court interpretation of its own constitution. *See Erie Railroad Co. v. Tompkins,* 304 U.S. 64 (1938).

a. **Do you believe that identical texts should be interpreted identically?**

Response: I am not aware of any Supreme Court decision that require such a result. Please see my response to question 21.

b. **Do you believe that the federal provision provides a floor but that the state provision provides greater protections?**

Response: Federalism is a system of government in which the same territory is controlled by two levels of government, usually a federal and a state government. Under federalism, states can provide greater protections and rights than those provided by the federal constitution.

22. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: Since the issue of *de jure* racial segregation in public schools is unlikely to come before me, I can say that *Brown v. Board of Education* was rightly decided.

23. Do federal courts have the legal authority to issue nationwide injunctions?

Response: Injunctions are governed by Rule 65 of Civil Procedure. Rule 65 provides that an "injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seeds Farms,* 561 U.S. 139 (2010). Although there is much debate as to the courts' legal authority to issue nationwide injunctions, the Supreme Court has not issued an opinion discussing the legal authority, or lack thereof, of nationwide injunctions.

a. **If so, what is the source of that authority?**

Response: Please see answer to question 23 above.

b. **In what circumstances, if any, is it appropriate for courts to exercise this authority?**

Response: Please see answer to question 23 above.

24. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: Please see my answer to question 23.

25. What is your understanding of the role of federalism in our constitutional system?

Response: Under federalism, the same territory is governed by two forms of government (federal and state). Under the United States Constitution, the federal government only has limited powers, while all other powers are reserved for the States. Federalism plays an important role as it can provide its citizens with additional rights and protections, as long as they are not contrary to federal law and the United States Constitution.

26. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: Please see my answer to question 5.

27. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: The advantages of awarding damages versus injunctive relief are very case specific. Injunctive relief is an extraordinary remedy that provides a remedy at law, when monetary damages will not suffice. If confirmed, I would follow Supreme Court precedent as to when to issue injunctive relief versus awarding damages.

28. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: In *Washington v. Glucksberg,* 521 U.S. 702 (1997), the Supreme Court held that the Fifth and Fourteenth Amendment Due Process Clause protect certain "unenumerated rights". "The Court's established method of substantive due process analysis has two primary features: First, the court has regularly observed that the Clause specially protects those fundamental rights and liberties that are objectively, deeply rooted in the Nation's history and tradition. Second, the court has required a careful description of the asserted fundamental liberty interest." Id. at 720-21.

Examples of unenumerated rights include the right to privacy (to use contraceptives) *Griswold v. Connecticut,* 381 U.S. 479 (1965); and the right to same-sex marriage. *Obergefell v. Hodges,* 576 U.S. 644 (2015).

29. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. **What is your view of the scope of the First Amendment's right to free exercise of religion?**

Response: The First Amendment expressly protects religious liberty. A compelling state interest is required to impose governmental burdens and restrictions on religious rights. *See Cantwell v. Connecticut,* 310 U.S. 296 (1940).

b. **Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?**

Response: The right to free exercise of religion is much more than the freedom of worship and conscience. Religious freedom protects people's right to live, speak and act according to their religious believes peacefully and publicly. *See Lee v. Weisman,* 505 U.S. 577 (1992).

c. **What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?**

Response: Religion is considered a suspect classification which a court will review subject to a strict scrutiny standard. This means that laws that discriminate on the basis of religion or are not neutral to religion, must be justified by a compelling governmental interest and must be narrowly tailored to that interest. *Church of the Lukimi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

d. **Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?**

Response: The role of the courts is to decide whether religious beliefs represent an "honest conviction." *See Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014). Please see also my answer to question 15.

e. **Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?**

Response: Under the Religious Freedom Restoration Act, even actions that are neutral and generally applicable are subject to strict scrutiny if they substantially burden religion. Therefore, to survive strict scrutiny, the government must show that the burden on religion was in furtherance of a compelling state interest and that there are no less restrictive means of furthering that compelling state interest. *See, Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014).

f. **Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the**

Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

30. **Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."**

    a. **What do you understand this statement to mean?**

    Response: My understanding is that when making rulings based exclusively on the rule of law, such decisions will not mirror the judge's personal beliefs.

31. **Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?**

    Response: No.

    a. **If yes, please provide appropriate citations.**

    Response: Not applicable.

32. **Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.**

    Response: No.

33. **Do you believe America is a systemically racist country?**

    Response: I have never studied such an important question and as such, have no solid basis upon which to render an opinion. To my knowledge, the District of Puerto Rico has never been accused of being systemically racist. If confirmed, I will abide by the principle of equal justice under the law and everyone appearing before me would be treated equally, fairly and impartially.

34. **Have you ever taken a position in litigation that conflicted with your personal views?**

    Response: Yes.

35. How did you handle the situation?

Response: Attorneys are duly bound to defend their client interests to the best of their abilities within the boundaries of the law. This is known as zealous advocacy. I never let my personal views interfere with my role as an advocate.

36. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

37. Which of the Federalist Papers has most shaped your views of the law?

Response: I cannot point to a specific Federalist Paper over all others.

38. Do you believe that an unborn child is a human being?

Response: As a judicial nominee, I am precluded from answering questions that may come before me. If confirmed, I will follow Supreme Court and First Circuit precedent.

39. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: Yes, testimony was provided in the case of *María Antongiorgi v. Arleane Merheb,* KMC 2015-0402 (505). In 2015, I filed a breach of contract claim against Ms. Merheb in the Court of First Instance of Puerto Rico, San Juan Municipal Part, Ms. Merheb leased one of my rental properties for one year. She left prior to the expiration of the rental agreement. Judgment was entered on my behalf on January 20, 2016. Such proceeding is not available online. I do not have a transcript.

40. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade,* 410 U.S. 113 (1973)?

Response: No.

b. The Supreme Court's substantive due process precedents?

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

41. Do you currently hold any shares in the following companies:

a. Apple?

Response: Yes.

b. Amazon?

Response: No.

c. Google?

Response: No.

d. Facebook?

Response: No.

e. Twitter?

Response: No.

42. Have you ever authored or edited a brief that was filed in court without your name on the brief?

a. If so, please identify those cases with appropriate citation.

Response: No.

43. Have you ever confessed error to a court?

a. If so, please describe the circumstances.

Response: To the best of my recollection, no.

44. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: As per the Judicial Conduct of Conduct, which applies to judicial nominees, I must answer and have answered all questions truthfully and to the best of my ability.

Questions for the Record for Maria del Rocio Antongiorgi
From Senator Mazie K. Hirono

1. **As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:**

   a. **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.

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

      Response: No.

Questions for the Record
Senator John Kennedy

Maria del R. Antongiorgi-Jordán

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

   Response: Having appeared before a large number of state and federal judges, I can attest to the value of an impartial judge that applies the law and precedent even handedly. To be able to do that, a judge must appear at all times "prepared", knowing the relevant facts of the case and applicable legal principles. This will enable the judge to question the parties properly, clarify or solve controversies. In turn, this requires that the judge gives the parties an opportunity to be heard, present his/her evidence while listening carefully and soberly evaluating the issues. During the process, I understand the judge must set the example as it relates to timeliness, respect for the parties, preparedness and civility. In rendering a decision, I will strive for the parties to know and understand the legal basis for the final determination and the reasoning that led to the same, which must be based on law and precedent.

2. **Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

   Response: If the statute or regulation is unambiguous, the court must apply the plain language of the statute or regulation, as well as binding precedent from the Supreme Court and the First Circuit Court of Appeals. *Bostock v. Clayton Cty*., 140 U.S. 1731 (2020).

3. **Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?**

   Response: During my 23 years in legal practice, I have never been faced with this issue. The Supreme Court has considered legislative history in interpreting ambiguous statutes. *See County of Maui v. Hawaii Wildlife Fund,* 140 S. Ct. 1462 (2020). The Supreme Court has also said that Committee Reports are the most reliable form of legislative history. *Garcia v. U.S*., 469 U.S. 70 (1984). Generally speaking, in the limited circumstances when courts look to legislative history, they consider statement from the legislative, not the executive branch. If the statute is clear and unambiguous, I would apply the plain language of the statute, as well as binding precedent.

4. **What First Amendment restrictions can the owner of a shopping center place on private property?**

   Response: In *Lloyd Corporation, Ltd. v. Tanner,* 407 U.S. 551 (1972), the Supreme Court specified the limits to free speech on private property. The Court held that there is

no First Amendment right of access in a privately owned and operated shopping center if the speech in question is not related to the activities of the shopping center.

5. **What does the repeated reference to “the people” mean within the Bill of Rights? Is the meaning consistent throughout each amendment that contains reference to the term?**

   Response: The phrase “the people” appear in several parts of the Constitution. The Constitution famously begin with “We the people.” It also appears in five of the Bill of Rights, to wit, the First Amendment (right of the *people* to assemble peacefully and seek redress); the Second Amendment (right of *people* to keep and bear arms); the Fourth Amendment (right of the *people* against unreasonable searches and seizures) and the Ninth and Tenth Amendments.

   The Supreme Court has held the “the people” refers to “persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” *See United States v. Verdugo-Urquidez,* 494 U.S. 259 (1990). In *District of Columbia v. Heller,* 554 U.S. 570 (2018), the Supreme Court added that “the people” also refers to “all members of the political community.”

6. **Are non-citizens unlawfully present in the United States entitled to a right of privacy?**

   Response: I am not aware of Supreme Court and First Court of Appeals precedent on this issue. Nonetheless, in *Plyer v. Doe,* 457 U.S. 202 (1982), the Supreme Court held that states could not constitutionally deny students the right to free public education because of their immigration status. The Court based its ruling on Fourteenth Amendment grounds (Equal Protection Clause).

7. **Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?**

   Response: In *United States v. Verdugo-Urquídez,* 494 U.S. 259 (1990), the Supreme Court held that Fourth Amendment protections do not apply to searches and seizures by federal agents of property owned by a non-resident alien in a foreign country. *Id*. at 265. The Supreme Court also stated that aliens receive constitutional protections when they come within the territory of the United States and develop substantial connections with the country. *Id*. at 265.

8. **At what point does equal protection of the law attach to a human life?**

   Response: This is a legal question. As a judicial nominee, I am precluded by the Code of Conduct for United States Judges from answering matters that may come before me.

9. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

Response: In *Crawford v. Marion County Election Board,* 553 U.S. 181 (2008), the Supreme Court upheld an Indiana law requiring citizens voting in person to present government-issued photo identification. The Court held that a state law's burden on a political party, an individual voter, or a discrete class of voters must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation. In *Crawford,* the Supreme Court found that the government complied with its burden of proof.

As a judicial nominee, I am bound by the Code of Conduct for United States Judges and cannot opine on issues that may come before me, but I can commit to apply *Crawford* and other Supreme Court and First Circuit precedent on this, and all other issues.

Senator Mike Lee
Questions for the Record
Maria del R. Antongiorgi-Jordán, Nominee to the United States District Court for the District of Puerto Rico

1. How would you describe your judicial philosophy?

Response: Having appeared before a large number of state and federal judges, I can attest to the value of an impartial judge that applies the law and precedent even handedly. To be able to do that, a judge must appear at all times "prepared", knowing the relevant facts of the case and applicable legal principles. This will enable the judge to question the parties properly, clarify or solve controversies. In turn, this requires that the judge gives the parties an opportunity to be heard, present his/her evidence while listening carefully and soberly evaluating the issues. During the process, I understand the judge must set the example as it relates to timeliness, respect for the parties, preparedness and civility. In rendering a decision, I will strive for the parties to know and understand the legal basis for the final determination and the reasoning that led to the same, which must be based on law and precedent.

2. What is the role of a federal judge in our Republican form of government?

Response: The role of a federal judge is to rule without fear or favor; to always follow and apply the rule of law and binding precedent; to afford all parties due process of law and to treat everyone equally under the law. Federal judges must also assure themselves that every case brought before them is properly justiciable under federal law because federal judges can only consider cases or controversies that are properly before them. Federal judges are the protectors of the rule of law.

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

Response: If the text is clear, I would consider the plain text of the statute, followed by Supreme Court and First Circuit precedent. *Bostock v. Clayton Cty.,* 140 S. Ct. 1731 (2020). In case of ambiguous statutes, and no binding precedent, I would consider statutory definitions, rules of construction, persuasive precedent from other circuits and some legislative history to interpret the text. *See Exxon Mobil Corp. v. Allapattah Services, Inc.,* 545 U.S. 546 (2005).

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

Response: First, review of the constitutional provision at issue must be made. This is to be followed by searching for any Supreme Court or First Circuit precedent. Should there be no precedent, I would interpret the constitutional provision in a manner consistent with the methods of interpretation that the Supreme Court has used. For example, in *District of Columbia v. Heller,* 554 U.S. 570 (2008), the Supreme Court looked at the original public meaning of the Second Amendment.

5. **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 guidance and precedent when faced with this issue. There are certain constitutional provisions in which the Supreme Court has looked at the original public meaning. For example, in *District of Columbia. v. Heller,* 554 U.S. 570 (2008), the Supreme Court looked at the original public meaning of the Second Amendment.

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

Response: Please see my answer to question 2.

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: Both the Supreme Court and First Circuit have established that the "plain meaning" or the "ordinary meaning" of a provision generally refers to the public understanding of the text at the time of enactment. *See Bostock v. Clayton County,* 140 S. Ct. 1731 (2020).

7. **What are the elements of Article III justiciability?**

Response: The term "justiciability" refers to the type of matter that a court can adjudicate under Art. III, Section 2 of the Constitution. A federal court may only adjudicate an "actual controversy" (Case and Controversy Clause). As such, a controversy must be "ripe" for adjudication. The party bringing the suit in court must have "standing". This typically means the plaintiff must have suffered a harm caused by the defendant for which he seeks redress in court. This means of course that the claim asserted cannot be "moot" and that relevant issues remain pending. Lastly, to be justiciable, the court must not be offering an "advisory opinion" or answer a political question.

8. **When does a federal court have subject matter jurisdiction over a case?**

Response: A court has subject matter jurisdiction if it has the power to hear the specific types of claims presented to the court.

Federal courts are courts of limited jurisdiction and may entertain cases arising under the United States Constitution (i.e.: cases where U.S. is a party, cases involving Ambassadors, admiralty and maritime cases, etc.) or under a federal statute (federal question) (i.e.: antitrust, securities, bankruptcy, patent and copyright cases) and in diversity jurisdiction.

9. Can subject matter jurisdiction be waived?

Response: No, subject matter jurisdiction may not be waived.

10. When should a federal court apply state law?

Response: A federal court should apply state law as it relates to substantive law and not procedural matters.

For example: A federal court that sits in cases based on diversity of jurisdiction must apply federal procedural law and substantive state law. Also, federal courts apply state law when determining supplemental claims based on state law.

11. When should a court apply federal common law?

Response: The Supreme Court has said that there is "no federal general common law." *Erie Railroad Co. v. Tompkins,* 304 U.S. 64 (1938).

12. Can federal courts decide issues of state-law?

Response: In general, a federal court may decide on issues of state law in diversity cases, or in cases in which supplemental jurisdiction is exercised.

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

Response: Congress only has the powers enumerated in the Constitution and implied from them. In *McCulloch v. Maryland,* 17 U.S. 316 (1819), the Supreme Court held that Congress also has "implied powers" which derive under the Necessary and Proper Clause (Art. 1, Section 8 of the United States Constitution). These implied powers are those necessary and proper to execute Congress's enumerated powers.

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

Response: Challenges to the constitutionality of a statute without reference to a specific "enumerated power" will require the analysis of relevant Constitutional text (to include its Articles and Amendments), the statutory text, along with thorough research of Supreme Court and First Circuit Court precedent.

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

Response: Yes. The Supreme Court held in *Washington v. Glucksberg,* 521 U.S. 702 (1997) that under the Fifth and Fourteenth Amendment Due Process Clause, certain "unenumerated rights" are protected. "The Court's established method of substantive due process analysis has two primary features: First, the court has regularly observed

that the Clause specially protects those fundamental rights and liberties that are objectively, deeply rooted in the Nation's history and tradition. Second, the court has required a careful description of the asserted fundamental liberty interest." Id. at 720-21.

Examples of unenumerated rights include the right to use contraceptives/marital privacy, *Griswold v. Connecticut,* 381 U.S. 479 (1965); and the right to same-sex marriage, *Obergefell v. Hodges,* 576 U.S. 644 (2015).

16. What rights are protected under substantive due process?

Response: Please see my response to question 15.

17. 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 constitutional protection to be offered to "personal rights" and "socio-economic" rights may only be distinguished by thorough analysis of applicable Supreme Court and First Circuit Court precedent. The Supreme Court stated in *Lochner v. New York,* 198 U.S. 45 (1905) that economic rights at issue were not subjected to strict scrutiny under the Due Process Clause. Conversely, the Supreme Court has determined that some personal rights are protected under substantive due process. If confirmed, I will remain bound by Supreme Court and First Circuit precedent.

I must also note that *Roe v. Wade* 410 U.S. 113 (1973) and *Planned Parenthood v. Casey* 505 U.S. 833 (1992), were overruled by the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. _____ (2022).

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

Response: The Supreme Court ruled in *United States v. Lopez,* 514 U.S. 549, (1995) that under the Commerce Clause, Congress may regulate: (a) the use of channels of interstate commerce, (b) the instrumentalities of interstate commerce or persons or things in interstate commerce, and (c) activities that substantially affect interstate commerce.

19. 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 four generally recognized suspect classifications: race, alienage, national origin and religion. *See Graham v. Richardson,* 403 U.S. 365 (1971).

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

Response: I consider the principles of separation of powers and checks and balances as the cornerstone of our democratic system of government: Such principles prevent the accumulation of power in our branch of government ensuring liberty interests.

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

Response: I would begin by asserting the branch's actions and if it, in fact, exceeded its constitutional authority. Should that be the case, the action should be declared unconstitutional. *See Marbury v. Madison,* 5 U.S. 137 (1803).

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

Response: Judges should treat all parties appearing before them with respect and civility. Nonetheless, judges' decision-making should be guided only by the rule of law and binding Supreme Court precedent and not by personal beliefs, emotions or opinions.

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

Response: Both assertions are contrary to law.

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

Response: I have not had the opportunity to study all instances in which the Supreme Court has struck down federal statutes while exercising its judicial review powers. Therefore, I do not have an opinion as to what accounts for the change. The downside to aggressive exercise of judicial review and the downside to judicial passivity are, in my opinion, the same: the lost credibility and trust in the judicial system and harm it can do to a governmental system of check and balances.

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

Response: Judicial review is the process under which executive, legislative and administrative actions are subject to review by the judiciary. Black's Law Dictionary (11th ed. 2019). In turn, judicial supremacy is defined as the doctrine that

interpretations of the Constitution by the federal judiciary, especially United States Supreme Court interpretations, are binding on the coordinate branches of the federal government and the sates. Black's Law Dictionary (11th ed. 2019).

26. 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: I believe that all elected officials are bound to follow the Constitution, which is the Supreme Law of the land. This includes recognizing the importance of judicial review.

27. 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: Federalist 78 recognizes judicial independence, and the role of judges in interpreting the rule of law.

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

Response: Trial courts are bound to apply the law and follow Supreme Court and Circuit Court precedent when deciding a case. In the unlikely scenario that a trial court is faced with a constitutional issue of first impression, trial courts must examine the text of the provision at issue and interpret the text in a manner consistent with the methods of interpretation that the Supreme Court has used.

29. 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. Defendants should be sentenced using the criteria set in 18 U.S.C. § 3553 and in the Sentencing Guidelines, which include the "nature and circumstances of the offense" and the "characteristics of the defendant." As per §5H1.10 of the

Sentencing Guidelines, the defendant's race, sex, national origin, creed, religion and socio-economic status are not to be taken into account during the sentencing process.

30. **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: As a judicial nominee, I am bound by the Code of Conduct for United States Judges, which precludes me from opining as to policy matters of the Executive and Legislative branches. Nonetheless, equity in the legal context is defined as "fairness, impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019).

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

Response: The Black's Law Dictionary defines equity as "fairness, impartiality, evenhanded dealing." Equality is defined as "the quality, state, or condition of being equal; esp., likeness in power or political status." Black's Law Dictionary (11th ed. 2019).

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

Response: The Fourteenth Amendment Equal Protection Clause states: … "no state shall deny to any person within its jurisdiction the equal protection of the laws."

33. **How do you define "systemic racism?"**

Response: To the best of my knowledge, systemic racism refers to a form of racism that is embedded in the laws and regulations of a society or an organization.

34. **How do you define "critical race theory?"**

Response: Black's Law Dictionary defines critical race theory as a "reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system disempowered racial minorities." Black's Law Dictionary (11th ed. 2019).

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

Response: Since I have not studied “critical race theory” and “systemic racism” in depth, I cannot responsibly offer a reasoned response.

Senator Ben Sasse
Questions for the Record for María Antongiorgi-Jordán
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
July 13, 2022

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

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

   Response: Having appeared before a large number of state and federal judges, I can attest to the value of an impartial judge that applies the law and precedent even handedly. To be able to do that, a judge must appear at all times "prepared", knowing the relevant facts of the case and applicable legal principles. This will enable the judge to question the parties properly, clarify or solve controversies. In turn, this requires that the judge gives the parties an opportunity to be heard, present his/her evidence while listening carefully and soberly evaluating the issues. During the process, I understand the judge must set the example as it relates to timeliness, respect for the parties, preparedness and civility. In rendering a decision, I will strive for the parties to know and understand the legal basis for the final determination and the reasoning that led to the same, which must be based on law and precedent.

3. **Would you describe yourself as an originalist?**

   Response: Black's Law Dictionary defines "originalism" as "[t]the doctrine that words of a legal instrument are to be given the meaning they had when they were adopted." Originalism, Black's Law Dictionary (11th Edition, 2019). The U.S. Supreme Court has applied originalism in certain constitutional matters, for example, when addressing Second Amendment rights. *See District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I will not apply any label or characterization to my judicial philosophy. Rather, I remain fully committed to apply precedent as dictated by the Supreme Court and the First Circuit. In a case of first impression, I would interpret the constitutional provision in a manner consistent with the measures of interpretation the Supreme Court has used.

4. **Would you describe yourself as a textualist?**

   Response: Black's Law Dictionary defines "textualism" as a doctrine in which "the words of a governing text are of paramount concern and that they fairly convey in their context is what the text means." Black's Law Dictionary (11th ed. 2019). Generally, when evaluating challenges to statutory provisions and the text of a statute is clear, "the judicial inquiry is complete," and the meaning of the text would be applied. *See Desert Palace, Inc. v. Costa*,

539 U.S. 90, 98 (2003). As per my previous response, if confirmed, it will be my duty and obligation to adhere to binding precedent of the Supreme Court and First Circuit.

5. **Do you believe the Constitution is a "living" document whose precise meaning can change over time? Why or why not?**

   Response: Black's Law Dictionary defines the term "living constitutionalism" as the "doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances, and in particular, with changes in social values." Black's Law Dictionary (11th ed. 2019). The Constitution is an enduring document that sets forth the principles governing our democratic government. The meaning of the Constitution does not change, unless amended as provided by Article V of the Constitution. If confirmed as a district judge, I will be bound to faithfully apply Supreme Court and First Circuit precedent.

6. **Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.**

   Response: I am not familiarized, nor have I studied in detail, the jurisprudence of all Justices appointed since 1953 that will enable me to express admiration for a particular Justice. However, if confirmed as a trial judge, I will be bound not by personal views or admiration of a particular judicial officer, but by my oath, which requires me to approach each case with an open and impartial mind; and to remain faithful to the rule of law. In discharging my duties, I remain bound to analyze the facts, research the applicable law and case law and apply precedent as set by the Supreme Court and First Circuit Court of Appeals.

7. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?**

   Response: An appellate court is bound by its own precedent until one of two events occur: (a) the precedent is overturned by an *en banc* decision of that court or (b) is overturned by a decision of the Supreme Court. Rule 35(a)(1)-(2) of the Federal Rules of Appellate Procedure sets the criteria for determining when to grant *en banc* review, i.e., whether *en banc* consideration is necessary to secure uniformity of the court's decisions, and whether the proceedings involve a question of exceptional importance. As a trial judge, I would remain bound by precent as defined by the First Circuit and the Supreme Court. *See also* Local Rule 35.0, First Circuit Local Rules.

8. **In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm it own precedent that conflicts with the original public meaning of the text of a statute?**

   Response: Please see my response to question 7 above. As a trial judge, I would remain bound to follow precedent as set by the U.S. Supreme Court and First Circuit.

9. What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?

Response: When the language of the statute is clear and unambiguous, extrinsic factors have no role in the statutory interpretation; the statute's plain language controls and should be applied. In situations where the statute is ambiguous, judges initially look for binding precedent from the Supreme Court or First Circuit. If there is no precedent, judges may also look for persuasive decisions issued by other Circuits Courts, statutory definitions and cannons of construction. Legislative history of the statute may also be considered, as an interpretative tool of last resort in the process of resolving the ambiguity or conflict. *See: Exxon Mobile Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) and *García v. U.S.*, 469 U.S. 70, 76 (1984). When considering legislative history, the Supreme Court has said that the Committee Reports are the most reliable form of legislative history. *Garcia v. U.S.,* 479 U.S. 70 (1984).

10. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: While determining sentence, federal judges are to find guidance in: (a) 18 U.S.C. §3553(a), which provides that "the court shall impose a sentence sufficient, but not greater than necessary" and that in doing so, it shall consider" "(1) the nature and circumstances of the offense and the history and characteristics of the defendant" 18 U.S.C. §3553(a)(1)(b). Guidance is also to be found within the Sentencing Guidelines and Sentencing Commission policy statements. For example, under §5H1.10, it is a policy statement that factors such as race, sex, national origin, creed, religion, and socio-economic status are not relevant in determining sentence. Also, under §1B1.4, in determining whether to impose a sentence within the applicable guideline range or while determining if a departure is warranted, the court "may consider, without limitation, any information concerning the background, character and conduct of the defendant unless prohibited by law." *See also* 18 U.S.C. §3661. If confirmed as a District Judge, I will be guided by these and all other statutory factors while sentencing an individual defendant.

Questions from Senator Thom Tillis
for María Antongiorgi-Jordán
Nominee to be United States District Judge for the District of Puerto Rico

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

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

   Response: Judicial activism is defined as "a philosophy of judicial decision-making or by judges allow their personal views about public policy, among other factors, to guide their decisions." Judicial activism, Black's Law Dictionary (11th ed. 2019). This type of action is improper or unbecoming of a judicial officer and constitutes a breach of his/her Oath of Office, which demands adherence to the Constitution and the rule of law as set by statute or precedent.

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

   Response: Impartiality is an expectation and responsibility of every federal judicial officer. The principle of impartiality and fairness are embedded within the Oath of Office and the Code of Conduct for U.S. Judges.

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

   Response: No. Policy making is not within the province of the Judicial Branch. Judges are bound to apply the law and binding precedent to the facts, without consideration of personal beliefs.

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

   Response: Yes. There may be times in which strict interpretation of the law may result in undesirable outcomes. Such situations are reconciled by acknowledging that adherence to the rule of law: (a) promotes confidence in the judicial system, (b) enhances transparency, and (c) maintains stability in our system of government. Upholding these core principles, is a desirable outcome in every case.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No. Interjecting personal politics of policy preferences is prohibited and will constitute a breach of Oath and a violation of the Code of Conduct for Unites States Judges.

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

   Response: American citizens are to feel confident that their Second Amendment and all other constitutional rights are protected by strict adherence to the rule of law. In evaluating a case, I will consider the parties' arguments, analyze the facts, identify the applicable law, and apply binding precedent in a fair and impartial manner. As it relates to the protection of Second Amendment rights, precedent is set in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 472 (2010) and *New York State Rifle v. Bruen*, 597 U.S. ___, (2002).

8. **How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?**

   Response: As a judicial nominee I am precluded from rendering opinions or advice on legal issues that my come before me. Conversely, I can assure that if confronted with the need to evaluate policies limiting Second Amendment rights or any other constitutional rights, Supreme Court and First Circuit precedent will be faithfully applied.

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

   Response: Under the qualified immunity doctrine, government officials are protected from civil damage liability to the extent that their conduct "does not violate clearly established statutory of constitutional rights of which a reasonable person would have known." *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Pearson v. Callahan*, 555 U.S. 223 (2009). If confirmed, when considering qualified immunity cases, I will apply Supreme Court precedent (as per *Harlow* and *Pearson*) and First Circuit precedent. *See Alfano v. Lynch,* F.3d 71 (1st Cir. 2017). The analysis requires the court to determine: (1) whether plaintiff has alleged the violation of a constitutional right and (2) whether the right asserted and at issue was clearly established at the time of the alleged violation.

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

    Response: Whether qualified immunity caselaw provides sufficient protection for law enforcement officers is a matter of policy as to which, as a judicial nominee, I cannot offer an opinion. The guidance and precedent set by the Supreme Court and First Circuit, (as per my response at question no. 9, above) are to be strictly and impartially applied absent action of Congress or issuance of new precedent by the Supreme Court.

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

    Response: Please see my response to question 10. If confirmed as a District Judge, I will apply the applicable statutory provisions and precedent as set by the Supreme Court and First Circuit Court of Appeals.

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

    Response: At the onset, two things are to be clarified: (1) in my 23 years of litigation experience I have not dealt with patent cases and (2) it will not be proper, as a judicial nominee to provide an opinion or personal views regarding patent eligibility caselaw. Constraint is essential to the actual and perceived integrity of the Judiciary. I do acknowledge, that if confirmed, I remain duty bound to apply Supreme Court and First Circuit precedent.

13. **How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.**

    a. **ABC Pharmaceutical Company develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating, or curing a disease or condition for individual patients, using conventional technology but a newly discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?**

       Response: As previously stated, providing personal opinions or making legal criticism while analyzing hypothetical factual scenarios, is precluded by the Code of Conduct, and will cast doubts over the impartiality of judicial officers and the Judiciary in general. This is even more so, when considering hypotheticals of scenarios depicting issues that may well appear in court. In all cases involving patent eligibility, if confirmed: I would apply binding Supreme Court and First Circuit precedent.

    b. ***FinServCo*** **develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should FinServCo's business method standing alone be eligible? What about the business method as practically applied on a computer?**

       Response: Please see my answer to question 13(a).

c. ***Human Genetics* Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *Human Genetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?**

Response: Please see my answer to question 13(a).

d. ***BetterThanTesla ElectricCo* develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla's* billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: Please see my answer to question 13(a).

e. ***Natural Laws and Substances, Inc.* specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations**?

Response: Please see my answer to question 13(a).

f. **A business methods company, *FinancialServices Troll*, specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?**

Response: Please see my answer to question 13(a).

g. ***BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such relationship existed in the prior art. Should *Bio Tech Co* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTechCo* invents a new, novel, a nonobvious method of diagnosing the disease state by means of tenting for the gene sequence and the method requires a least one step that involves the manipulation and transformation**

of physical subject matter using techniques and equipment? Should that be patent eligible?

Response: Please see my answer to question 13(a).

h. **Assuming *BioTechCo's* diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and befit? If there is such an exception, what are its limits?**

Response: Please see my answer to question 13(a).

i. ***Hantson Pharmaceuticals* develops a new chemical entity as a composition of matter that proves effective in treating Truly Terrible Disease. Should this new chemical entity be patent eligible?**

Response: Please see my answer to question 13(a).

j. ***Stoll Laboratories* discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should Stoll Labs be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit this effect?**

Response: Please see my answer to question 13(a).

14. **Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: Please see my answer to question 13(a).

15. **Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the lawfulness of a use of digital content and technologies.**

a. What experience do you have with copyright law?

Response: I have no significant, substantive experience in the litigation of copyright law. If confirmed, I will ensure participation in relevant continuing legal education programs and trainings under Federal Judicial Center. In addressing any related issues, I remain bound by precedent.

b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.

Response: None.

c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?

Response: None.

d. What experience do you have with First Amendment and free speech issues. Do you have experience addressing free speech and intellectual property issues, including copyright?

Response: Please refer to my response to question 15(a).

16. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office recently reported courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute…" It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases?

a. In your opinion, where there is a debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?

Response: If confirmed, while facing a case in which debate exists among courts about the meaning of legislative text, I would research, identify, and apply Supreme Court and First Circuit precedent. If there is no binding precedent, the text of the statute is to be interpreted in accordance with its plan and ordinary meaning. Were the text to be ambiguous, I would look to relevant canons of statutory construction along with Supreme Court and First Circuit Court of Appeals precedent while interpreting similar statutory provisions. Under this scenario, persuasive caselaw from other Circuit Courts may be considered. If necessary, legislative history may be consulted to the extent allowed by the Supreme Court and the First Circuit Court of Appeals' precedent. *See Garcia v. United States*, 469 U.S. 70, 76 (1984). García indicates that Committee Reports are more useful that other types of legislative history because they represent "the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation."

b. Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?

Response: To date, there is Supreme Court precedent addressing whether and to what extent the analysis made by a federal agency (the U.S. Copyright Office) plays a role in deciding how to apply the law in a particular case or controversy. In *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.* 467 U.S. 837 (1984), the Supreme Court articulated the standard of judicial deference to an administrative agency's statutory interpretation. The standard involves a two-prong test to determine if deference is proper: (1) the court must determine if Congress has directly addressed the issue in question (if so, judicial review concludes); (2) if the statute is ambiguous or does not address the issue, the court must determine the reasonableness of the agency's interpretation. If it is reasonable, deference is accorded. If the matter of interpretation is simply addressed by means of an opinion letter, policy statement, manual or guideline, the agency's position is entitled to respect were the same to be persuasive but will not be subject to deference as per precedent set in *Skidmore v. Swift*, 323 U.S. 134 (1944).

c. Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?

Response: My 23 years of litigation experience involved a wide range of topics but focused on labor and employment matters. I have had no significant substantive experience with copyright legal issues. If confirmed, I intend to pursue legal training and education on diverse civil topics, such as copyright. If faced with a related controversy, I would promptly and diligently research applicable law, study the facts, and case record and apply Supreme Court and First Circuit precedent.

17. The scale of only copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and the was a lot less infringing material online.

a. How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the ascension of dominant platforms and the proliferation of automation and algorithms.

Response: A judicial officer is bound to apply statutory provisions, as written, in a fair, impartial, and consistent manner. Adapting statutory provisions to encompass technological changes remains within the province of Congress.

b. How can judges best interpret and apply prior judicial opinions that relied upon the then– current state of technology once that technological landscape has changed?

Response: The Supreme Court has the power to overrule its own precedent if it concludes that prior decisions are no longer in conformity with the law and/or the Constitution. Congressional action may also overrule precedent. However, trial courts are not free to alter or amend statutory text in order to have it adapted to technological advances. If confirmed, I remain bound to apply First Circuit and Supreme Court precedent and any laws enacted by Congress as established and until the precedent is overruled by the Supreme Court or Congress enacts new legislation.

18. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have let to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about the fact that nearly one quarter of all patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: Generally, judge or forum shopping, whether real or perceived will be a matter of concern for all participants in a case, parties and judges alike. It would affect the transparency and legitimacy of the legal process. In the District of Puerto Rico there are no other divisions. More so, civil and criminal cases are randomly assigned through a computerized system. Both factors, minimize or eliminate any "judge or forum shopping" possibilities. Despite these measures, judicial officers are to remain attentive to the fairness and impartiality of the judicial process.

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: Yes. Judicial officers are to zealously ensure the impartiality and transparency of the judicial process.

c. Do you think it is *ever* appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?

Response: No. It is not appropriate for judges to take steps geared to attract types of cases or litigants.

d. If so, please explain your reasoning. If not, do you commit no to engage in such conduct?

Response: I commit without hesitation to preserve and adhere to the rule of law, to the Oath of Office to be taken. If confirmed, and to guide myself by the highest ethical principles so as to enhance the trust and confidence on the Judiciary, which translates into a stable society.

19. **In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.**

    a. **What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?**

       Response: If a judge continues to flaunt binding case law in spite of previous mandamus orders, I understand, it will be upon the appeals court to define the proper course of action. Certainly, as a judicial nominee, it would not be proper for me to provide an opinion on the matter, except to re-assure my commitment, if confirmed, to apply precedent and respect for the rule of law.

    b. **Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such circumstance?**

       Response: See my response to question 19(a).

20. **When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation's 94 judicial districts, does this undermine the perception of fairness and of the judiciary evenhanded administration of justice?**

    Response: I am not aware of the circumstances that may have prompted the concentration of particular type of cases in one or two of the 94 judicial districts nor the public perception that such event, if real, has triggered. Nonetheless, I understand that any factor (for example attempts at "forum shopping) casting doubts over the impartiality and fairness of the judiciary, is a factor to be closely scrutinized by any district confronting such situation and that certainly and ultimately may be evaluated by the Judicial conference.

    a. **If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice encouraged forum shopping?**

       Response: Generally speaking, district courts may adopt local rules regarding case assignment and case management to ensure the efficient administration of justice. These local rules may be adopted while mirroring, among other things, the Federal Rules of Procedures and policies and guidelines for the judiciary. Such local rules are public, and subject to public comment and challenges by members of the bar. While precluded from commenting on the adequacy of rules and procedures adopted or to be adopted in a particular District, I am clear that federal judges do have an ethical obligation to follow the law and are bound, 24-7; to avoid and not to take actions that will undermine public trust and confidence in the administration of justice.

b. **To prevent the possibility of judge-shopping by allowing patent litigants to select a single– judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?**

Response: Not being familiar with particular scenarios in which the filing patent litigants may "select a single– judge division" will not allow me to reasonably and responsibly form an opinion. I am familiar with the case assignment process in the District of Puerto Rico, where every single case, civil or criminal, is randomly assigned through a computerized system.

21. **Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.**

a. **If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is having in a lawless manner?**

b. **Would five mandamus reversals be sufficient? Ten? Twenty?**

Response: Respectfully, as a judicial nominee and as per the Code of Conduct for United States Judges, I should not provide opinions or judgments as to corrective measures, if any, to be adopted against a judicial officer who has been subject, once or several times to a mandamus. I do understand that one can avoid being subject of a mandamus by preserving the commitment to the rule of law, applying precedent at all times and by walking the extra mile and devoting all energies to dispense justice in a timely matter. In this regard, my commitment is unequivocal.