Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Judge Vélez-Rivé
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: I am hopeful that having spent the last 18 years as a United States Magistrate Judge there are few areas of the law that I have not had some experience with. Since I was appointed as a United States Magistrate Judge in 2004, I have faced many legal issues on diverse areas of the law that I was not previously familiar with as an advocate. To familiarize myself with these new legal issues, I relied on an exhaustive study and analysis of the legal arguments presented by the parties in each case and a thorough legal research with the aid of my law clerk. In addition, I have attended multiple workshops for Magistrate Judges, CLEs for federal practitioners, and training programs from the Federal Judicial Center both in person and virtually. If confirmed, I will rely on my experience as a United States Magistrate Judge for 18 years and the above-mentioned tools to familiarize myself with legal issues that I have not previously encountered.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Camille Lizette Vélez-Rivé
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: I am not familiar with the term "super precedent", and I have never used it as a United States Magistrate Judge. I am not aware of any Supreme Court or First Circuit case that uses this term.

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 this statement made by Justice Ketanji Brown Jackson, nor the context in which it was made. As a sitting United States Magistrate Judge and a judicial nominee, it is not appropriate for me to comment on Justice Ketanji Brown Jackson's statement.

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

Response: As a sitting United States Magistrate Judge for 18 years, all my decisions have been based on the facts of the case and the applicable law in each particular case. If confirmed as a District Judge, all my judicial decisions will only consider the facts and law presented in each case.

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

Response: To threaten any person, including Supreme Court Justices, is wrong and could be a crime under 18 U.S.C. § 115.

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

Response: The Supreme Court has recognized that, in addition to the rights expressly enumerated in the Constitution, unenumerated fundamental rights are protected under the Due Process Clause of the Fifth and Fourteenth Amendments when that right is deeply rooted in our nation's tradition and history and implicit in the concept of ordered liberty. *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228 (2022)*; see also Washington v. Glucksberg*, 521 U.S. 702 (1997). I would be bound to faithfully apply Supreme Court precedent to any case that comes before me.

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

Response: I will faithfully abide by Supreme Court precedent in Second Amendment cases. *See New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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: As a United States Magistrate Judge and if confirmed as a District Judge, I will be bound to apply Supreme Court precedent as already held.

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

Response: Section 1507 is a misdemeanor offense which criminalizes picketing or protesting near a courthouse, or residence of a judge, juror, or witness with the intent of interfering or obstructing with the administration of justice of influencing such persons in the discharge of their official duties.

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

Response: As a judicial nominee, it is not appropriate for me to offer opinions on prospective questions of constitutional interpretation and application of a law that could come before me in a case. However, the Supreme Court held that a Louisiana statute with similar language was facially valid in *Cox v. Louisiana*, 379 U.S. 559 (1965). If confirmed and confronted with this issue, I will faithfully apply Supreme Court and First Circuit precedent to any challenge to this section.

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

Response: Yes. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), the Supreme Court held that parents have a constitutional right to direct the education of their children.

11. Do Blaine Amendments violate the Constitution?

Response: In my 18 years as a United States Magistrate Judge, I have never encountered a case which dealt with the Blaine Amendments. However, in *Espinoza v. Montana Dept of Revenue*, 140 S. Ct.2246 (2020), the Supreme Court struck down Montana's state constitutional Blaine Amendment. If confirmed as a district judge, I will faithfully apply Supreme Court and First Circuit precedent.

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: As a United States Magistrate Judge and, if confirmed as a District Judge, I will follow binding Supreme Court and First Circuit precedent on constitutional interpretation.

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: As a United States Magistrate Judge and, if confirmed as a District Judge, I will follow binding Supreme Court and First Circuit precedent on constitutional interpretation.

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 to Questions 14a to 14i: As a sitting United States Magistrate Judge and as a judicial nominee, it is not appropriate for me to answer whether the listed Supreme Court cases were correctly decided. As a United States Magistrate Judge and, if confirmed as a District Judge, I will follow Supreme Court precedent in all cases before me. However, I recognize that *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228 (2022) overruled *Roe v. Wade* and *Planned Parenthood v. Casey*. In addition, I will indicate that *Brown v. Board of Education* and *Loving v. Virginia* were correctly decided, because the issues presented in these two cases are not likely to be re-litigated.

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

Response: Yes. Black's Law Dictionary defines judicial activism as "the philosophy of judicial decision making whereby judges allow their personal views about public policy, among other factors to guide theory decisions." (Black's Law Dictionary, 11th Ed., 2019). Federal courts have limited jurisdiction and judges should apply the law strictly to the cases before the court without exceeding their jurisdiction. This is what I have done during my 18 years as a United States Magistrate Judge.

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: Although I believe it would be rare to confront a constitutional issue of true first impression as a district judge, if such a situation were to arise, I would consider the text of the provision and the meaning of the terms at issue, as well as the method of interpretation that the Supreme Court or First Circuit has used in the most analogous circumstance and any persuasive authority from other jurisdictions.

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

Response: A judge should allow all parties an opportunity to express their arguments and views, giving them an opportunity to be heard. The judge should try to understand the views of all litigants on the issues before the court prior to making a ruling. A judge should keep an open mind and treat all parties fairly and with respect. A judge's decision, however, should be made by a fair and impartial application of the relevant law to the facts of each case.

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?

Response: No.

b. Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?

Response: No.

c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, 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?

Response: No.

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?

Response: No.

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?

Response: No.

b. Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.

c. Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

d. Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

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?

Response: No.

b. Are you currently in contact with anyone associated with the Open Society foundations?

Response: No.

c. Have you ever been in contact with anyone associated with the Open Society Foundations?

Response: No.

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?

Response: No.

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?

Response: No.

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?

Response: No.

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?

Response: No.

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: Yes. Prior to starting the vetting process as a judicial candidate, I was put in contact with Robert Raben through a mutual friend because I was seeking information on the endorsement process of judicial candidates by the Hispanic National Bar Association (HNBA), an organization that I am a member of. To the best of my understanding, Mr. Raben is a past president of the HNBA and currently chairs the HNBA's Endorsement Committee. I spoke to Mr. Raben in that capacity on one occasion. Then, an associate from the Raben group sent me the questionnaire to start the endorsement process, which I filled out and returned. I was later interviewed by the Office of the White House Counsel and the vetting process started; at which time I did not further pursue the endorsement from the HNBA. I have had no further contact with Mr. Raben or anyone else related to him.

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 11, 2021, I was contacted by the office of the Honorable Pedro Pierluisi, Governor of Puerto Rico, asking if I was interested in submitting my c*urriculum vitae* to be considered for a judicial vacancy in the District of Puerto Rico. On that same date, I submitted my *curriculum vitae* and attended a meeting with Governor Pierluisi. On January 23, 2022, I was contacted by the Office of the White House Counsel for an interview the next day concerning a judicial vacancy in Puerto Rico. Since January 24, 2022, 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 United States Senate. On July 13, 2022, I appeared before the Senate Judiciary Committee.

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

Response: On July 20, 2022, the Office of Legal Policy of the Department of Justice sent me these questions. I answered the questions relying on my Senate Judiciary Questionnaire and legal research of constitutional and statutory provisions, as well as Supreme Court and First Circuit cases. Then, I submitted my answers to the Office of Legal Policy for review and transmittal to the Senate Judiciary Committee. All answers are my own.

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

Questions for the Record for Judge Camille Lizette Vélez-Rivé, Nominee for the United States District Court for the District of Puerto Rico

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 Fourteenth Amendment prohibits a state from denying a person equal protection under the law and there are many state and federal laws that prohibit racial discrimination in employment, public accommodations and other contexts.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, it is not appropriate for me to comment on my beliefs as to any unenumerated rights which, as of yet, are unarticulated by the Supreme Court. However, the Supreme Court has recognized that, in addition to the rights expressly enumerated in the Constitution, some unenumerated fundamental rights are protected under the due process clause of the Fifth and Fourteenth Amendments when that right is deeply rooted in our nation's tradition and history and is implicit in the concept of ordered liberty. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022); *see also Washington v. Glucksberg,* 521 U.S. 702 (1997).

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: I strongly believe that every party is entitled to a day in court, to have an opportunity to be heard, and to have a judge carefully study the facts of the case, the applicable statutes and jurisprudence and apply them impartially and fairly to the facts of the case. My judicial philosophy for the past 18 years as a United States Magistrate Judge has been just that. My commitment as a District Judge, if confirmed, would be the same. Although I have read and researched many cases from the Warren, Burger, Rehnquist and Roberts Courts, I have never closely studied the specific philosophies of individual Justices. Thus, I cannot characterize my judicial philosophy as being analogous to any of those listed.

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

Response: I do not subscribe to any specific school of constitutional interpretation. Black's Law Dictionary defines originalism as a doctrine that indicates that "words of a legal instrument are to be given the meanings they had when they were adopted." (Black's law Dictionary, 11th Ed. 2019). It refers to how the words of the Constitution or a particular statute would have been understood when the statute was enacted. The

Supreme Court has applied originalism when deciding certain constitutional and statutory issues. *District of Columbia v. Heller,* 554 U.S. 570 (2008). If confirmed, I will faithfully apply the precedents from the Supreme Court and the First Circuit on constitutional interpretation.

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

Response: I do not subscribe to any specific school of constitutional interpretation. Black's Law dictionary describes "living constitutionalism" as a doctrine where "the Constitution should be interpreted in accordance with changing circumstances and in particular, with changing social values." (Black's Law Dictionary, 11th Ed., 2019). If confirmed, I will faithfully apply the precedents from the Supreme Court and the First Circuit on constitutional interpretation.

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

Response: Although I believe it would be rare to confront a constitutional issue of true first impression as a district judge, if such a situation were to arise, I would consider the text of the provision and the meaning of the terms at issue, as well as the method of interpretation that the Supreme Court or First Circuit has used in the most analogous circumstance and any persuasive authority from other jurisdictions.

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

Response: No, to the best of my understanding. I am not aware that the Supreme Court has ever addressed this matter. As a United States Magistrate Judge, I must abide by applicable precedent and the plain meaning of the statute in my interpretation of the same. In the past, however, the Supreme Court has decided constitutional issues pursuant to the current meaning or contemporary standards. *See Atkins v. Virginia,* 536 U.S. 304 (2000) (excessive punishment); *Miller v. California,* 413 U.S. 15 (1973) (obscenity).

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

Response: I believe the Constitution is an enduring document and it is only changed through the Article V amendment process. However, there are some instances when courts must apply the Constitution to circumstances the drafters could not have

anticipated at the time of the Constitutional Convention. *See United States v. Jones,* 565 U.S. 400 (2012) (officers must secure a search warrant before attaching a GPS tracking device on a vehicle owned by a private party). If confirmed, I will faithfully apply Supreme Court and the First Circuit precedent on constitutional interpretation.

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

Response: Yes. As a sitting United States Magistrate Judge and if confirmed as a District Judge, I am bound to follow all Supreme Court precedent.

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

Response: Yes. As a sitting United States Magistrate Judge, and if confirmed as a District Judge, I am bound to follow all Supreme Court precedent.

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

Response: The offenses that trigger a presumption in favor of pretrial detention are included in 18 U.S.C. Section 3142(e)(3) and they are the following:

(A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;
(B) an offense under section 924(c), 956(a), or 2332b of this title;
(C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;
(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or
(E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

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

Response: The policy rationales underlying the presumption are that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community because there is probable cause to believe that the defendant committed one or more of the offenses listed in Section 3142(e)(3).

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

Response: Yes. The free exercise clause of the First Amendment and the Religious Freedom Restoration Act (RFRA) create identifiable limits to what the government may impose or require of religious organizations and small businesses operated by observant owners. Under RFRA, the federal government may not substantially burden a person's exercise of religion, even through a facially neutral law, unless the application of the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. *See Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014). On a similar vein, in *Tandon v. Newsom,* 141 S. Ct. 1294 (2021), the Supreme Court held that, under the free exercise clause of the First Amendment, the government may not treat any comparable secular activity more favorably than religious exercise.

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

Response: No. Under RFRA, the government may not discriminate against religious organizations unless the law is narrowly tailored using the least restrictive means to achieve a compelling governmental interest. *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014).

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

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo,* 141 S. Ct. 63 (2020), the Supreme Court held that the religious organizations were entitled to a preliminary injunction against an ordinance that restricted public gatherings due to the COVID-19 pandemic. The Court found petitioners demonstrated that zoned restrictions on public gatherings applied to religious services but not to other secular services. This showed that the state's action was not neutral and was not narrowly tailored to serve a compelling state interest. Thus, it could not survive strict scrutiny. The Supreme Court found that the restriction could cause irreparable harm if enforced due to the loss of First Amendment freedoms.

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

Response: *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) concerned restrictions put in place by the state of California on private gatherings because of the COVID-19 pandemic. The Supreme Court found that the restrictions treated certain religious activities less favorably than comparable secular activities. The Supreme Court found the restrictions were not content neutral and they triggered strict scrutiny review. The Court further held that the restrictions violated petitioner's free exercise rights and, because petitioners would likely succeed on the merits of their claims, they were entitled to an injunction.

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

Response: Yes. For example, in *Kennedy v. Bremerton School District,* 142 S. Ct. 2407 (2022), the Supreme Court held that a school district violated a football coach's First Amendment free speech and religious exercise rights due to his practice of kneeling and praying on the field after games. The Supreme Court found that the school district's actions targeted religion as the coach was fired for praying, and also retaliated in violation of his private speech because his prayer was an expression as a private citizen and not as a public employee. Therefore, the district's actions triggered heightened scrutiny, and the school district was unable to satisfy its burden.

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

Response: *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n,* 138 S. Ct. 1719 (2018) involved a bakery that refused to sell a wedding cake to a same sex couple. The Supreme Court held that the Colorado Civil Rights Commission violated petitioners' First Amendment right to free exercise of religion because the record of the case contained instances that the Commission demonstrated "clear and impermissible hostility towards the sincere religious beliefs" held by the bakery owners. *Id.* at 1729.

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

Response: Yes. The Supreme Court held that the court must ask if those religious beliefs are sincerely held, not whether they adhere to any particular organization's traditional teachings. *Frazee v. Ill. Dep't of Emp. Sec.,* 489 U.S. 829, 834-35 (1989); *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: Yes. The Court's function is limited to deciding whether the religious belief is sincerely held, irrespective of whether it is reasonable or not. Thus, there may be many interpretations of a doctrine. *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014).

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

Response: The Court's function is limited to deciding whether the religious belief is sincerely held, not whether it is reasonable or acceptable. *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: No.

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

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru,* 140 S. Ct. 2049 (2020), the Supreme Court reaffirmed its previous holding in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC,* 556 U.S. 171 (2012), that the First Amendment allows religious institutions to make employment decisions based on religious considerations that might otherwise violate the law because its employees performed "vital religious duties." *Our Lady of Guadalupe School,* at 2066. The Court found this exemption arises from the freedom of religion clauses of the First Amendment, and the protection this clause provides to religious institutions to determine matters of doctrine and governance without state interference.

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

Response: In *Fulton v. City of Philadelphia,* 141 S. Ct. 1868 (2021), the Supreme Court held that the city's decision not to refer foster children to a Catholic agency due to that agency's refusal to certify same sex couples as foster parents violated the Free Exercise

clause of the First Amendment. The city's position was that the requirement was a facially neutral and generally applicable ordinance prohibiting discrimination due to sexual orientation, and a standard contract applicable to all foster agencies affirmed the non-discrimination requirement. However, the Court found that the requirement allowed for entirely discretionary exemptions, and therefore was not "generally applicable." *Id*. at 1879. The Court found that the city failed to demonstrate a compelling interest for denying an exception to the agency and, thus, could not withstand strict scrutiny.

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

Response: In *Carson v. Makin,* 142 S. Ct. 1987 (2022), the Supreme Court held that Maine's tuition assistance program violated the Free Exercise clause of the First Amendment. Under Maine's program, parents in school districts that did not operate secondary schools were allowed to pick the public or private school they wanted their child to attend, and the district would help defray that cost, but the state refused to provide funds to a private school unless it was non-sectarian. The Court found that this violated the Free Exercise Clause because it failed to consider otherwise qualified private schools from public benefits due to religion and could not therefore withstand strict scrutiny. The Court cited to its prior decisions 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).

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

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that a school district violated a football coach's First Amendment free speech and religious exercise rights due to his practice of kneeling and praying on the field after games. The Court found that the school district's actions targeted religion as the coach was fired for praying, and also retaliated in violation of his private speech because his prayer was an expression as a private citizen and not as a public employee. Therefore, the district's actions triggered heightened scrutiny, and the school district was unable to satisfy its burden.

23. 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 Justice Gorsuch's concurrence in *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), he was critical of the Minnesota state officials and lower court's misapplication

of the Religious Land Use and Institutionalized Persons Act, which requires an analysis under strict scrutiny where the government must prove that the law is narrowly tailored to serve a compelling state interest. In this case, the Amish community claimed a religious exemption to the county requirement to install modern septic systems. Justice Gorsuch explained that the county and lower courts had erred in treating the county's general interest in sanitation regulations as "compelling" without considering the interest the county had in denying an exemption to this specific Amish community. Justice Gorsuch further explained that the county and the lower courts erred when they failed to provide a rationale as to why the exception was denied to a religious group but available to others.

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

Response: If confirmed and confronted with this issue, I will faithfully apply Supreme Court and First Circuit precedent on the standard of interpretation to any challenge to Section 1507.

25. Would it be appropriate for the court to provide its employees trainings which I 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 to Questions 25a to 25d: I am not aware of any trainings of this sort in the District of Puerto Rico or in the First Circuit. All trainings provided by the judiciary must adhere to the applicable rules, laws and the Constitution of the United States.

26. 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: As a United States Magistrate Judge for 18 years in Puerto Rico, I have never participated in the court's governance nor the organization of any trainings in the District

Court for the District of Puerto Rico. However, I can say that I have never experienced any issues of racial or gender discrimination in the District Court for the District of Puerto Rico. As a United States Magistrate Judge, I always make sure that everyone is treated equally regardless of their race or gender. My conduct would be the same if confirmed as a District Judge.

27. 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.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, it is not appropriate for me to answer this question.

29. Is the criminal justice system systemically racist?

Response: I have not researched nor read any studies about the criminal justice system and whether it is systemically racist. As a United States Magistrate Judge, I always make sure that everyone is treated equally regardless of their race. My conduct would be the same if confirmed as a District Judge.

30. 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: This is a policy decision for the legislative branch. As a United States Magistrate Judge and a judicial nominee, it is not appropriate for me to comment on policy issues.

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

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is not appropriate for me to answer this question on my political views.

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

Response: As a sitting United States Magistrate Judge and a judicial nominee, I respect all members of the U.S. Supreme Court. I will continue to faithfully follow Supreme Court precedent as I have done for the past 18 years as a United States Magistrate Judge.

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

Response: Original public meaning avers that the meaning sought is the one revealed by the text as reasonably understood by a reader when it was passed. The Supreme Court has often held that the original meaning of constitutional provision is an important part of that interpretation. *See District of Columbia v. Heller,* 554 U.S. 570 (2008) and *New York State Rifle & Pistol Association v. Bruen,* 142 S. Ct. 2111 (2022) (Second Amendment); and *Crawford v. Washington,* 541 U.S. 36 (2004) (Sixth Amendment). As a sitting United States Magistrate Judge and judicial nominee, I am bound by all Supreme Court precedent.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court ruled that the Second Amendment protects the right of an individual to keep and bear arms unconnected to service in the militia, including self-defense within the home. In *McDonald v. City of Chicago,* 561 U.S. 742 (2010), the U.S. Supreme Court confirmed that the Second Amendment applies with full force to the states through the Fourteenth Amendment. In *New York State Rifle & Pistol Assn v. Bruen,* 142 S. Ct. 2111 (2022), the Supreme Court held that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home.

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

Response: Yes. The Supreme Court so held in *District of Columbia v. Heller,* 554 U.S. 570 (2008) and *New York State Rifle & Pistol Assn v. Bruen,* 142 S. Ct. 2111 (2022).

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

Response: To the best of my understanding, no Supreme Court or First Circuit precedent has established that the right to own a firearm receives less protection than other individual rights specifically enumerated in the Constitution.

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

Response: To the best of my understanding, no Supreme Court or First Circuit precedent has established that the right to own firearms receives less protection than the right to vote.

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

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is not appropriate for me to answer this question. If a matter came before me involving a claim that the Executive was refusing to enforce a law, I would closely examine the relevant facts and applicable law.

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

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is not appropriate for me to answer this question. If a matter came before me involving a claim that the Executive was engaging in a substantive administrative rule change under the guise of prosecutorial discretion, I would closely examine the relevant facts and applicable law.

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

Response: No. The death penalty is legal in the United States pursuant to 18 U.S.C. 3591 (a). Only Congress can end the death penalty through legislation. Thus, the President of the United States does not have the authority to abolish the death penalty unilaterally.

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

Response: In *Alabama Association of Realtors v. HHS,* 141 S. Ct. 2485 (2021), the Supreme Court vacated a stay of an order that held that the Centers for Disease Control (CDC) exceeded its authority when it imposed a nationwide eviction moratorium for certain rental properties during the COVID-19 pandemic. The Court found that the petitioners had substantial likelihood of success on the merits of their claim, examined the factors relevant to whether the stay should be maintained and ultimately held that the stay should be vacated.

42. Throughout your time as a magistrate judge, you recused yourself over 50 times. Is this something that will hinder your ability to hear cases and controversies as an Article III judge, and do you foresee this number will continue to become larger?

Response: No. As a United Magistrate Judge for 18 years, I have faithfully followed Canon 3(c)(1) of the Code of Conduct for United States Judges and 28 U.S.C. Section 455. I have recused myself when the Code of Conduct and recusal statutes call for recusal. I will follow the Code of Conduct and recusal statutes if confirmed as a District Judge.

Senator Josh Hawley
Questions for the Record

Judge Camille Vélez-Rivé
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: If confirmed as a District Judge, I will apply the 18 U.S.C. Section 3553(a) factors in sentencing a defendant to fashion a sentence that is sufficient but not greater than necessary. I expect that I will carefully evaluate on a case-by-case basis whether the facts in a particular case support a specific sentencing enhancement. I do not anticipate that I will make a practice of refusing to apply enhancements in Sentencing Guidelines when sentencing child pornography offenders or other offenders.

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?**

      Response: As a judicial nominee, it is not appropriate for me to answer this question about a policy matter.

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

      Response: Please see my response to Question 2a.

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

Response: Yes. As a United States Magistrate Judge now, and if confirmed as a District Judge, I am bound to follow all Supreme Court precedent.

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?

Response: No. A judge must adjudicate all cases and controversies before the court pursuant to the law and applying the law impartially to the facts of each individual case. The judge's personal feelings or views should not come into play in judicial adjudication.

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

Response: As a sitting United States Magistrate Judge, it is not appropriate for me to comment on whether a former Supreme Court Justice violated his judicial oath.

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

Response: Abstention doctrines are used to justify a federal court's refusal to hear cases within its jurisdiction, deferring instead to a state court's authority to hear the case. Abstention is the exception, not the rule, and is appropriate only when considerations of proper constitutional adjudication, regard for federal-state relations, or wise judicial administration are present. The Supreme Court has recognized several abstention doctrines.

Under the *Younger* abstention doctrine, the court must refrain from hearing cases that would interfere with a state criminal proceeding. *Younger v. Harris*, 401 U.S. 37 (1971). The *Younger* abstention has been extended to certain types of state civil proceedings. *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350 (1989), as well as to quasi-judicial proceedings that implicate important state interests, as long as there is an adequate opportunity to litigate federal claims in the administrative proceeding or in the state court judicial review proceeding. *Ohio Civil Rights Com'n v. Dayton Christian Schools, Inc.,* 477 U.S. 619 (1986). The First Circuit has held that *Younger* abstention is appropriate when the relief would interfere with: "1) an ongoing state judicial proceeding; 2) that implicates an important state interest; and 3) that provides an adequate opportunity for the federal plaintiff to advance his federal constitutional challenge." *Rossi v. Gemma*, 489 F.3d 26, 34-35 (1st Cir. 2007).

The *Pullman* doctrine is applied in cases in which the resolution of a federal constitutional question might be avoided if the state courts were given the opportunity to

interpret ambiguous state law. *Railroad Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941). The First Circuit applies a two-part test to apply this doctrine: 1) if there is substantial uncertainty over the meaning of a state law involved; and 2) where a state court ruling clarifying the law would eliminate the need for a federal constitutional ruling. *Ford Motor Co. v. Meredith Motor Co*., 257 F.3d 67, 71 (1st Cir. 2001).

The *Colorado River* abstention doctrine may be applied in cases which are duplicative of a pending state proceeding, that is, when there is parallel litigation in state court involving the same parties and the same issues. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976). The decision of whether the court must dismiss or stay proceedings as a result of the parallel litigation is left to the Court's discretion. *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.,* 460 U.S. 1, 19 (1983). The First Circuit examines a non-exclusive list of factors to determine whether or not to abstain: "(1) whether either court has assumed jurisdiction over 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." *Río Grande Cmty. Health Ctr. v. Rullán*, 397 F.3d 56, 71-72 (1st Cir. 2005).

The *Burford* abstention doctrine may be applied on grounds of comity with the states where the exercise of jurisdiction by the federal court would disrupt a state administrative process. *Burford v. Sun Oil Co.,* 319 U.S. 315 (1943); *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans,* 491 U.S. 350 (1989). In the First Circuit, the *Burford* abstention is used when there is a "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." *Forty-Six Hundred LLC v. Cadence Educ., LLC*, 15 F. 4th 70, 75 (1st Cir. 2021).

Under the *Rooker-Feldman* abstention doctrine, lower federal courts are precluded from exercising appellate jurisdiction over challenges to a final state court judgments where the challenger was a party because federal law vests sole jurisdiction to review these claims in the Supreme Court. *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). In the First Circuit, the doctrine "is confined to ... cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Puerto Ricans for P.R. Party v. Dalmau*, 544 F.3d 58, 68 (1st Cir. 2008).

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

Response: No, to the best of my recollection.

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.

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

Response: Original public meaning avers that the meaning sought is the one revealed by the text as reasonably understood by a reader when it was passed. The Supreme Court has held that the original meaning of constitutional provision is an important part of that interpretation. *See District of Columbia v. Heller,* 554 U.S. 570 (2008) and *New York State Rifle & Pistol Association v. Bruen,* 142 S. Ct. 2111 (2022) (Second Amendment) and *Crawford v. Washington,* 541 U.S. 36 (2004) (Sixth Amendment). As a sitting United States Magistrate Judge and judicial nominee, I am bound by this and all Supreme Court precedent.

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

Response: If the plain language of the statute is unambiguous, the inquiry is at an end and other extrinsic factors should play no role on the statutory interpretation. *Desert Palace, Inc. v. Costa,* 539 U.S. 90, 98 (2003). Otherwise, I would apply the interpretative principles from the First Circuit and the Supreme Court. The First Circuit standard for statutory interpretation considers Congressional intent as the key. "In ascertaining congressional intent, we employ the traditional tools of statutory construction, including a consideration of the language, structure, purpose, and history of the statute." *United States v. Gordon*, 875 F.3d 26, 33 (1st Cir. 2017). If a statute's plain meaning offers a plausible interpretation, the inquiry ends. Statutory history and legislative context furnish additional sources of insight that a court may inspect when attempting to discern congressional purpose. *Id*.

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: I would follow precedent from the Supreme Court on the probative value of legislative history because the Supreme Court has ruled that some forms of legislative history are more persuasive than others. For example, in *United States v. Craft*, 535 U.S. 274, 285 (2002), the Supreme Court ruled that "failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute."

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

Response: Never, to the best of my understanding.

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: The Supreme Court has held that "a prisoner must show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason". *Bucklew v. Precythe,* 139 S. Ct. 1112, 1125 (2019); *Glossip v. Gross*, 576 U.S. 863 (2015).

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: Under *Glossip*, the alternative method must be known and available, as well as significantly reduce a substantial risk of severe pain when compared to the known and available alternatives. *Glossip v. Gross,* 576 U.S. 863, 877 (2015).

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: I am not aware of any First Circuit case that has addressed this issue. The Supreme Court, however, has held that the rights under *Brady v. Maryland*, 373 U.S. 83 (1963), in this case for DNA evidence, did not extend to a petitioner in postconviction context. *See Dist. Attorney's Off. for Third Jud. Dist. v. Osborne,* 557 U.S. 52, 69 (2009).

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: I have no doubt about my 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.

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: If the law is truly neutral and generally applicable, it will be subject to rational basis review. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993); *Does 1-6 v. Mills,* 16 F. 4th 20 (1st Cir. 2021). When the law is motivated by a

hostility to religion, however, it will be subject to strict scrutiny. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018). The same occurs when the laws contain exceptions that treat comparable secular activity more favorably than religious exercise. *See Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Fulton v. City of Phila*., 141 S. Ct. 1868 (2021); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020).

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: Please see my answer to Question 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 standard of the First Circuit is consonant with Supreme Court precedent. The Supreme Court has held that the court must ask if those religious beliefs are sincerely held, not whether they adhere to any particular organization's traditional teachings. *Frazee v. Ill. Dep't of Emp. Sec.,* 489 U.S. 829, 834-35 (1989); *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014); *Hanna v. Sec'y of the Army*, 513 F.3d 4, 16 (1st Cir. 2008).

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: The Supreme Court ruled in *Heller* that the Second Amendment protects the right of an individual to keep and bear arms unconnected to service in the militia, including self-defense within 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, to the best of my knowledge.

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 have not studied the writings of Justice Holmes and I am not aware of this particular quote written by him. As a judicial nominee, it is not appropriate for me to comment on what Justice Holmes may have meant by this comment and to provide my personal beliefs as to its meaning.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, it is not appropriate for me to opine whether a Supreme Court case was correctly decided. However, the *Lochner* case was abrogated by *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937) and *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963), where the Court stated that the doctrine that prevailed in *Lochner* and other cases "has long since been discarded." *Id.* at 730. As a sitting United States Magistrate Judge and, if confirmed as a District Judge, I will follow all Supreme Court precedent, regardless of my opinion as to whether the precedent was correctly decided.

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 cannot identify any Supreme Court opinions that have not been formally overruled but that I believe are no longer good law.

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: I am not familiar with this quote from Judge Hand and I do not have an opinion about it. As a sitting United States Magistrate Judge, I am bound to follow all Supreme Court precedent as to what constitutes a monopoly. *See United States v. Grinnell Corp.,* 384 U.S. 563 (1966); *Am. Tobacco Co. v. United States,* 328 U.S. 781 (1946).

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

Response: Please see my answer to Questions 19a.

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: In *United States v. E.I. du Pont de Nemours & Co.,* 351 U.S. 377, 391 (1956), the Supreme Court defined monopoly power as "the power to control prices or exclude competition." What percentage of a market share constitutes a monopoly depends on the specific facts of each case, and neither the Supreme Court nor the First Circuit have established what percentage of market share is presumptively sufficient to establish a monopoly. *See Id.* at 405. ("The 'market' which one must study to determine when a producer has monopoly power will vary with the part of commerce under consideration"). However, the Supreme Court has ruled on several cases regarding this issue, enough to establish generally that control of at least 75% of a market share is necessary to constitute a monopoly. *Eastman Kodak Co. v. Image Tech. Servs., Inc.,* 504 U.S. 451, 481 (1992) (greater than 87%); *United States v. Grinnell Corp.,* 384 U.S. 563, 571 (1966) (87% market share); *Am. Tobacco Co. v. United States,* 328 U.S. 781, 797 (1946) (2/3 of domestic market).

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).

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: The Supreme Court held in *Erie R. Co. v. Tompkins*, 304 U.S. 64, 77-79 (1938) that "except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state."

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

Response: 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: Some state constitutions may provide broader protections than the U.S. Constitution.

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

Response: As a sitting United States Magistrate Judge and as a judicial nominee, it is not appropriate for me to opine whether a Supreme Court case was correctly decided. However, I will indicate that *Brown v. Board of Education* was correctly decided, because the issues presented in this case are not likely to be re-litigated.

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

Response: Fed. R. Civ. P. 65 governs the federal court's authority to issue an injunction. The issue of whether a federal court has the authority to issue a nationwide injunction is not clearly defined and has been the subject of considerable debate, mainly because it affects parties not before the court, whose main role is to resolve case and controversies between the parties before it.

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

Response: Please see my answer to Question 23.

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

Response: Please see my answer to Question 23.

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: The role of federalism in our constitutional system is to limit the government by creating two separate powers, the national government and the state governments.

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: As a sitting Magistrate Judge and a judicial nominee, I will faithfully apply Supreme Court and First Circuit precedent on this matter. I would weigh individually the advantages and disadvantages of awarding damages versus injunctive relief in each case that comes before me.

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

Response: The Supreme Court has held that the substantive due process clauses of the Fifth and Fourteenth Amendments protects certain rights that are not explicitly mentioned in the Constitution and are "deeply rooted in this nation's history and tradition." *Washington v. Glucksberg,* 521 U.S. 702, 721 (1997). In *Glucksberg*, the Court listed these rights, including the right to marry, *Loving v. Virginia*, 388 U.S. 1, (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535, (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska,* 262 U.S. 390 (1923); to marital privacy and contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965); and to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952). More recently, the Supreme Court also established the right to same-sex marriage in *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 Free Exercise Clause of the First Amendment is one of the fundamental rights established by the Constitution that protects an individual's right to practice the religion of their choice. *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: I believe so. I am not aware of any Supreme Court or First Circuit precedent that compares "free exercise" with "free worship."

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: If the law is truly neutral and generally applicable, it will be subject to rational basis review. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). When the law is motivated by a hostility to religion, however, it will be subject to strict scrutiny. *Masterpiece Cakeshop, Ltd. v. Colo.*

Civil Rights Comm'n, 138 S. Ct. 1719 (2018). The same occurs when the laws contain exceptions that treat comparable secular activity more favorably than religious exercise. *See Tandon v. Newsom,* 141 S. Ct. 1294 (2021); *Fulton v. City of Phila.,* 141 S. Ct. 1868 (2021); *Roman Catholic Diocese of Brooklyn v. Cuomo,* 141 S. Ct. 63 (2020); *Does 1-6 v. Mills*, 16 F. 4th 20 (1st Cir. 2021). When applying strict scrutiny, the inquiry is whether the "government has placed a substantial burden on the observation of a central religious belief or practice and if so, whether a compelling governmental interest justifies that burden." *Church of the Lukumi Babalu Aye, Inc.,* 508 U.S. at 566.

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: Please see 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: The Religious Freedom Restoration Act establishes that the federal government may not substantially burden the exercise of religion, even if the rule is one of general applicability, unless the government "demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §2000bb1. Thus, actions by the federal government which are subject to the Religious Freedom Restoration Act, even if they are neutral and generally applicable, will be subject to strict scrutiny if they substantially burden the free exercise of religion. *See Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 720, 723 (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, to the best of my knowledge.

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: I am not familiar with this quote from Judge Scalia and I do not have an opinion about it. As a sitting United States Magistrate Judge and judicial

nominee, it is not appropriate for me to comment on what Justice Scalia may have meant by this comment and to provide my personal beliefs as to its meaning.

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.

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 not researched nor read any studies about the criminal justice system and whether it is systemically racist. As a United States Magistrate Judge, I have always made sure that all litigants who appear before me are treated fairly and equally regardless of their race. I would do the same if confirmed as a District Judge.

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: I have never considered my personal views in making judicial decisions during my 18 years as a United States Magistrate Judge. I have always applied the applicable law to the facts of the case impartially and fairly without fear or favor. I would do the same if confirmed as a District Judge.

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 have never studied the Federalist Papers in detail, nor have I conducted any research about them. Thus, I cannot state which one has shaped my views of the law.

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

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is not appropriate for me to opine on this question. However, I will follow Supreme Court and First Circuit precedent on this matter.

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, I have testified under oath during my two divorce proceedings in the state courts in Puerto Rico. My two divorces were by mutual agreement and the questions that were posed to me under oath were related to my willingness to get divorced. These testimonies are not available online or as a record, to the best of my knowledge.

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?

b. Amazon?

c. Google?

d. Facebook?

e. Twitter?

Response to Questions 41a to 41e: No.

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

Response: No.

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

43. Have you ever confessed error to a court?

Response: No, to the best of my knowledge.

a. If so, please describe the circumstances.

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: The duty of candor is to answer truthfully and to the best of my abilities the questions posed when testifying before the Senate Judiciary Committee avoiding deliberate falsehoods.

Questions for the Record for Camille Lizette Vélez-Rivé
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
Camille L. Vélez-Rivé

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

Response: I strongly believe that every party is entitled to a day in court, to have an opportunity to be heard, and to have a judge carefully study the facts of the case, the applicable statutes and jurisprudence and apply them impartially and fairly to the facts of the case. My judicial philosophy for the past 18 years as a United States Magistrate Judge has been just that. My commitment as a District Judge, if confirmed, would be the same.

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 plain language of the statute is unambiguous, the inquiry is at an end and other extrinsic factors should play no role on the statutory interpretation. *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98 (2003). Otherwise, I would apply the interpretative principles from the First Circuit and the Supreme Court. The First Circuit standard for statutory interpretation considers Congressional intent as the key. To ascertain congressional intent, the First Circuit employs traditional tools of statutory construction, including a consideration of the language, structure, purpose and history of the statute. If a statute's plain meaning offers a plausible interpretation, the inquiry ends. Statutory history and legislative context furnish additional sources of insight that a court may inspect when attempting to discern congressional purpose. *United States v. Gordon*, 875 F.3d 26 (1st Cir. 2017).

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

Response: Please see my answer to Question 2.

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

Response: While a private owner of a shopping center may not be constrained by the First Amendment, he may be constrained by the state's constitution, depending on the circumstances of each case. In this particular case, the Court held that "California Constitution protects speech and petitioning, reasonably exercised, in shopping centers even when the centers are privately owned." *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 78 (1980).

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: In *District of Columbia v. Heller*, 554 U.S. 570, 579-580 (2008), the Supreme Court indicated that "in all six other provisions of the Constitution that mention 'the people,' the term unambiguously refers to all members of the political community, not an unspecified subset. Moreover, the Supreme Court stated in *United States v. Verdugo-Urquidez,* 494 U.S. 259, 265 (1990): "'[T]he people' seems to have been a term of art employed in select parts of the Constitution .... [Its uses] sugges[t] that 'the people' protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of 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."

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

Response: Yes. The Supreme Court ruled in *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886), that non-citizens in the United States have due process rights, indicating that "[t]he Fourteenth Amendment to the Constitution is not confined to the protection of citizens", but rather applies "to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality." *See also Plyler v. Doe,* 457 U.S. 202 (1982) (guaranteeing due process to aliens). Moreover, in *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), the Supreme Court held that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." If confirmed as a District Judge, I will apply faithfully Supreme Court and First Circuit precedent.

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-Urquidez,* 494 U.S. 259, 265 (1990), the Supreme Court held that Fourth Amendment protection does not apply to searches and seizures by law enforcement agents of the United States of property owned by a non-citizen in a foreign country. The First Circuit has similarly ruled that the Fourth Amendment does not constrain the United States' actions against aliens in international waters. *United States v. Vilches-Navarrete*, 523 F.3d 1, 13 (1st Cir. 2008). If confirmed as a District Judge, I will apply faithfully Supreme Court and First Circuit precedent.

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

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is not appropriate for me to answer this question because it a matter that can come before me. If

confirmed as a District Judge, I will apply faithfully Supreme Court and First Circuit precedent.

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 Cnty. Election Bd.*, 553 U.S. 181 (2008), the Supreme Court held that photo identification requirements for voting were not automatically unconstitutional, and that this requirement was relevant to the state of Indiana's interest in protecting the integrity and reliability of the electoral process. The Court held that the "[s]tate has identified several state interests that arguably justify the burdens that imposes on voters and potential voters", and that the petitioners had failed to question the legitimacy of those interests. *Id.* at 191.

Senator Mike Lee
Questions for the Record
Camille L. Vélez-Rivé, Nominee to the United States District Court for the District of Puerto Rico

1. How would you describe your judicial philosophy?

Response: I strongly believe that every party is entitled to a day in court, to have an opportunity to be heard, and to have a judge carefully study the facts of the case, the applicable statutes and jurisprudence and apply them impartially and fairly to the facts of the case. My judicial philosophy for the past 18 years as a United States Magistrate Judge has been just that. My commitment as a District Judge, if confirmed, would be the same.

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

Response: I would first determine whether the Supreme Court or the First Circuit have previously interpreted the statute. If there is no precedent, I would consider the text of the provision and the meaning of the terms at issue, as well as the method of interpretation that the Supreme Court or First Circuit has used in the most analogous circumstance and any persuasive authority from other jurisdictions.

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

Response: I would first determine whether the Supreme Court or the First Circuit have previously interpreted the constitutional provision. If there is no precedent, I would consider the text of the constitutional provision and the meaning of the terms at issue, as well as the method of interpretation that the Supreme Court or First Circuit has used in the most analogous circumstance and any persuasive authority from other jurisdictions.

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

Response: The Supreme Court has applied originalism when deciding certain constitutional and statutory issues, including the Second Amendment and the Confrontation Clause. *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *Crawford v. Washington*, 541 U.S. 36 (2004).

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

Response: If the plain language of the statute is unambiguous, the inquiry is at an end and other extrinsic factors should play no role on the statutory interpretation. *Desert Palace, Inc. v. Costa,* 539 U.S. 90, 98 (2003). Otherwise, I would apply the interpretative principles from the First Circuit and the Supreme Court. The First Circuit standard for

statutory interpretation considers Congressional intent as the key. "In ascertaining congressional intent, we employ the traditional tools of statutory construction, including a consideration of the language, structure, purpose, and history of the statute." *United States v. Gordon*, 875 F.3d 26, 33 (1st Cir. 2017). If a statute's plain meaning offers a plausible interpretation, the inquiry ends. Statutory history and legislative context furnish additional sources of insight that a court may inspect when attempting to discern congressional purpose. *Id*.

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: Original intent asserts that the meaning sought is the one intended by the drafters of the law. Original public meaning avers that the meaning sought is the one revealed by the text as reasonably understood by a reader when it was passed. As a sitting United States Magistrate Judge and if confirmed as a District Judge, I will faithfully apply Supreme Court and First Circuit precedent on statutory interpretation.

6. What are the constitutional requirements for standing?

Response: A plaintiff must have suffered 1) an injury in fact that is concrete and particularized; 2) that is fairly traceable to the challenged action; 3) that is likely to be redressed by a favorable judicial decision. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555 (1992).

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

Response: Yes. The case of *McCulloch v. Maryland*, 17 U.S. 316 (1819) held that the Necessary and Proper Clause in Article I, Section 8 of the Constitution gave Congress certain implied powers to enact laws that were not explicitly enumerated in the Constitution. The *McCulloch* case, for example, specifically held that Congress had the power to establish a national bank.

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

Response: I would examine any Supreme Court precedent and First Circuit precedent to guide my analysis as to whether Congress has exceeded its constitutional authority.

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

Response: Yes. The Supreme Court has held that the substantive due process clauses of the Fifth and Fourteenth Amendments protects certain rights that are not explicitly mentioned in the Constitution and are "deeply rooted in this nation's history and

tradition." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). In *Glucksberg*, the Court listed these rights, including the right to marry, *Loving v. Virginia*, 388 U.S. 1, (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); to marital privacy and contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965); and to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952). More recently, the Supreme Court also established the right to same-sex marriage in *Obergefell v. Hodges*, 576 U.S. 644 (2015).

10. What rights are protected under substantive due process?

Response: Please see my answer to Question 9.

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

Response: The Supreme Court precedent upholding the rights I listed in my answer to Question 9 are protected by the Fifth and Fourteenth Amendments and remain good law. Recently, in *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228 (2022), the Supreme Court overruled *Roe v. Wade* and *Planned Parenthood v. Casey* and held the Constitution does not protect the right to an abortion. In addition, the *Lochner* doctrine "has long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).

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

Response: The Supreme Court has held that Congress, through the Commerce Clause, is empowered to regulate channels and instrumentalities of interstate commerce and any activity that has a substantial effect on interstate commerce. *See United States v. Morrison*, 529 U.S. 598 (2000); *United States v. López*, 514 U.S. 549 (1995).

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

Response: The Supreme Court has identified four suspect classifications, to wit: race, national origin, alienage and religion. *Graham v. Richardson*, 403 U.S. 365 (1971).

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

Response: The Founding Fathers sought to limit the power of each branch of government, while also giving each branch oversight authority over the others, to protect constitutional liberty interests.

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

Response: I would review the arguments of the parties and look for precedent from the Supreme Court, the First Circuit or other Circuits to determine whether the branch exceeded its constitutional authority.

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

Response: A judge should allow all parties an opportunity to express their arguments and views giving them an opportunity to be heard. The judge should try to understand the views of all litigants on the issues before the court prior to making a ruling. A judge should keep an open mind and treat all parties fairly and with respect. A judge's decision, however, should be made by a fair and impartial application of the relevant law to the facts of each case.

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

Response: Both outcomes are contrary to the law, and therefore improper for a judge who has taken an oath to apply the Constitution and laws of the United States.

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

Response: I have not studied trends in the Supreme Court's exercise of its authority to strike down or invalidate unconstitutional laws. As such, I am unable to explain this change. Aggressive judicial review could imply an activist court, whereas judicial passivity could lead to abandoning the judicial branch's role in the constitutional checks and balances process. In the end, it is a judge's duty to apply the law faithfully and equally, irrespective of the amount of statutes it invalidates, while always remembering the holding of *Marbury v. Madison*, 5 U.S. 137, 177 (1803), "[i]t is emphatically the province and duty of the judicial department to say what the law is."

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

Response: In the case of *Marbury v. Madison*, 5 U.S. 137, 177 (1803) the Supreme Court established the principle of judicial review in the United States, meaning that American courts have to power to strike down laws and statutes that they find violate the Constitution. Black's Law Dictionary defines "judicial supremacy" as "the doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." (Black's Law Dictionary, 11th Ed., 2019).

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

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is not appropriate for me to offer an opinion as to actions of officials from other branches of government. However, elected officials have a Constitutional obligation to uphold the Constitution and must take an oath in affirmance thereof. U.S. Const., Art. VI, § 3.

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

Response: Federalist number 78 discussed the power of judicial review, later affirmed in *Marbury v. Madison*, 5 U.S. 137 (1803), and recognizes the importance of the judiciary's role in interpreting and applying the law in deciding cases before it, not making policy or enforcing laws delegated to the other two branches of government.

22. 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: As a sitting United States Magistrate Judge and if confirmed as a District Judge, I will faithfully apply Supreme Court and First Circuit precedent on statutory and Constitutional interpretation. In the case of precedent that is not directly on point, a district judge still must consider whether it is so closely analogous that it should be applied.

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

Response: A defendant's group identity(ies) should play no role in sentencing. If confirmed as a District Judge, I will follow and apply the 18 U.S.C. 3553(a) factors in sentencing a defendant.

24. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who

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

Response: As a sitting United States Magistrate Judge and judicial nominee, it is not appropriate for me to answer this policy question about whether I agree with the Biden Administration's definition of "equity."

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

Response: Black's Law Dictionary defines "equity" as "fairness; impartiality; evenhanded dealing" and "equality" as "the quality, state, or conditions being equal; esp., likeliness in power or political status." (Black's Law Dictionary, 11th Ed., 2019).

26. 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 does not mention "equity." However, it states in part that "[n]o State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." As a sitting United States Magistrate Judge and judicial nominee, I must faithfully apply Supreme Court or First Circuit precedent in applying the Fourteenth Amendment to any case before me. U.S. Const. amend. XIV, § 2.

27. How do you define "systemic racism"?

Response: I have no personal definition of systemic racism because I have never used the term nor researched or studied systemic racism. I am not aware of any consensus definition of the same.

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

Response: I am not familiar with "critical race theory" and I have never researched the matter. I am not aware of any consensus definition of the term. Black's Law Dictionary defines it 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).

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

Response: I am not familiar with either term, as explained in my answers to Questions 27 and 28. Since there is no consensus definition of what systemic racism is, I cannot compare it to critical race theory.

Senator Ben Sasse
Questions for the Record for Camille L. Vélez-Rivé
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: I strongly believe that every party is entitled to a day in court, to have an opportunity to be heard, and to have a judge carefully study the facts of the case, the applicable statutes and jurisprudence and apply them impartially and fairly to the facts of the case. My judicial philosophy for the past 18 years as a United States Magistrate Judge has been just that. My commitment as a District Judge, if confirmed, would be the same.

3. Would you describe yourself as an originalist?

Response: I do not subscribe to any specific school of constitutional interpretation. Black's Law Dictionary defines originalism as a doctrine that indicates that "words of a legal instrument are to be given the meanings they had when they were adopted." (Black's law Dictionary, 11th Ed., 2019). It refers to how the words of the Constitution or a particular statute would have been understood when the statute was enacted. The Supreme Court has applied originalism when deciding certain constitutional and statutory issues. *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I will faithfully apply the precedents from the Supreme Court and the First Circuit on constitutional interpretation.

4. Would you describe yourself as a textualist?

Response: Black's Law Dictionary defines "textualism" a "the doctrine that the words of a governing text are od paramount concern and that what they fairly convey in their context is what the text means." (Black's Law Dictionary, 11th Ed., 2019). The Supreme Court has held many times that the starting point of any analysis is the statutory text, and if the statue is unambiguous, then the Court's inquiry is complete. *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98 (2003); *Connecticut Nat. Bank v. Germain*, 503 U.S. 249 (1992). Only when the text is ambiguous may a judge consider other sources. If confirmed, I will faithfully apply the precedents from the Supreme Court and the First Circuit on constitutional interpretation.

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

Response: I do not subscribe to any specific school of constitutional interpretation. However, the Constitution is an enduring document that can be changed through the Article V amendment process. Black's Law dictionary describes "living constitutionalism" as a doctrine where "the Constitution should be interpreted in accordance with changing circumstances and in particular, with changing social values." (Black's Law Dictionary, 11th Ed., 2019). If confirmed, I will faithfully apply the precedents from the Supreme Court and the First Circuit on constitutional interpretation.

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 have not researched or studied in detail the jurisprudence of any Justice appointed since 1953 to determine whose jurisprudence I admire the most.

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: As a sitting United States Magistrate Judge, it is my obligation to follow binding appellate court precent regardless of whether it conflicts with the original public meaning of the Constitution. The First Circuit, as an appellate court, can override its own precents via an *en banc* hearing. *See* Fed. R. App. P. 35(a).

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

Response: As a sitting United States Magistrate Judge, it is my obligation to follow binding appellate court precent regardless of whether it conflicts with the original public meaning of a statute. The First Circuit, as an appellate court, can override its own precents via an *en banc* hearing. *See* Fed. R. App. P. 35(a).

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: If the plain language of the statute is unambiguous, the inquiry is at an end and other extrinsic factors should play no role on the statutory interpretation. *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98 (2003). Otherwise, I would apply the interpretative principles from the First Circuit and the Supreme Court. The First Circuit standard for statutory interpretation considers Congressional intent as the key. "In ascertaining congressional intent, we employ the traditional tools of statutory construction, including a consideration of the language, structure, purpose, and history of the statute." *United*

States v. Gordon, 875 F.3d 26, 33 (1st Cir. 2017). If a statute's plain meaning offers a plausible interpretation, the inquiry ends. Statutory history and legislative context furnish additional sources of insight that a court may inspect when attempting to discern congressional purpose. *Id*.

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: No. 18 U.S.C. 3553(a) dictates the factors to consider in sentencing, one of them being "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." The Sentencing Guidelines also prohibit consideration of race, sex, national origin, and creed, as they are not relevant in the determination of a sentence. U.S. Sentencing Guidelines Manual, sec. 5H1.10 (policy statement). I will consider the above and all other statutory factors when sentencing a defendant.

Questions from Senator Thom Tillis
for Camille L. Vélez-Rivé
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: Black's Law Dictionary defines judicial activism as "the philosophy of judicial decision making whereby judges allow their personal views about public policy, among other factors to guide their decisions." (Black's Law Dictionary, 11th Ed., 2019). All cases should be decided pursuant to the facts and the law applicable to each case, not the judge's personal views. I do not consider judicial activism to be appropriate.

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

   Response: It is an expectation for a judge to be impartial in all decisions he/she makes. It is also required under the oath I have taken as a United States Magistrate Judge and the one I will take if confirmed as a District Judge.

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

   Response: No. Under the separation of powers doctrine, the judiciary is limited to deciding the correctness of cases and controversies before the court, nothing more.

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

   Response: Yes. As a United States Magistrate Judge, I have always sought to apply the law to the facts of a case before me fairly and impartially, regardless of the perceived desirability of the outcome.

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

   Response: No.

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

Response: I will faithfully abide by Supreme Court precedent in Second Amendment cases. *See New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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: I will faithfully apply Supreme Court and First Circuit precedent to all cases that come before me, including several recent rulings pertaining to constitutional rights in a pandemic. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct 63 (2020); *Doe v. Mill*s, 16 F.4th 20 (1st Cir. 2021).

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: As a United States Magistrate Judge, I have considered whether qualified immunity shields a government official from being sued on several cases. My approach to cases has been to carefully study the facts of each case and apply precedent established by the Supreme Court and the First Circuit on this matter. *See Pérez v. Zayas*, 396 F. Supp. 2d 90 (D.P.R. 2005); *Vega Santana v. Trujillo Panisse*, 547 F. Supp. 2d 129 (D.P.R. 2008) *Velázquez v. Mun. Gov't of Cataño*, 91 F. Supp. 3d 176 (D.P.R. 2015).

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: As a sitting United States Magistrate Judge, I must apply all binding Supreme Court and First Circuit precedent regarding qualified immunity in all cases before me regardless of my beliefs.

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

Response: Please see my answer to Question 10.

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: If confirmed, I will closely study the facts of the case and applicable law, as I have done for the past 18 years. As a sitting United States Magistrate Judge and a judicial nominee, it is not appropriate for me to opine on the Supreme Court's patent jurisprudence, except to say that I will faithfully apply all Supreme Court and First Circuit binding 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?

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?

c. *HumanGenetics* 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 *HumanGenetics* 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?

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?

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?

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?

g. *BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should *BioTechCo* 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 *BioTech Co* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?

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 benefit? If there is such an exemption, what are its limits?

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

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 from this effect?

Response to Questions 13a to 13j: As a sitting United States Magistrate Judge and a judicial nominee, it is not appropriate for me to answer the above hypothetical questions because these are matters that can come before me. However, as a United States Magistrate Judge and, if confirmed as a District Judge, I will follow Supreme Court and First Circuit precedent on patent law.

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 Questions 13a to 13j.

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: In my 18 years as a United States Magistrate Judge, I was able to identify approximately 10 cases that I have issued a Report and Recommendation or an Opinion and Order, in a consent case, which raised copyright law issues, including copyright infringement.

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

Response: None to the best of my knowledge.

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

Response: None to the best of my knowledge.

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: In my 18 years as a United States Magistrate Judge, I have handled several First Amendment and free speech cases. *See Ramos v. Dep't of Educ. for Puerto Rico*, 849 F. Supp. 2d 212 (D.P.R. 2012), *Velázquez v. Mun. Gov't of Cataño*, 91 F. Supp. 3d 176 (D.P.R. 2015); *Díaz-Báez v. Alicea Vasallo,* 22 F.4th 11 (D.P.R. 2019), *Sánchez v. McClintock,* Civ. No. 11-1542 (CVR), 2016 WL 344528 (D.P.R. Jan. 27, 2016). I have not had significant experience with free speech and intellectual property issues, including copyright.

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 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 the plain language of the statute is unambiguous, the inquiry is at an end and other extrinsic factors should play no role on the statutory interpretation. *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98 (2003). Otherwise, I would apply the interpretative principles from the First Circuit and the Supreme Court. The First Circuit standard for statutory interpretation considers Congressional intent as the key. To ascertain congressional intent, the First Circuit employs traditional tools of statutory construction, including a consideration of the language, structure, purpose and history of the statute. If a statute's plain meaning offers a plausible interpretation, the inquiry ends. Statutory history and legislative context furnish additional sources of insight that a court may inspect when attempting to discern congressional purpose. *United States v. Gordon*, 875 F.3d 26 (1st Cir. 2017).

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: As a United States Magistrate Judge for 18 years, I have never faced this situation nor a similar one. Thus, I cannot opine on this question. However, I am bound by Supreme Court and First Circuit precedent and I will decide any case based on the facts and applicable law in that particular case without fear or favor.

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: Please see my answer to Question 16b.

17. The scale of online copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and there 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: In my 18 years as a United States Magistrate Judge, I have never dealt with the Digital Millennium Copyright Act and I have had no occasion to study it. Thus, I am not familiar with it. However, if confirmed, I will faithfully follow Supreme Court and First Circuit precedent.

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: All judges must apply the existing law to the facts of each case fairly and impartially, and in conformity with any binding Supreme Court and Circuit precedent. It is up to the Congress, not the courts, to tailor laws to the modern age.

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 led 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: I have not studied nor researched "judge-shopping" or "forum shopping." In the District of Puerto Rico, where I currently serve as a United States Magistrate Judge, cases are randomly assigned to the District Judges, Senior Judges and Magistrate Judges and there are no divisions across the district. In the District of Puerto Rico, a party cannot request a particular judge to hear his or her case, which limits the ability of a party to judge shop.

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

Response: Please see my answer to Question 18a.

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.

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

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: This is a matter which must be addressed by the Court of Appeals in each judge's district. *See* Fed. R. App. P. 21.

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

Response: Please see my answer to Question 19a.

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's evenhanded administration of justice?

Response: I have not studied whether there is an overwhelming concentration of any particular type of litigation in a few districts, and if so, how that affects the perception of the judiciary branch.

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 and encouraged forum shopping?

Response: In the District of Puerto, Rico, where I currently serve as a United States Magistrate Judge, cases are randomly assigned to the District Judges, Senior Judges and Magistrate Judges. In the District of Puerto Rico, a party cannot request a particular judge to hear his or her case, which limits the ability of a party to judge or forum shop. I have not personally experienced issues involving forum shopping in my 18 years here as a United States Magistrate Judge.

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: I have not studied or researched judge-shopping. In the District of Puerto Rico, where I currently serve as a United States Magistrate Judge, cases

are randomly assigned to the District Judges, Senior Judges and Magistrate Judges and there are no divisions across the district. In the District of Puerto Rico, a party cannot request a particular judge to hear his or her case, which limits the ability of a party to judge shop. Thus, a local rule on patent cases to be assigned randomly would seem unnecessary.

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 behaving in a lawless manner?

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is not appropriate for me to give an opinion as to the conduct of other judges.

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

Response: As a sitting United States Magistrate Judge and a judicial nominee, it is not appropriate for me to give an opinion as to how many mandamus reversals would be sufficient.