

Senator Chuck Grassley, Ranking Member
Questions for the Record
Sarala Nagala
Judicial Nominee to the U.S. District Court for the District of Connecticut

- 1. In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

Response: To my knowledge, neither the Supreme Court nor the Second Circuit has ever used the term “super precedent.” If I am confirmed, I would faithfully apply all precedents of the Supreme Court and Second Circuit.

- 2. Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?**

Response: In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court held that police may stop and pat down someone to search for weapons if they have a reasonable suspicion of the person’s involvement in criminal activity and that the person is armed and dangerous. *See also Arizona v. Johnson*, 555 U.S. 323 (2009); *United States v. Simmons*, 560 F.3d 98, 108 (2d Cir. 2009).

- 3. Should law firms undertake the pro bono prosecution of crimes?**

Response: No. Prosecution of crimes is a function of the government.

- 4. Do you agree with Judge Ketanji Brown Jackson in 2013 when she said she did not believe in a “living constitution”?**

Response: I am not familiar with Judge Jackson’s remarks or the context in which they were made. If I am confirmed, I will faithfully apply Supreme Court and Second Circuit precedent in interpreting constitutional provisions.

- 5. Is it possible for private parties—like law firms, retired prosecutors, or retired judges—to prosecute federal criminals in the absence of charges being actively pursued by federal authorities?**

Response: No. Prosecution of crimes is a function of the government.

- 6. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. Would you hire a member of the Federalist Society to serve in your chambers as a law clerk?**

Response: Yes.

7. Please provide a definition of “cultural competency.”

Response: Although the phrase “cultural competency” may mean different things to different people, I generally use it to refer to an ability to understand and respect people from different cultural backgrounds than one’s own.

8. What did you teach and tell the police about “cultural competency”?

Response: In the cultural competency police department trainings in which I have participated with members of the Muslim and Sikh communities, our goal was to connect police officers to members of the Muslim and Sikh communities in Connecticut and to educate those officers on aspects of those religions that they may encounter when interacting with members of those faiths. For instance, the Sikh presenters would demonstrate that the turbans many Sikhs wear as part of their faith are made up of a single piece of cloth that is typically many feet long, and that requires time and skill to tie; they are not as easy to put on and take off as a hat. At these trainings, I generally presented about federal hate crimes laws.

9. What is implicit bias?

Response: I am generally familiar with the term “implicit bias.” I understand it to refer to attitudes or biases that persons hold unconsciously.

10. Do you have any implicit biases? If so, what are they?

Response: It is my understanding that we all hold implicit biases. Because they are held unconsciously, it is difficult to fully identify them.

11. Approximately how long have you worked with the Anti-Defamation League in leading a program for educators addressing anti-Muslim and anti-Sikh bias?

Response: To the best of my recollection, my involvement with the Anti-Defamation League in the program for educators addressing anti-Muslim and anti-Sikh bias was limited to a single event on January 28, 2016. I have worked with the Anti-Defamation League on other community engagement programs for several years.

12. What materials did you use to train educators regarding anti-Muslim and anti-Sikh bias in your partnership with the Anti-Defamation League?

Response: I do not have a copy of the materials I used at the January 28, 2016, event. To the best of my recollection, I spoke generally about federal civil rights and hate crimes laws.

13. What did you teach and train educators, in partnership with the Anti-Defamation League, regarding anti-Muslim and anti-Sikh bias?

Response: I do not have a copy of the materials I used at the January 28, 2016, event. To the best of my recollection, I spoke generally about federal civil rights and hate crimes laws.

14. Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?

Response: This is a decision to be made by an individual law firm.

15. As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?

Response: No.

16. Do you agree with the proposition that some clients do not deserve representation on account of their:

a. Heinous crimes?

Response: No.

b. Political beliefs?

Response: No.

c. Religious beliefs?

Response: No.

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

Response: Judicial decisions should be based on application of the relevant law to the facts of a specific case.

18. Do you believe that we should defund police departments? Please explain.

Response: The question of funding for police departments is a policy matter. As a judicial nominee, it would be inappropriate for me to comment on this issue.

19. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

Response: The question of funding for police departments is a policy matter. As a judicial nominee, it would be inappropriate for me to comment on this issue.

20. Do you believe that the federal government should reallocate funds away from the Department of Justice, specifically, U.S. Attorney's Offices, to provide greater support to the Federal Public Defenders?

Response: The question of funding for United States Attorney's Offices and Federal Public Defenders is a policy matter. As a judicial nominee, it would be inappropriate for me to comment on this issue.

21. Is a social worker qualified to respond to a domestic violence call where there is an allegation that the aggressor is armed?

Response: I am unable to answer this question without the benefit of further facts.

22. Do you believe legal gun purchases have caused the violent crime spike?

Response: I have not studied the effects, if any, that legal gun purchases have had on violent crime. If I am confirmed, I would faithfully follow precedents of the Supreme Court and Second Circuit on all issues, including the Second Amendment.

23. Do rogue gun dealers constitute a substantial factor in the amount of crimes committed with firearms?

Response: I have not studied the impact, if any, that "rogue gun dealers" have on the number of crimes committed with firearms.

24. Is gun violence a public-health crisis?

Response: Early in my tenure as a junior associate at Munger, Tolles, & Olson LLP, I worked on an amicus brief in *McDonald v. City of Chicago*, 561 U.S. 742 (2010) on behalf of public health organizations, in which my firm's clients took the position that "gun violence is a major public health problem that must be addressed through multiple modalities, including legislation and regulation." The brief submitted empirical information "to aid the Court's analysis." The position expressed in the amicus brief was that of my law firm's clients; as an advocate, I was then and have always been duty-bound to zealously represent the interests of my clients. As a judicial nominee, however, it would be inappropriate for me to opine on this issue.

25. Is racism a public-health crisis?

Response: Whether racism is considered a public health crisis is a matter for policymakers. As a judicial nominee, it would be inappropriate for me to opine on this issue.

26. Is the federal judiciary affected by implicit bias?

Response: My understanding of implicit bias is that it is present in all persons.

27. Do you have implicit bias? How do you know if it's implicit?

Response: My understanding of implicit bias is that it is present in all persons.

a. If you answered yes, how does implicit bias impact you in your day to day role as a prosecutor, particularly as it pertains to your:

i. Recommendations regarding pre-trial detention?

Response: Based on my basic understanding of implicit bias, one of the better ways to counteract it is to be intentionally reflective and deliberative when making decisions. I have endeavored to do so in all decisions I have made as a prosecutor, including my recommendations regarding pre-trial detention.

ii. Recommendations regarding sentencing?

Response: Based on my basic understanding of implicit bias, one of the better ways to counteract it is to be intentionally reflective and deliberative when making decisions. I have endeavored to do so in all decisions I have made as a prosecutor, including my recommendations regarding sentencing.

28. You can answer the following questions yes or no:

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

Response: As a judicial nominee, I do not think it would be appropriate for me to comment on the “correctness” of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about whether they were correctly decided. However, there are a small number of constitutional decisions that are foundational to our system of justice and that present facts that are unlikely to come before me if I am confirmed, such that I am comfortable opining that they were correctly decided. *Brown v. Board of Education* is one of those decisions.

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

Response: Please see my response to Question 28a. I believe that *Loving v. Virginia*, like *Brown v. Board of Education*, is foundational to our system of justice and presents facts that are unlikely to come before me if I am confirmed, such that I am comfortable opining that it was correctly decided.

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

Response: As a judicial nominee, I do not think it would be appropriate for me to comment on the “correctness” of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about whether they were correctly decided.

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

Response: Please see my response to Question 28c.

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

Response: Please see my response to Question 28c.

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

Response: Please see my response to Question 28c.

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

Response: Please see my response to Question 28c.

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

Response: Please see my response to Question 28c.

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

Response: Please see my response to Question 28c.

j. Was *Sturgeon v. Frost* correctly decided?

Response: Please see my response to Question 28c.

k. Was *Juliana v. United States* (9th Cir.) correctly decided?

Response: As a judicial nominee, I do not think it would be appropriate for me to comment on the “correctness” of a decision of the Ninth Circuit.

l. Was *Rust v. Sullivan* correctly decided?

Response: Please see my response to Question 28c.

29. Is threatening Supreme Court Justices right or wrong?

Response: Threatening Supreme Court Justices is wrong. Certain threats against judges are criminalized by 18 U.S.C. § 115.

30. Do you think the Supreme Court should be expanded?

Response: As a judicial nominee, it would be inappropriate for me to comment on the composition of the Supreme Court.

31. How do you distinguish between “attacks” on a sitting judge and mere criticism of an opinion he or she has issued?

Response: The answer to this question would depend on the specific factual circumstances, including the language used by speaker.

32. Does racism qualify as a public health emergency?

Response: Whether racism is considered a public health emergency is a matter for policymakers. As a judicial nominee, it would be inappropriate for me to opine on this issue.

33. Is climate change real?

Response: If confirmed, and if a case came before me that raised a question regarding the existence of climate change, I would carefully review the facts of the case and faithfully apply Supreme Court and Second Circuit precedents.

34. Is the federal judicial system systemically racist? Please explain.

Response: The term “systemically racist” is not a term defined under the law. I am aware of studies showing that certain policies have had different impacts on different demographic groups, and I am aware that Congress has considered and is considering

some of these issues. If confirmed, I will follow applicable federal precedents and strive to ensure that I am treating every litigant in my courtroom fairly.

- a. **If you answered yes, if confirmed how will you feel comfortable working in a systemically racist system?**

Response: Please see my response to Question 34.

35. **What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun-offenders to the community?**

Response: This is a question of policy; as a judicial nominee, it would be inappropriate for me to opine on this issue. If I am confirmed and presented with a case presenting a question of release of a prisoner during COVID-19, I would apply the relevant Supreme Court and Second Circuit precedents to analyze the issue.

36. **If the Justice Department determines that a prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.**

Response: Under Federal Rule of Criminal Procedure 48(a), the government "may, with leave of court, dismiss an indictment, information, or complaint." Thus, the district court must consider the question of whether to grant the government leave to dismiss. I am unaware of any cases in the District of Connecticut in which an amicus has been appointed to continue a prosecution that the Department of Justice has sought to dismiss.

37. **Over the course of your career, how many times have you spoken at events sponsored or hosted by the following liberal, "dark money" groups?**

- a. **American Constitution Society**

Response: None.

- b. **Arabella Advisors**

Response: None.

- c. **Demand Justice**

Response: None.

- d. **Fix the Court**

Response: None.

e. Open Society Foundation

Response: None.

38. What is the legal basis for a nationwide injunction? What considerations would you consider as a district judge when deciding whether to grant one?

Response: The issuance of injunctions is governed by Federal Rule of Civil Procedure 65. I do not believe that the Supreme Court has decided the legal standard for issuance of a nationwide injunction. If I am confirmed and presented with a case in which a nationwide injunction may be contemplated, I would consider all relevant Supreme Court and Second Circuit precedents on this issue.

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

Response: To my knowledge, the Supreme Court has not decided the question of what level of scrutiny applies to a Second Amendment challenge. Currently, in determining whether heightened scrutiny applies to a Second Amendment challenge, the Second Circuit considers two factors: (1) “how close the law comes to the core of the Second Amendment right” and (2) “the severity of the law’s burden on the right.” *New York State Rifle & Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 258 (2d Cir. 2015). If a law “neither implicate[s] the core protections of the Second Amendment nor substantially burden[s] their exercise,” heightened scrutiny does not apply. *Id.* In *New York State Rifle*, the Second Circuit analyzed the regulations under an intermediate scrutiny standard.

40. In your view, is a personal philosophical or religious objection to the death penalty on the part of President Biden a valid justification to abandon the defense of Dylann Roof’s death sentence on direct appeal?

Response: As a judicial nominee, it would be inappropriate for me to opine on President Biden’s views on this issue. If confirmed as a district court judge, I can attest that I would impose punishments that are lawful under federal law in appropriate circumstances, including capital punishment.

41. Will you commit, if confirmed, to both seek and follow the advice of the Department’s career ethics officials on recusal decisions?

Response: Yes.

42. In your career as a prosecutor, did you ever encounter a defendant who sought to withdraw his guilty plea? Please provide an approximation of the number.

Response: To the best of my recollection, only one defendant I have prosecuted sought to withdraw his guilty plea. He eventually withdrew his motion to withdraw his guilty plea.

a. In your career, did you ever personally encounter a situation where the judge refused to accept a motion to dismiss with prejudice, filed by the government? If yes, please explain the circumstances and provide the citation.

Response: I have never encountered this situation.

43. Under the Religious Freedom Restoration Act the federal government cannot “substantially burden a person’s exercise of religion.”

a. Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?

Response: Under the Religious Freedom Restoration Act, codified 42 U.S.C. § 2000bb-1(c), “a person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.” In *Holt v. Hobbs*, 574 U.S. at 358, 360-61 (2015), the Supreme Court held, in case brought under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), that the “petitioner bore the burden of proving” both that a government policy “implicate[d] his religious exercise” and that the government policy “substantially burdened his exercise of religion.” The Supreme Court noted that RLUIPA allows for religious accommodations “pursuant to the same standard” as set forth in the Religious Freedom Restoration Act. *Id.* at 358. If the religious adherent makes that showing, the burden shifts to the government to show that policy is “in furtherance of a compelling governmental interest” and “is the least restrictive means of furthering that compelling governmental interest.” *Id.* at 362. *See also Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418 (2006).

b. How is a burden deemed to be “substantial[]” under current caselaw? Do you agree with this?

Response: Under 42 U.S.C. § 2000b-1(b), “Government may substantially burden a person’s exercise of religion only if it 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.” The Supreme Court has addressed what it means for the Government to “substantially burden” a person’s exercise of religion in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (holding that the Department of Health and Human Services’ contraception mandate at issue substantially burdened the exercise of religion) and *Holt v. Hobbs*, 574 U.S. at 358, 360-61 (2015) (holding, in a case involving the Religious Land Use and Institutionalized Persons Act, that a government policy preventing a prisoner from growing a short beard in accordance with his religious beliefs substantially burdened his exercise of religion). The Second Circuit has held that a substantial burden generally exists under the Religious Freedom Restoration Act when the state “put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs.” *Newdow v. Peterson*, 753 F.3d 105 (2d Cir. 2014), quoting *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996). My personal views, if any, about this standard are irrelevant. If confirmed, and if presented with a case raising this issue, I will faithfully follow all Supreme Court and Second Circuit precedents in this area.

44. Do you agree with the Supreme Court that the free exercise clause lies at the heart of a pluralistic society (*Bostock v. Clayton County*)? If so, does that mean that the Free Exercise Clause requires that religious organizations be free to act consistently with their beliefs in the public square?

Response: In *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the Supreme Court stated: “We are also deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society.” 140 S. Ct. at 1754. The Supreme Court also noted, however, that questions of “how these doctrines protecting religious liberty interact with Title VII are questions for future cases.” *Id.* Because litigation about these matters may come before me if I am confirmed, it would be inappropriate for me to opine further.

45. Do Blaine Amendments violate the Constitution?

Response: In *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), the Supreme Court held that a state-based scholarship program that provides public funds for students to attend private schools cannot discriminate against religiously affiliated schools under the Free Exercise Clause of the Constitution. If confirmed, and if presented with a case on this issue, I will faithfully follow all Supreme Court and Second Circuit precedents in this area.

46. Do you believe potential voter fraud or other elections abnormalities are concerns that the Justice Department should take seriously?

Response: Yes.

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

Response: In February of 2021, I received an announcement soliciting applications for the vacancies on the United States District Court for the District of Connecticut. I submitted an application to a staff member of U.S. Senator Richard Blumenthal by the deadline of March 10, 2021. I understand that there was an Advisory Committee convened by Senators Blumenthal and Christopher Murphy to review the applications. I was not interviewed by the Committee, but I understand that my application was passed on to Senators Blumenthal and Murphy for a possible interview.

On March 31, 2021, I interviewed with Senators Blumenthal and Murphy and their aides. On April 9, 2021, I interviewed again with Senators Blumenthal and Murphy and their aides.

On April 18, 2021, I was contacted by the White House Counsel's Office for an interview, which took place on April 20, 2021. Since April 21, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 2, 2021, I participated in a follow-up conversation with the White House Counsel's Office. On June 15, 2021, my nomination was submitted to the United States Senate.

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

Response: No.

a. Did anyone do so on your behalf?

Response: Not to my knowledge.

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

Response: No.

a. Did anyone do so on your behalf?

Response: I am aware that, without any direction or request from me, a former colleague of mine discussed that I had applied for the district court vacancies with an individual or individuals associated with the Connecticut chapter of the American Constitution Society. I was not privy to that conversation or conversations.

50. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

a. Did anyone do so on your behalf?

Response: Not to my knowledge.

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

Response: No.

a. Did anyone do so on your behalf?

Response: Not to my knowledge.

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

Response: Response: I was interviewed by attorneys from the White House Counsel's Office on April 20, 2021. I have been in contact with representatives of the White House Counsel's Office and the Office of Legal Policy since April 21, 2021.

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

Response: I reviewed the questions and drafted my answers, conducting research where necessary. I provided my draft responses to the Department of Justice's Office of Legal Policy for review and feedback. After receiving feedback from the Office of Legal Policy, I revised and finalized my responses for submission.

**Senator Marsha Blackburn
Questions for the Record
Senate Judiciary Committee**

Sarala V. Nagala, Nominee to be U.S. District Judge for the District of Connecticut

- 1. While you were an associate at Munger, Tolles, & Olsen LLP you wrote an amicus brief in *McDonald v. City of Chicago* (2010) advocating for the removal of handguns from American homes and the community. You also advocated that local lawmakers should seek to address gun ownership through gun-control legislation. What is your interpretation of the Second Amendment? Does it guarantee an individual right to gun ownership to law-abiding Americans?**

Response: As I stated at my hearing, I was asked to work on that brief early in my tenure as a junior associate at Munger, Tolles, & Olson LLP. Other, more senior lawyers at the firm had agreed that the firm would represent the clients and formulated the arguments made in the brief. If confirmed, I would faithfully apply the precedents of the Supreme Court and the Second Circuit, including *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), in which the Supreme Court held that the Second Amendment confers “an individual right to keep and bear arms.”

- 2. How would you describe your interpretational approach to the Constitution? Would you describe yourself as an originalist?**

Response: If I am confirmed as a district judge, I will faithfully follow all precedents of the United States Supreme Court and the United States Court of Appeals of the Second Circuit, including those that address the interpretation of constitutional provisions. Where those precedents interpret constitutional provisions based on the original meaning of the text, I would faithfully follow them if confirmed. *See, e.g., Heller v. United States*, 554 U.S. 570 (2008) (interpreting the Second Amendment). Where those precedents have instead interpreted constitutional provisions in a different manner, I would likewise faithfully follow them. *See, e.g., Trop v. Dulles*, 356 U.S. 86 (1958) (considering “evolving standards of decency” in interpreting the Eighth Amendment).

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

Questions for the Record for Sarala Vidya Nagala, nominee to the United States District Court for the District of Connecticut

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. **When you were an associate at Munger, Tolles, & Olsen LLP, you wrote an amicus brief in *McDonald v. City of Chicago*, in which you advocated for the removal of handguns from American homes and the community. You argued that this was necessary as a matter of “public health,” since handguns pose a “particular threat to all Americans.” Please explain whether the Supreme Court agreed or disagreed with this position.**

Response: Early in my tenure as a junior associate at Munger, I worked on an amicus brief in the *McDonald* case on behalf of public health organizations. Other, more senior lawyers at the firm had agreed that the firm would represent the clients and formulated the arguments made in the brief. The brief argued that the Court did not need to reach “the question of whether the Second Amendment’s substantive scope ... encompasses and renders unconstitutional the ordinances at issue” because the decision below turned on a procedural ground. The brief further argued, however, that if the Court addressed the constitutionality of the ordinances at issue, “empirical information regarding the effect of firearms ... on the public’s health may bear on the constitutional question.” In *McDonald*, the Supreme Court held that the Second Amendment applies to the states because it is incorporated through the Due Process Clause of the Fourteenth Amendment. If confirmed, I would faithfully apply the precedents of the Supreme Court and the Second Circuit, including *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald*.

2. **Please describe the holding of *McDonald v. City of Chicago*.**

Response: In *McDonald*, the Supreme Court held that the Second Amendment applies to the states because it is incorporated through the Due Process Clause of the Fourteenth Amendment.

3. **What is the standard of review for a Second Amendment claim in the Second Circuit Court of Appeals? As part of your answer, please state the controlling precedent, if any, in the Second Circuit.**

Response: Neither *Heller* nor *McDonald* decided the question of what level of scrutiny applies to a Second Amendment challenge. Currently, in determining whether heightened scrutiny applies to a Second Amendment challenge, the Second Circuit considers two factors: (1) “how close the law comes to the core of the Second Amendment right” and (2) “the severity of the law’s burden on the right.” *New York State Rifle & Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 258 (2d Cir. 2015). If a law “neither implicate[s] the core protections of the Second Amendment nor substantially burden[s] their exercise,” heightened scrutiny does not apply. *Id.* In *New York State Rifle*, the Second Circuit analyzed the regulations at issue under an intermediate scrutiny standard.

4. **What role does history play in analyzing a Second Amendment claim?**

Response: In both *Heller* and *McDonald*, the Supreme Court relied heavily on historical analysis.

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

Response: In *Heller*, the Supreme Court held that the Second Amendment confers “an individual right to keep and bear arms.” 554 U.S. 570, 595 (2008). In *McDonald*, the Supreme Court further held that the individual right to keep and bear arms is a fundamental right that applies to the states as well as to the federal government. 561 U.S. 742, 750 (2010).

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

Response: To my knowledge, neither the Supreme Court nor the Second Circuit have engaged in a comparison of the protections accorded the right to own a firearm and other individual rights enumerated in the Constitution.

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

Response: To my knowledge, neither the Supreme Court nor the Second Circuit have engaged in a comparison of the protections accorded the right to own a firearm and the right to vote.

8. **Please describe a “*Jacobson* remand” in the Second Circuit, and explain how this process, under existing precedent, comports with jurisdictional requirements.**

Response: In *United States v. Jacobson*, 15 F.3d 19 (2d Cir. 1994), the Second Circuit remanded a case to the district court to supplement its record on a discrete issue related to the reasons for a particular criminal sentence, while retaining jurisdiction over the appeal. As the Second Circuit later noted, a *Jacobson* remand “eliminates any question as to the district court’s jurisdiction” over the particular issue that is the subject of the remand and “enables [the Second Circuit] to provide, if appropriate, for the automatic restoration of appellate jurisdiction, without the need for a new notice of appeal.” *United States v. Salameh*, 84 F.3d 47, 50 (2d Cir. 1996).

9. **When the Second Circuit issues a *Jacobson* remand, how is the jurisdiction of the district court limited?**

Response: When the Second Circuit issues a *Jacobson* remand, it generally seeks supplementation of the record on a discrete legal or factual issue.

**Questions for the Record for Sarala Nagala
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.

**Senator Mike Lee Questions
for the Record
Sarala Nagala, District of CT**

1. How would you describe your judicial philosophy?

Response: My approach to the work of a judge, if I am confirmed, would be to ensure that all parties have the ability to present their arguments to the court; to carefully develop the factual record as it pertains to the legal dispute; to analyze the relevant precedents and legal arguments raised by the parties; to fairly and impartially apply the appropriate legal standards to the factual record; to reach decisions expeditiously but thoughtfully; and to articulate those decisions in a clear manner.

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

Response: I would first look to the text of the statute and to Supreme Court and Second Circuit precedents that are directly on point. I would analyze the plain language and structure of the statute. If the statute's meaning remained unclear, I would then employ traditional canons of statutory construction. I would also look to precedents from the Supreme Court and Second Circuit that address analogous statutes or regulations, and then to persuasive, but non-binding, authority, while recognizing its non-binding nature. If none of these avenues resolved the ambiguity, I may look to legislative history, including particularly committee reports, to see if it sheds light on the meaning of the ambiguous text.

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

Response: I would first look to Supreme Court and Second Circuit precedents that are directly on point. I would also analyze the plain language, structure, and historical context of the constitutional provision, to attempt to determine the meaning of the text. I would then employ traditional canons of construction. Finally, I would look to precedents from the Supreme Court and Second Circuit that address analogous language in other provisions, and then to persuasive, but non-binding, authority, while recognizing its non-binding nature.

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

Response: If confirmed, I would follow Supreme Court and Second Circuit precedent about the role of text and the original meaning of the Constitution when interpreting the Constitution.

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: The text is the starting point for interpretation of statutes.

- 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: If I am confirmed, I will faithfully follow all precedents of the United States Supreme Court and the United States Court of Appeals of the Second Circuit, including those that address the interpretation of constitutional provisions. Where those precedents interpret constitutional provisions based on the original public meaning of the text, I would faithfully follow them if confirmed. *See, e.g., Heller v. United States*, 554 U.S. 570 (2008) (interpreting the Second Amendment). Where those precedents have instead interpreted constitutional provisions in a different manner, I would likewise faithfully follow them. *See, e.g., Trop v. Dulles*, 356 U.S. 86 (1958) (considering “evolving standards of decency” in interpreting the Eighth Amendment).

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

Response: The Supreme Court has identified a three-part test for establishing standing in federal court: (1) injury in fact; (2) causation; and (3) likelihood of redress. *Lujan v. Defenders 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: The Supreme Court has held that Congress has implied powers under the Necessary and Proper Clause. *See, e.g., McCulloch v. Maryland*, 17 U.S. 316, 411-412 (1819). If confirmed, I would faithfully follow such precedent.

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 faithfully follow precedent from the Supreme Court and Second Circuit on this issue.

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

Response: The Supreme Court has held that the Constitution protects various unenumerated rights. Two examples are the right to travel, *see Saenz v. Roe*, 526 U.S. 489 (1999), and the right to privacy, *see Griswold v. Connecticut*, 381 U.S. 479 (1965).

10. **What rights are protected under substantive due process?**

Response: The liberty interest protected by the Due Process clause has been found to protect many different rights, including the right to marry, the right to parent, and the right to use contraception. *See, e.g., Loving v. Virginia*, 388 U.S. 1 (1967); *Meyer v.*

Nebraska, 262 U.S. 390 (1923); and *Griswold v. Connecticut*, 381 U.S. 479 (1965).

- 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: Any personal beliefs I may hold about the scope of substantive due process would not be relevant if I were confirmed. If confirmed as a district court judge, I will faithfully follow the precedent of the Supreme Court and the Second Circuit regarding what rights are protected by substantive due process.

- 12. What are the limits on Congress’s power under the Commerce Clause?**

Response: The Supreme Court has recognized some limitations on Congress’s Commerce Clause Power in *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000). The Supreme Court has held that Congress may only regulate three categories of activity pursuant to the Commerce Clause: (1) “the use of the channels of interstate commerce,” (2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce” and activities that threaten such instrumentalities, persons or things, and (3) activities that “substantially affect interstate commerce[.]” *United States v. Lopez*, 514 U.S. at 558–59.

- 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 held that a suspect class is one “saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” See *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Examples of suspect classifications are race, alienage, and national origin. See, e.g., *See, e.g., Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 n.4 (1976); *Fisher v. University of Texas*, 136 S. Ct. 2198 (2016).

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

Response: These features are critical to our constitutional structure. They were designed to prevent the concentration of power in any one branch of government and to help safeguard the liberties guaranteed under the Constitution. The judicial branch, like the other two branches, is limited in its power.

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 faithfully follow any precedents of the Supreme Court and Second Circuit if faced with an issue of this nature.

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

Response: A judge's role is to fairly and impartially consider the facts and applicable law in a particular case, without regard to personal or emotional views.

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

Response: Neither of these outcomes is desirable. If confirmed, I would work hard to avoid both.

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 this issue in enough detail to opine on any such trend. If confirmed, my role would be to carefully analyze the facts and law of the particular case or controversy presented to me.

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

Response: Judicial review is a feature of our constitutional system of checks and balances that allows for review by the courts of the actions of the legislative and executive branches of government. I understand judicial supremacy to refer to the view that the Supreme Court is the final interpreter of the meaning of the Constitution and its decisions should be binding on the other branches of government.

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: This is a matter for individual elected officials to decide. Their

considerations could include the need to promote the rule of law and the legitimacy of judicial decisions.

- 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: Separation of powers and checks and balances are critical features of our democracy written into the Constitution. Hamilton’s words recognize that the role of the judiciary is limited, and is enforceable through a strong belief in the legitimacy of the courts and rule of law.

- 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: A lower court judge is bound by Supreme Court and circuit court precedent, regardless of whether he or she believes that such precedent may be correctly or incorrectly reasoned. A judge also should only address the issues presented by the case or controversy before him or her.

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

Response: None. The federal sentencing statute, 18 U.S.C. § 3553(a) sets forth the permissible factors for consideration in a sentencing.

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

Response: I am not familiar with this particular definition by President Biden. As a judicial nominee, it would be inappropriate for me to opine on his views. I generally view equity as synonymous with fairness.

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

Response: Although I have not studied this issue in detail, I understand the two terms to refer to different concepts. Merriam Webster’s Collegiate Dictionary (11th ed. 2007) defines equity as “justice according to natural law or right, specifically freedom from bias or favoritism,” and equality as “the quality or state of being equal.”

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

Response: The word “equity” does not appear in the Equal Protection Clause of the Fourteenth Amendment.

27. How do you define “systemic racism?”

Response: I define “systemic racism” as a set of institutions, policies, or practices that that disadvantage certain persons based on race.

28. How do you define “critical race theory?”

Response: I have not studied this issue in sufficient detail to provide a definition. Generally, I know “critical race theory” to be an area of legal scholarship addressing issues of race.

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

Response: I understand “critical race theory” to be an academic area of study and “systemic racism” to be a societal issue.

30. Please answer (with a “Yes” or “No” only) the question that you were asked by Senator Grassley at your nomination hearing: Do you stand by the views set forth in the amicus brief you wrote in 2010 (advocating for the removal of handguns from American homes)?

Response: The position expressed in the amicus brief was that of my law firm’s clients. As I stated at my hearing, I was asked to work on the brief early in my tenure as a junior associate at the firm. Other, more senior lawyers at the firm had agreed that the firm would represent the clients and formulated the arguments made in the brief. As an advocate, I have always been duty-bound to zealously represent the interests of my clients. I understand that the role of a judge is different. I am confirmed, I will faithfully follow the precedents of the Supreme Court and Second Circuit on all issues, including the Second Amendment.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: “Nominations”
July 28, 2021

For all nominees:

- 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. Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

Response: No.

For all judicial nominees:

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

Response: My approach to the work of a judge, if I am confirmed, would be to ensure that all parties have the opportunity to present their arguments to the court; to carefully develop the factual record as it pertains to the legal dispute; to analyze the relevant precedents and legal arguments raised by the parties; to fairly and impartially apply the appropriate legal standards to the factual record; to reach decisions expeditiously but thoughtfully; and to articulate those decisions in a clear manner.

- 2. Would you describe yourself as an originalist?**

Response: I do not associate myself with any particular label. Interpretation of a constitutional or statutory provision always begins with the text of the provision at issue.

- 3. Would you describe yourself as a textualist?**

Response: I do not associate myself with any particular label. Interpretation of a constitutional or statutory provision always begins with the text of the provision at issue.

- 4. Do you believe the Constitution is a “living” document? Why or why not?**

Response: I believe that the Constitution was remarkable in its conception and is remarkable in how it continues to endure today. If confirmed, I would follow Supreme

Court and Second Circuit precedent concerning the meaning of any particular constitutional provisions.

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

Response: Although I have not studied particular Supreme Court Justices' jurisprudence in enough detail to opine on that particular question, I have long admired Justices Sandra Day O'Connor and Ruth Bader Ginsburg as role models for women in law.

6. Was *Marbury v. Madison* correctly decided?

Response: As a judicial nominee, I do not think it would be appropriate for me to comment on the "correctness" of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about their "correctness." However, there are a small number of constitutional decisions that are foundational to our system of justice and that present facts that are unlikely to come before me if I am confirmed, such that I am comfortable opining that they were correctly decided. *Marbury v. Madison* is one of those decisions.

7. Was *Lochner v. New York* correctly decided?

Response: As a judicial nominee, I do not think it would be appropriate for me to comment on the "correctness" of a Supreme Court precedent. If confirmed, I will apply all binding Supreme Court precedents, without regard to any personal opinions about whether they were correctly decided.

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

Response: I believe that *Brown v. Board of Education* is foundational to our system of justice and presents facts that are unlikely to come before me if I am confirmed, such that I am comfortable opining that it was correctly decided.

9. Was *Bolling v. Sharpe* correctly decided?

Response: Please see my answer to Question 7.

10. Was *Cooper v. Aaron* correctly decided?

Response: Please see my answer to Question 7.

11. Was *Mapp v. Ohio* correctly decided?

Response: Please see my answer to Question 7.

12. Was *Gideon v. Wainwright* correctly decided?

Response: I believe that *Gideon v. Wainwright* is foundational to our system of justice and presents facts that are unlikely to come before me if I am confirmed, such that I am comfortable opining that it was correctly decided.

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

Response: Please see my answer to Question 7.

14. Was *South Carolina v. Katzenbach* correctly decided?

Response: Please see my answer to Question 7.

15. Was *Miranda v. Arizona* correctly decided?

Response: Please see my answer to Question 7.

16. Was *Katzenbach v. Morgan* correctly decided?

Response: Please see my answer to Question 7.

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

Response: I believe that *Loving v. Virginia*, is foundational to our system of justice and presents facts that are unlikely to come before me if I am confirmed, such that I am comfortable opining that it was correctly decided.

18. Was *Katz v. United States* correctly decided?

Response: Please see my answer to Question 7.

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

Response: Please see my answer to Question 7.

20. Was *Romer v. Evans* correctly decided?

Response: Please see my answer to Question 7.

21. Was *United States v. Virginia* correctly decided?

Response: Please see my answer to Question 7.

22. Was *Bush v. Gore* correctly decided?

Response: Please see my answer to Question 7.

23. Was District of Columbia v. Heller correctly decided?

Response: Please see my answer to Question 7.

24. Was Crawford v. Marion County Election Board correctly decided?

Response: Please see my answer to Question 7.

25. Was Boumediene v. Bush correctly decided?

Response: Please see my answer to Question 7.

26. Was Citizens United v. Federal Election Commission correctly decided?

Response: Please see my answer to Question 7.

27. Was Shelby County v. Holder correctly decided?

Response: Please see my answer to Question 7.

28. Was United States v. Windsor correctly decided?

Response: Please see my answer to Question 7.

29. Was Obergefell v. Hodges correctly decided?

Response: Please see my answer to Question 7.

30. 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: If I am confirmed as a district court judge, I would not be presented with a question of whether an appellate court should reaffirm its own precedent, as that would rest with the appellate court itself. If I am confirmed as a district judge, I would apply all binding Second Circuit precedent.

31. 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: If I am confirmed as a district court judge, I would not be presented with a question of whether an appellate court should reaffirm its own precedent, as that would rest with the appellate court itself. If I am confirmed as a district judge, I would be bound to apply all binding Second Circuit precedent.

32. 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: This is not one of the factors that a sentencing court may consider under 18 U.S.C. § 3553(a) when imposing a sentence.

Questions from Senator Thom Tillis
for Sarala Vidya Nagala
Nominee to be United States District Judge for District of Connecticut

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

Response: Yes.

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

Response: Judicial activism can mean different things. It can occur when a judge decides a case based on his or her personal views, rather than following the law, when the two conflict. Judicial activism is not appropriate.

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

Response: Impartiality is absolutely an expectation for a judge.

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

Response: The role of a judge is to decide a case or controversy presented to her. A judge should not evaluate policy decisions in order to reach a desired outcome.

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

Response: Yes. I am prepared to faithfully interpret the law even if it results in what one might deem an undesirable 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: If confirmed, I would faithfully apply the precedents of the Supreme Court and the Second Circuit, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), in which the Supreme Court held that the Second Amendment right to keep and bear arms is an individual right, and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), in which the Supreme Court held that the Second Amendment applies to the states.

- 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: If confirmed, I would faithfully follow the precedents of the Supreme Court and the Second Circuit to analyze any issue, including whether there is a violation of the Second Amendment or any other constitutional right.

- 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: If confirmed, I would faithfully follow the precedents of the Supreme Court and the Second Circuit to analyze any issue, including whether to grant qualified immunity in a particular case. The relevant questions in determining whether qualified immunity applies are: (1) whether a constitutional right would have been violated on the facts alleged; and (2) whether the right was “clearly established” at the time of the violation. *Saucier v. Katz*, 533 U.S. 194, 200 (2001).

- 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 judicial nominee, it would be inappropriate for me to comment on the scope of qualified immunity protections for law enforcement officers. If confirmed, I will faithfully follow the precedents of the Supreme Court and Second Circuit in all areas, including questions of qualified immunity.

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

Response: As a judicial nominee, it would be inappropriate for me to comment on the scope of qualified immunity protections for law enforcement officers. If confirmed, I will faithfully follow the precedents of the Supreme Court and Second Circuit in all areas, including questions of qualified immunity.

- 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 I am confirmed and a patent eligibility case were to come before me, I will faithfully follow the precedents of the Supreme Court, including *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208 (2014), and relevant circuit courts in evaluating the arguments

presented by the parties.

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

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

Response: I agree with other judicial nominees who have declined to analyze specific factual hypotheticals, as doing so may suggest how nominees would decide matters that could come before them, if confirmed. Additionally, during my nine years as an Assistant United States Attorney, I have not had occasion to become familiar with the relevant patent precedents that would be relevant to analyzing this hypothetical. When I have encountered areas of the law with which I am unfamiliar, I have made sure to delve deeply into the relevant case law to ensure that I fully understand an issue, and I would continue to do so if confirmed. If I am confirmed and a matter like the hypothetical posed in Question No. 13a came before me, I would look to Supreme Court and relevant circuit precedents, and would apply those precedents to the facts of the case before me. To the extent that the question poses a policy judgment about what the law should be, that is a matter suited for the legislature.

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

Response: Please see my answer to Question 13a.

- 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?**

Response: Please see my answer to Question 13a.

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

Response: Please see my answer to Question 13a.

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

Response: Please see my answer to Question 13a.

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

Response: Please see my answer to Question 13a.

- 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?

Response: Please see my answer to Question 13a.

- 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?

Response: This is a policy question to be answered by the legislature.

- 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?**

Response: Please see my answer to Question 13a.

- 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: Please see my answer to Question 13a.

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: As noted in my response to Question 13a, during my nine years as an Assistant United States Attorney, I have not had occasion to become familiar with patent law jurisprudence such that I could opine on its current state. I also believe it would be inappropriate for a judicial nominee to opine on policy matters. If I am confirmed and a case involving patent eligibility comes before me, I would faithfully apply Supreme Court and relevant circuit precedents on this issue to the facts of the particular case.