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April 25, 2022

Senator Dick Durbin  
United States Senate  
711 Hart Senate Office Building  
Washington, D.C. 20510

Senator Chuck Grassley  
United States Senate  
135 Hart Senate Office Building  
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), I write to express LDF’s strongest support for the nomination of Natasha Merle to serve as a judge on the United States District Court for the Eastern District of New York.

Founded in 1940 by Thurgood Marshall, LDF is the country’s first and foremost civil rights law firm. It has been an entirely separate organization from the NAACP since 1957. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate unjust disparities, and achieve equality under the law for all Americans.

LDF has examined and reviewed the record of judicial nominees for decades. Our examinations of the record of judicial nominees focus on an assessment of the capacity of judicial nominees to undertake their work with fairness and impartiality, and with respect for the rights of those who are often most marginalized in our society. The role of a federal judge is among the most central to maintaining the rule of law and the preservation of our constitutional democracy. Article III judges enjoy lifetime tenure and hold a position of the highest public trust. As such, it is important that individuals who serve as judges have a demonstrated commitment to fairness and to upholding the rule of law.

Ms. Merle has worked at LDF for nearly six years. We are deeply familiar with her keen intellect, legal expertise, strong work ethic, and impartial temperament. She has devoted her career to public service, and to ensuring that all people have access to justice. She has distinguished herself as an exceptional civil rights litigator and is eminently qualified to serve on the district court for the Eastern District of New York. We could not recommend her more highly.



## ***Education and Professional Record***

Ms. Merle has an impressive educational and professional record, and significant experience working in the Second Circuit. She graduated from the University of Texas at Austin with honors in 2015 and from the New York University School of Law *cum laude* in 2008.<sup>1</sup> She then clerked for the Hon. Robert L. Carter on the U.S. District Court for the Southern District of New York.<sup>2</sup> Before joining the federal bench, Judge Carter was a legal assistant to LDF’s Founder, Thurgood Marshall and he also served as an assistant special counsel at LDF. Judge Carter played a pivotal role in some of LDF’s most significant cases including serving as lead attorney in the Topeka school desegregation case, one of the five cases consolidated to form *Brown v. Board of Education*.<sup>3</sup> Judge Carter’s esteemed civil rights career was recognized when, in 1972, President Nixon appointed him as a judge on the U.S. District Court for the Southern District of New York where he served for nearly 40 years with great distinction. If confirmed, Ms. Merle is poised to follow in the same great tradition as Judge Carter.

After her clerkship with Judge Carter, Ms. Merle was awarded the Equal Justice Works Fellowship<sup>4</sup> to work at the Gulf Region Advocacy Center (“GRACE”). GRACE is an independent, client-centered, Houston-based charity that provides defense to individuals facing the death penalty.<sup>5</sup> Ms. Merle then continued her capital defense work as an Assistant Federal Public Defender in the Capital Habeas Unit in Arizona, where she provided legal assistance to indigent people unable to afford counsel to protect their legal rights, as mandated by the Supreme Court case *Gideon v. Wainwright*.<sup>6</sup>

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<sup>1</sup> Natasha Merle, *Questionnaire for Judicial Nominee*, Senate Judiciary Committee (last visited Apr. 22, 2022).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> 347 U.S. 483, (1952).

<sup>4</sup> An Equal Justice Works Fellowship provides emerging lawyers with an opportunity to transform passion for equal justice into a career and fosters long-term success in the public service. *Become a Fellow: Follow Your Path to Justice*, Equal Justice Works (last visited Apr. 22, 2022), <https://www.equaljusticeworks.org/become-a-fellow/>.

<sup>5</sup> *Home*, GRACE: Gulf Region Advocacy Center (last visited Apr. 22, 2022), <http://gracelaw.org/>.

<sup>6</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).



After completing a second clerkship with Judge Jon Gleeson of the Eastern District of N.Y., the court to which she is now nominated, Ms. Merle joined Fried, Frank, Harris, Shriver & Jacobson LLP (“Fried Frank”) as an associate. At Fried Frank, Ms. Merle focused on general litigation spanning a wide range of issues including contracts, trademark infringement, real estate, and white-collar investigations, all while maintaining an active pro bono practice. In 2016, Ms. Merle joined LDF as a Fried Frank Fellow (2016-2018)<sup>7</sup>, she was then hired by LDF as an Assistant Counsel (2018) and soon thereafter promoted to Senior Counsel (2018-2021). In 2021, she was promoted again to Deputy Director of Litigation and currently serves in that position (2021-present). While at LDF, Ms. Merle has handled matters involving voting rights, education, and criminal justice. She has represented clients in federal and state courts across the country, including the Supreme Court. In her current role, Ms. Merle also supervises and mentors junior LDF attorneys. In addition to managing a substantial case load and managerial responsibilities, Ms. Merle maintains a robust teaching practice at Columbia Law School and New York University School of Law.

### ***Key Cases***

Throughout her fourteen-year career as a public defender, associate in a private law firm, and litigator at LDF, Ms. Merle has gained extensive experience litigating and leading a variety of civil and criminal law cases. Below we share highlights of some of the most consequential cases Ms. Merle has litigated at LDF that are illustrative of her commitment to protecting civil rights and to the rule of law.

#### ***1. Voting Rights Expertise and Litigation Record***

Ms. Merle has litigated several important cases defending the right to vote on behalf of individual voters. In 2020, for example, Ms. Merle served as co-lead counsel in *People First v. Merrill*<sup>8</sup>, a case which challenged restrictive early voting

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<sup>7</sup> The Fried Frank Civil Rights Fellowship was created to bridge the worlds of private law firm litigation and public service law by joining with two of the country's leading civil rights advocacy organizations, LDF and the Mexican-American Legal Defense and Educational Fund (MALDEF). See *generally About Us: The Fried Frank Civil Rights Fellowship*, Fried Frank (last visited Apr. 22, 2022), <https://www.friedfrank.com/index.cfm?pageID=49>.

<sup>8</sup> *People First v. Merrill*, 467 F. Supp. 3d 1179 (N.D. Ala. 2020) (Kallon, J.), stay pending appeal denied, 815 F. App'x 505 (11th Cir. 2020) (Rosenbaum, J. Pryor, Grant, JJ.), stay granted, 141 S. Ct. 190

requirements on behalf of several Alabama voters who required a safe alternative to voting in person at a polling place during the COVID-19 pandemic because their health conditions placed them in a higher risk category for severe illness and death from COVID. Specifically, the case alleged that Alabama’s absentee voting requirements and ban on curbside voting violated of the U.S. Constitution, the Voting Rights Act, and the Americans with Disabilities Act (“ADA”) during the COVID-19 pandemic.

With the 2020 election quickly approaching, the plaintiffs filed an emergency motion for a preliminary injunction requesting the court instruct state officials to make absentee and in-person voting more accessible to protect the health and safety of Alabama voters. Following a two-week trial, the district court ruled in the plaintiff’s favor in part.<sup>9</sup> The defendants filed multiple appeals to the U.S. Court of Appeals for the Eleventh Circuit and the U.S. Supreme Court, which ultimately granted their request for a stay in a 6-3 decision.

From 2019 to the present, Ms. Merle has served as lead counsel in *Christian Ministerial Alliance v. Arkansas*<sup>10</sup>, a case challenging the method of electing judges to the Arkansas Supreme Court and Court of Appeals on behalf of Black voters. The Arkansas Supreme Court is comprised of seven justices who are all elected at-large, and the Arkansas Court of Appeals is comprised of 12 judges who are elected from a mix of single-member and multi member districts. The suit alleged that, as a result of these methods of election, Black voters are denied an equal opportunity to participate in the political process to elect candidates of their choice as no Black judge has ever been elected to either court for decades, and that this method of election dilutes the voting strength of Black voters in Arkansas in violation of the Voting Rights Act. The case is currently in trial.

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(2020); 491 F. Supp. 3d 1076 (N.D. Ala. 2020) (Kallon, J.), stay pending appeal granted in part, No. 20-13695-B, 2020 WL 6074333 (11th Cir. 2020) (Jordan, J. Pryor, Lagoa, JJ.), stay granted, 141 S. Ct. 25 (2020).

<sup>9</sup> *Questionnaire for Judicial Nominees* at 23-24.

<sup>10</sup> *Christian Ministerial All. v. Arkansas*, No. 4: 19-cv-402-JM (E.D. Ark.) (Moody, J.).

In *Greater Birmingham Ministries v. Alabama*,<sup>11</sup> Ms. Merle again served as co-lead counsel. This suit challenged the Alabama voter ID law, House Bill (“H.B.”) 19, on the ground that it violated the Fourteenth and Fifteenth Amendments to the U.S. Constitution, and Section 2 of the VRA.<sup>12</sup> In 2011, before the 2013 *Shelby County v. Holder* decision, the Alabama state legislature passed H.B. 19, a law which required voters to present a form of government-issued photo identification to vote.<sup>13</sup> The law also included a provision that would allow a potential voter without the required ID to vote if that person could be positively identified by two poll workers, a provision similar to pre-1965 vouch-to vote systems. Notably, although H.B. 19 passed the state legislature and was sent to the Governor’s desk in 2011, it was not implemented until after the *Shelby* decision in 2013, once the state would no longer have to submit this and other voting changes to the federal government for review under Section 5 to determine whether it would have a discriminatory impact.<sup>14</sup> The defendant later succeeded on an motion for summary judgment and in subsequent appeals.

## ***2. Commitment to Fair Trials and Justice for All***

Ms. Merle has consistently demonstrated an unwavering commitment to equal justice under the law. At LDF, Ms. Merle played a key role in a case entitled, *Buck v. Davis*,<sup>15</sup> which alleged that Mr. Buck’s death sentence was an unconstitutional product of racial discrimination. During his sentencing hearing, Mr. Buck’s trial attorneys presented expert testimony from a psychologist asserting that Mr. Buck was more likely to commit violent crimes and be dangerous in the future because he is Black. The key question for jurors during sentencing deliberations was whether Mr. Buck was more likely to be dangerous in the future. LDF argued the case before the Supreme Court and the Court eventually ruled for

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<sup>11</sup> *Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253 (N.D. Ala. 2018) (Coogler, J.), aff’d, 992 F.3d 1299 (11th Cir. 2021) (Branch Carnes, Gayles, JJ.)

<sup>12</sup> Complaint *Greater Birmingham Ministries v Alabama*, Case No. Case 2:15-cv-02193-LSC (N.D. Ala. May 03, 2016). Available at <https://www.naacpldf.org/wp-content/uploads/Greater-Birmingham-Ministries-v.-Alabama-Amended-Complaint.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> *Case: Greater Birmingham Ministries V. Alabama*, NAACP Legal Defense and Educational Fund, Inc. (last visited Apr. 22, 2022), <https://www.naacpldf.org/case-issue/greater-birmingham-ministries-v-alabama/>

<sup>15</sup> *Buck v. Davis*, 137 S. Ct. 759 (2017)

Mr. Buck, holding that his Sixth Amendment right to the effective assistance of counsel was violated by his counsel’s knowing introduction of expert evidence that Mr. Buck’s race rendered him more likely to commit criminal acts of violence in the future.

From 2020 to 2021, Ms. Merle served as lead counsel in *People v. Supreme Court of San Diego County*.<sup>16</sup> In this case, Mr. Bryan Jones was convicted of multiple crimes and sentenced to death in 1994. After his conviction, Mr. Jones asserted that the prosecution had used peremptory strikes to discriminate against prospective jurors in violation of *Batson v. Kentucky*.<sup>17</sup> Ms. Merle argued that Mr. Jones was entitled to the prosecutor’s jury selection notes in order to confirm whether the prosecutor used race-neutral reasons for striking Black jurors.<sup>18</sup> Ms. Merle also presented this argument before the California Supreme Court and that Court agreed with Ms. Merle’s argument and remanded the case to a California Court of Appeal.

### ***Conclusion***

Ms. Merle possesses impeccable credentials and a depth of experience as a seasoned litigator who has practiced in the private, government, and public interest sectors. If confirmed, Ms. Merle would be the fourth Black woman to serve as a judge in Eastern District of New York<sup>19</sup> and the sixth Black judge in that district.<sup>20</sup> As a Black woman and the child of an immigrant family,<sup>21</sup> Ms. Merle’s confirmation will add important diversity to the court. When the federal judiciary is reflective of the

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<sup>16</sup> *People v. Sup. Ct. of San Diego Cty.*, 12 Cal. 5th 348 (2021).

<sup>17</sup> 476 U.S. 79, (1986).

<sup>18</sup> *Questionnaire for Judicial Nominees* at 22.

<sup>19</sup> (1) Sandra Lynn Townes, (2) Margo Kitsy Brodie, (3) LaShann Moutique DeArcy Hall. *Biographical Directory of Article III Federal Judges, 1789-present*, Federal Judicial Center (Accessed April 2022). Available at <https://www.fjc.gov/history/judges/search/advanced-search>.

<sup>20</sup> (1) Henry Bramwell, (2) Margo Kitsy Brodie, (3) LaShann Moutique DeArcy Hall, (4) Sterling Johnson Jr., (5) William Francis Kuntz III. *Biographical Directory of Article III Federal Judges, 1789-present*, Federal Judicial Center (Accessed April 2022). Available at <https://www.fjc.gov/history/judges/search/advanced-search>.

<sup>21</sup> Ms. Merle’s maternal family is from Dominican Republic and St. Kitts; her paternal family is from Puerto Rico and Panama.

diversity of the nation, it increases public trust, confidence, and fairness in the justice system.<sup>22</sup>

Ms. Merle would also be the first public defender to be confirmed to this court in nearly 30 years and only the second judge in this court's history to ever serve as a public defender.<sup>23</sup> The federal bench would be improved by the addition of judges who, like Ms. Merle, have spent a portion of their legal career serving as public defenders. Although this period did not represent the bulk of Ms. Merle's career, her experience representing the most marginalized members of our society will provide a valuable perspective to the judicial decision making.<sup>24</sup>

Ms. Merle's professional experience demonstrates an ability to fairly adjudicate the various complex issues which will come before her. Furthermore, she has demonstrated a steadfast commitment to the protections afforded to all by the U.S. Constitution.

Throughout her career at LDF, Ms. Merle has conducted herself with the utmost professionalism and integrity. We are confident that she will bring the same profound commitment to justice, fairness, and the rule of law to the district court that we have witnessed during her time at LDF.

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<sup>22</sup> Ruthie Ashley, *Does a diverse bench really matter?*, American Bar Association (Oct. 18, 2018), [https://www.abajournal.com/news/article/does\\_a\\_diverse\\_bench\\_really\\_matter](https://www.abajournal.com/news/article/does_a_diverse_bench_really_matter); Kate Berry, *Building a Diverse Bench: Selecting Federal Magistrate and Bankruptcy Judges*, Brennan Center for Justice at NYU School of Law and American Bar Association Judicial Division (2017), [https://www.brennancenter.org/sites/default/files/publications/Building\\_A\\_Diverse\\_Bench\\_0726.pdf](https://www.brennancenter.org/sites/default/files/publications/Building_A_Diverse_Bench_0726.pdf);

<sup>23</sup> *Biographical Directory of Article III Federal Judges, 1789-present*, Federal Judicial Center (Accessed April 2022) (Search includes all judges for the U.S. District Court for the Eastern District of New York who listed "community defender," "public defender," or "federal defender" as non-volunteer work experience). Available at <https://www.fjc.gov/history/judges/search/advanced-search>.

<sup>24</sup> Sherrilyn Ifill, *Racial Diversity on the Bench: Beyond Role Models and Public Confidence*, 57 Wash. & Lee L. Rev. 405 (2000).



Natasha Merle is well qualified to serve on the district court for the Eastern District of New York, and we urge the Senate Judiciary Committee to advance her nomination without delay.

Sincerely,

A handwritten signature in cursive script that reads 'Janai S. Nelson'.

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