

**Senator Dick Durbin**  
**Chair, Senate Judiciary Committee**  
**Written Questions for Nusrat Choudhury**  
**Nominee to the U.S. District Court for the Eastern District of New York**  
**May 4, 2022**

1. At your hearing, Senator Kennedy asked you about comments you reportedly made during a 2015 panel at Princeton University. You replied that you made those comments in your role as an advocate.

**Is there anything you would like to add to your initial response to Senator Kennedy?**

Response: Senator Kennedy asked me whether at a 2015 speaking event, I said, “The killing of unarmed Black men by police happens every day in America.”

I did not make this statement. I strongly disavow this statement, and I regret not disavowing this statement during my hearing. And to be clear, the statement is not true. Such a statement is inconsistent with my deep respect for law enforcement, appreciation for the risks they take, and the important role they play in advancing public safety. And it does not reflect the work I have done in partnership with law enforcement and their counsel to advance constitutional, effective, and safe policing in cities nationwide, including Biloxi, Milwaukee, and Chicago.

When asked at my hearing whether I made this statement seven years ago, I stated, “I don’t recall that statement, but it is something I may have said in that context.” In the moment, I did not know the basis for the question, so even though I did not believe that I had made the statement, I incorrectly left open the possibility that I had in fact done so. However, I have now reviewed my submission to the Committee and all publicly available material. There is no record that I made this statement, and I did not do so. Additionally, I regret that I failed to state unequivocally at my hearing that the statement is simply not true.

The only record of my remarks at the 2015 event are tweets posted by people I do not know. The tweet that appears to be the basis for misattributing this statement to me is anonymous, inaccurate, and does not capture the full context of the discussion. I made note of this in my Senate Judiciary Questionnaire. *See* Nusrat Jahan Choudhury SJQ at 27 (reporting the March 28, 2015 event at the Princeton School of Public and International Affairs and noting that “although press coverage is supplied, several of the statements attributed to me are inaccurate”).

I strive to be cautious in my public communications to ensure that assertions are based on facts. I recall stating at the event in question that every day in the United States, there are interactions between officers and community members that disparately impact people of color. That is what I was referring to when an attendee tweeted that I said, “It happens every day.”

I have deep respect and compassion for law enforcement who put their lives on the line. I would not raise false impressions or questions about their commitment to public safety. My

utmost regard for the work of law enforcement is shown by my work with them and their counsel to settle litigation with reforms that advance constitutional, effective, and safe policing.

I am aware that disproportionate uses of force by law enforcement can undermine community trust and safety. These issues are extremely complicated and must be discussed based on accurate facts and statistics—and that is what I have endeavored to do as an advocate working with law enforcement and their counsel on these issues. I would reiterate, again, that the statement I was asked about was not an accurate statement, and I regret not saying so during my hearing.

My respect and admiration for law enforcement is reflected in my work at the ACLU of Illinois, where I have served as Legal Director since January 2020. During this time, I supported the filing of three administrative complaints in the Illinois Department of Human Rights on behalf of two Chicago police officers.

I was humbled to receive letters submitted to the Committee in support of my confirmation from opposing counsel in litigation involving police. Gerald Blessey, the former City Attorney for Biloxi, Mississippi, described our work to resolve litigation involving Biloxi police practices as follows:

[Ms. Choudhury] is fair-minded and a pleasure to work with on these serious, complex, and challenging issues.

I understand that Ms. Choudhury has been accused of making statistically inaccurate statements critical of law enforcement. She was always fact-based in her communications with us; our settlement was based on an agreed, accurate data base. Her expressions of utmost respect for law enforcement personnel and the difficult challenges that police encounter as they protect and serve the public are consistent with my first-hand experience working with her on policing issues. I have every confidence in her temperament and ability to be an impartial judge and know her to be exceptionally well qualified for the position.

Grant F. Langley, the former Milwaukee City Attorney, and Jan A. Smokowicz, the former Milwaukee Deputy City Attorney, represented the Milwaukee Police Department and the Milwaukee Fire and Police Commission in litigation against my clients. They wrote that I “displayed an unfailingly even temper and a reasonable and fair approach to resolving the many thorny issues that arose during” efforts to settle the litigation.

John Clopper, a former Assistant U.S. Attorney for the Southern District of New York, represented the Federal Bureau of Investigation, U.S. Department of Justice, and National Security Agency against my client in litigation. Mr. Clopper wrote: “Nusrat is among the most open-minded lawyers I have litigated against.” He described me as “impartial[,]” “fair-minded[,]” “collaborative,” and a “role model for collegiality in the legal profession.”

If confirmed as a district judge for the Eastern District of New York, I would strive, in each case, to uphold the solemn judicial oath to “administer justice . . . faithfully and impartially”

to all parties and counsel who appear before me, including law enforcement officers and agencies.

**Senator Chuck Grassley, Ranking Member**  
**Questions for the Record**  
**Ms. Nusrat J. Choudhury**  
**Nominee to be United States District Judge for the Eastern District of New York**

- 1. In 2021, you participated in a panel discussion titled “Race, Sex and Policing.” During the discussion, you expressed support for “reimagining the role of policing in our society while also engaging in immediate reform efforts to address the serious harm that marginalized communities, including people of color, women and transgender people, experience from policing on a daily basis.” How, in your view, should the role of policing in our society be “reimagined”?**

Response: Respectfully, I would characterize my comments as descriptive rather than offering a statement of support for a particular viewpoint. I have great respect for the work police do to ensure rule of law and keep communities safe under challenging conditions.

At this event, I addressed the efforts of clients to whom I provide legal representation in the enforcement of a federal Consent Decree that advances “constitutional and effective” policing in Chicago and “ensure[s] that Chicago police officers are provided with the training, resources, and support they need to perform their jobs professionally and safely.” Consent Decree ¶ 2, *Illinois v. Chicago*, No. 17-cv-6260, ECF No. 703-1 (N.D. Ill. Jan. 31, 2019); *see id.* ¶¶ 669, 709 (providing enforcement authority to a Coalition of community organizations). In the referenced quote, I was noting that different people use different terms to refer to their work on these issues.

I am not aware of any consensus definition of “reimagining” policing. Whether policing should be “reimagined” is a question for policymakers.

Consistent with the Code of Conduct for United States Judges, as a pending judicial nominee, it would be inappropriate for me to comment on my personal views, if any, about whether policing in our society should be “reimagined” and any changes that would entail. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

- 2. In a July 2021 letter criticizing the Chicago Police Department, you suggested that “minor offenses” like theft and criminal trespass “do not threaten public safety.” In your view, should police departments pursue and apprehend people suspected of theft or criminal trespass?**

Response: Public safety and rule of law are deeply important to all communities. Police officers perform an important and challenging job to help advance these goals every day.

The July 2021 letter that I helped prepare constituted legal advocacy on behalf of clients. It was sent by a Coalition of 14 organizations that collectively enforce a federal Consent Decree governing police reform in Chicago, which includes my clients—the ACLU of Illinois, Communities United, Community Renewal Society, One Northside, and Next Steps. See Consent Decree ¶¶ 669, 709, *Illinois v. Chicago*, No. 17-cv-6260, ECF No. 703-1 (N.D. Ill. Jan. 31, 2019). The letter was signed by eight attorneys who provide legal representation to different Coalition organizations, and was sent to the Chicago Police Department and other entities that enforce the Consent Decree.

The Coalition’s letter stems from the 2017 findings of a U.S. Department of Justice investigation into the Chicago Police Department, which found that “dangerous and unnecessary foot pursuits” contributed to “a pattern or practice of unreasonable force in violation of the Fourth Amendment.” U.S. Department of Justice, Civil Rights Division and U.S. Attorney’s Office for the Northern District of Illinois, *Investigation of the Chicago Police Department 23, 25 (2017) (“DOJ Report”)*, <https://www.justice.gov/opa/file/925846/download>.

The July 2021 letter addresses the Coalition’s views and recommendations for how to improve a June 2021 Chicago Police Department policy governing police foot pursuits in order to advance officer and community safety. The Coalition recommended that the Chicago policy should restrict foot chases, which carry safety risks for the officer, community members, and the person being chased, in the situation where officers do not have more than reasonable suspicion that a person being chased is engaged in theft or criminal trespass.

The question of whether police should pursue and apprehend people suspected of theft or criminal trespass is an issue for policymakers and is the subject of discussion and debate amongst policymakers, researchers, advocates, and the public.

Consistent with the Code of Conduct for United States Judges, as a pending judicial nominee, it would be inappropriate for me to comment on my personal views, if any, about whether police should pursue and apprehend people suspected of theft or criminal trespass. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

3. **In 2015, you authored a blog post titled “If You’re Black or Brown and Ride a Bike in Tampa Watch Out: Police Find that Suspicious.” In the blog post, you wrote that the Tampa police were “targeting Blacks who ride bicycles – including children as young as three years old – for dramatically high rates of stops and searches.” Do you still believe that the Tampa police are “targeting” three-year-old Black and Brown children who ride bikes?**

Response: I am not aware of any current Tampa Police Department practices to enforce bicycle laws or the age, race, or ethnicity of people who may be stopped and ticketed by Tampa police for bicycle violations.

The 2015 blog referenced in the question cited a Tampa Bay Times study finding that, from 2003 to 2015, Tampa police issued more than 10,000 tickets to people for bicycle violations, with Black people receiving 79% of the tickets, even though Black people comprised about one quarter of the Tampa population at the time. *See* Kameel Stanley, *How Riding Your Bike Can Land You in Trouble if You are Black*, Tampa Bay Times, Apr. 18, 2018, <https://www.tampabay.com/news/publicsafety/how-riding-your-bike-can-land-you-in-trouble-with-the-cops---if-youre-black/2225966/>. As reported in the 2015 blog, the ACLU reviewed the data analyzed by the Tampa Bay Times and found that from 2003 to 2015, Tampa police issued 142 bicycle tickets to people age 15 and younger, including children as young as three years old. The 2015 blog provided a link to the Hillsborough County, Florida data source that was reviewed by the Tampa Bay Times and the ACLU, which appears to no longer work: <ftp://www.hillsclerk.com/traffic>.

The U.S. Department of Justice Community Oriented Policing Services Program (DOJ COPS) investigated the Tampa Police Department practices in question. The DOJ COPS' 2016 report documented that after learning of the "community's concerns" the Tampa Police Department "implement[ed] new data reporting protocols for all traffic stops" and "reduc[ed] the volume of bicycle stops and citations." Greg Ridgway, et al., U.S. Department of Justice, *Community Oriented Policing Services, An Examination of Racial Disparities in Bicycle Stops and Citations Made by the Tampa Police Department* 51 (2016), <https://www.tampa.gov/document/report-23341>.

Police stops and ticketing practices are issues for policymakers and are the subject of discussion and debate amongst policymakers, researchers, advocates, and the public.

Consistent with the Code of Conduct for United States Judges, as a pending judicial nominee, it would be inappropriate for me to comment on my personal views, if any, about whether Tampa police stop and ticket children for bicycle violations. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

4. **In the ACLU of Illinois's Fall 2020 Impact Report, you wrote that "people across Illinois" face "systemic racism and anti-Black police violence."**
  - a. **In your view, is the Chicago Police Department systemically racist?**
  - b. **In your view, are all police departments systemically racist?**

Response to both subparts: As I testified at my hearing, police officers have an important and challenging job. I have deep respect for law enforcement and appreciate the risks they take and the important role they play in advancing public safety.

My respect and admiration for law enforcement is reflected in my work at the ACLU of Illinois, where I have served as Legal Director since January 2020. During this time, I supported the filing of three administrative complaints in the Illinois Department of Human Rights on behalf of two Chicago police officers. My utmost regard for the work of law enforcement is also shown by my work done in partnership with law enforcement and their counsel to advance constitutional, effective, and safe policing in cities nationwide, including Biloxi, Milwaukee, and Chicago.

I have not used the term “systemically racist” to describe the Chicago Police Department or any other police department, and I do not recall ever using this term in litigation on behalf of ACLU or ACLU of Illinois clients. I am not aware of a consensus definition of the term “systemically racist.”

In the quote referenced in the question, I described peaceful protesters in Illinois who framed their concerns as challenging “systemic racism and anti-Black police violence.”

I am aware that, in 2017, the U.S. Department of Justice (“DOJ”) concluded an investigation into the Chicago Police Department. The DOJ found that the Department exhibited “a pattern or practice of unreasonable force in violation of the Fourth Amendment,” that this pattern or practice “disproportionately burdens minority communities,” and that there was a “recurrence of unaddressed racially discriminatory conduct by officers.” U.S. Department of Justice, Civil Rights Division & United States Attorney’s Office Northern District of Illinois, Investigation of the Chicago Police Department 15, 22, 144 (2017), <https://www.justice.gov/opa/file/925846/download>. My employer, the ACLU of Illinois, is part of a Coalition of 14 organizations that collectively enforce a federal Consent Decree governing police reform in Chicago. *See* Consent Decree ¶¶ 669, 709, *Illinois v. Chicago*, No. 17-cv-6260, ECF No. 703-1 (N.D. Ill. Jan. 31, 2019). I provide legal representation to five members of this Coalition—the ACLU of Illinois, Communities United, Community Renewal Society, One Northside, and Next Steps.

The question of whether there are systemic issues in the Chicago Police Department or any other police department is an issue for policymakers, the public, researchers, and advocates.

Consistent with the Code of Conduct for United States Judges, as a pending judicial nominee, it would be inappropriate for me to comment on my personal views, if any, about whether the Chicago Police Department or any other police department has systemic issues. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as

established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

5. **In September 2013, you tweeted that “#FBI agents have tried to use the #NoFlyList to coerce Americans into #spying on their communities.” You made similar allegations in an ACLU Blog post in 2013, suggesting that the FBI was “blacklisting innocent Americans” to get them to spy on each other. What evidence do you have that the FBI encouraged Americans to spy on their communities in 2013 or during the Obama Administration?**

Response: I drafted the tweet and blog referenced in the question in my role as an attorney representing ACLU clients—U.S. veterans and other Americans—in litigation concerning constitutionally inadequate redress procedures for U.S. persons denied boarding on planes due to inclusion on the U.S. government’s No Fly List. *See Latif v. Holder*, No. 10-cv-750 (D. Or.).

In that litigation, U.S. Marine veteran Ibraheim Mashal submitted a sworn declaration stating that after being denied boarding on a 2010 flight from Chicago to Spokane for a business trip, two FBI agents “told me that if I would help the FBI as serving as an informant, my name would be removed from the No Fly List and I would receive compensation.” Decl. of Ibrahim Mashal ¶ 10, *Latif v. Holder*, 3:10-cv-750-BR, ECF No. 92-9 (Mar. 22, 2013). Mr. Mashal attested, “I told the agents that I did not feel comfortable answering their questions without my attorney present. The agents promptly ended the meeting.” *Id.* Due to inclusion on the No Fly list, Mr. Mashal lost business clients and was unable to attend his sister-in-law’s graduation from a Christian missionary school and the wedding of a fellow Marine veteran. *Id.* ¶¶ 11–14.

U.S. citizen Nagib Ali Ghaleb submitted a sworn statement to a federal district court reporting that, in 2010, after being denied boarding on a flight home to the United States from Germany, he met with two U.S. officials, “one of whom was an FBI agent,” who “offered to arrange for me to fly back immediately to the United States if I would agree to tell them who the ‘bad guys’ were” in Yemen and San Francisco,” including by “provid[ing] the names of people from my mosque and my community.” Decl. of Nagib Ali Ghaleb ¶¶ 6–8, *Latif v. Holder*, No. 3:10-cv-750-BR, ECF No. 91-3 (Mar. 13, 2013). Mr. Ghaleb declined. *Id.* ¶ 8. Due to inclusion on the No Fly List, Mr. Ghaleb was unable to travel to be with his family, including his ailing mother. *Id.* ¶ 12.

In June 2014, a federal district court ruled that the existing redress procedures for Americans on the No Fly List violated the Fifth Amendment right to procedural due process and the Administrative Procedure Act by failing to provide the plaintiffs an after-the-fact explanation and meaningful opportunity to be heard to contest their inclusion on the list. *Latif v. Holder*, 28 F. Supp. 3d 1134, 1160–61 (D. Or. June 24, 2014).



In October 2014, pursuant to an order of the district court, the U.S. government informed Mr. Mashal and Mr. Ghaleb that they were no longer on the No Fly List. Defs' Status Report, *Latif v. Holder*, No. 3:10-cv-750, ECF No. 153-1 (Oct. 10, 2014).

6. **In a June 2020 news article, you are quoted as saying that “[c]urfews are gonna raise a red flag every time they’re used. And we strongly urge the city [of Chicago] not to ever use again [sic].”**

- a. **In your view, is it ever appropriate for a city to use curfews to quell rioting?**

Response: A “riot” is by definition a “violent public disorder.” Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/riot>. Public safety is important to all communities. Whether it is appropriate to use a curfew to quell violence and how to do so in compliance with legal and constitutional standards is a question for policymakers.

Consistent with the Code of Conduct for United States Judges, as a pending judicial nominee, it would be inappropriate for me to comment on my personal views, if any, about whether it is appropriate for municipalities to use curfews to quell rioting. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

- b. **Why do curfews raise red flags every time they are used?**

Response: If by “curfew,” the question is referring to a government action that restricts citizens from engaging in certain activities in public spaces during certain time periods, such restrictions may implicate First and Fourteenth Amendment rights.

In the First Amendment context, the Supreme Court has recognized:

Ordinarily, the State’s constitutionally permissible interests are adequately served by criminal penalties imposed after freedom to speak has been so grossly abused that its immunity is breached. The impact and consequences of subsequent punishment for such abuse are materially different from those of prior restraint. Prior restraint upon speech suppresses the precise freedoms which the First Amendment sought to protect against abridgement.

The Court has emphasized that (a) system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity. And even where this presumption might otherwise be overcome,

the Court has insisted on careful procedural provisions, designed to assure the fullest presentation and consideration of the matter which the circumstances permit.

*Carroll v. President and Comm'rs of Princess Anne*, 393 U.S. 175, 180–81 (1968) (citations and quotation marks omitted).

Additionally, due process “requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (citation omitted). “Certainty is all the more essential when vagueness might induce individuals to forego their rights of speech, press, and association for fear of violating an unclear law.” *Scull v. Com. of Va. ex rel. Comm. on Law Reform & Racial Activities*, 359 U.S. 344, 353 (1959).

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on any legal issues that could come before the court. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

7. **In a blog post about the 1989 Central Park Five case, you suggested that the American “system of criminal laws and norms” is “anchored by near-unreviewable law enforcement discretion to target and pressure vulnerable people into abandoning their rights and submitting to state punishment.” You also suggested that there is “mounting evidence that incarceration destroys communities and costs too much.”**
  - a. **Do you believe the American justice system is “anchored by near-unreviewable law enforcement discretion?” If so, please explain how this view comports with your understanding of 42 U.S.C. § 1983. If not, why did you write this statement?**

Response: I have deep respect for law enforcement and appreciate the risks they take and the important role they play in advancing public safety. This blog described a docu-drama that raised questions about practices related to a police investigation and criminal prosecution in 1989. In the blog, I noted that the concerns raised were “not about individual prosecutors or police, many of whom would rightly denounce the approaches on display in the series.” That observation comports with my experience working with current and former law enforcement

officers who demonstrate respect for community members and constitutional rights.

Congress enacted 42 U.S.C. § 1983 (“Section 1983”), which provides a cause of action for equitable relief or damages against a government official who under color of state law “subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,” with certain exceptions. A plaintiff bringing a Section 1983 case in federal court must meet requirements for pursuing and prevailing on such claims. *See, e.g., Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013) (describing federal court abstention under the *Younger* doctrine when a case concerns: (1) “ongoing state criminal prosecutions,” (2) “certain civil enforcement proceedings,” or (3) “pending civil proceedings involving certain orders . . . uniquely in furtherance of the state court’s ability to perform their judicial functions.”) (quotation marks omitted); *Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (holding that under the *Rooker-Feldman* doctrine, federal courts lack subject matter jurisdiction to hear claims 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”); *Dist. of Columbia v. Wesby*, 138 S. Ct. 577, 589–90 (2018) (“[O]fficers are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time.”).

In the blog, I cited to statements by ACLU clients who brought Section 1983 litigation to enforce their constitutional rights concerning practices that involved police. *See Collins v. Milwaukee*, No. 2:17-cv-234 (E.D. Wis.); *Kennedy v. Biloxi*, No. 1:15-cv-348 (S.D. Miss.).

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment further on any legal issues concerning the discretion law enforcement officers may exercise or federal courts review of the exercise of any such discretion. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

- b. **Do you still believe law enforcement personnel actively seek to pressure vulnerable people into abandoning their rights and submitting to state punishment?**

Response: Respectfully, that is not how I would characterize my prior statement or current views. I have deep respect for law enforcement and appreciate the risks they take and the important role they play in advancing public safety. The referenced blog described a docu-drama that raised questions about practices related to a police investigation and criminal prosecution in 1989. In the blog, I noted that the concerns raised were “not about individual prosecutors or police, many of whom would rightly denounce the approaches on display in the series.” That observation comports with my experience working with current and former law enforcement officers who demonstrate respect for community members and constitutional rights.

My respect and admiration for law enforcement is reflected in my work at the ACLU of Illinois, where I have served as Legal Director since January 2020. During this time, I supported the filing of three administrative complaints in the Illinois Department of Human Rights on behalf of two Chicago police officers.

My utmost regard for the work of law enforcement is shown by my work with them and their counsel to settle litigation with reforms that advance constitutional, effective, and safe policing. I was humbled to receive letters submitted to the Committee in support of my confirmation from opposing counsel in such litigation.

Gerald Blessey, the former City Attorney for Biloxi, Mississippi, described our work to resolve litigation involving Biloxi police practices as follows:

Ms. Choudhury shared her extensive knowledge of practical, best practices seeking to minimize the burden of reforms on the City, municipal court, and police department. . . . She is fair-minded and a pleasure to work with on these serious, complex, and challenging issues. . . . Her expressions of utmost respect for law enforcement personnel and the difficult challenges that police encounter as they protect and serve the public are consistent with my first-hand experience working with her on policing issues.

Grant F. Langley, the former Milwaukee City Attorney, and Jan A. Smokowicz, the former Milwaukee Deputy City Attorney, represented the Milwaukee Police Department and the Milwaukee Fire and Police Commission in litigation against my clients. They wrote that I “displayed an unfailingly even temper and a reasonable and fair approach to resolving the many thorny issues that arose during” efforts to settle the litigation.

John Clopper, a former Assistant U.S. Attorney for the Southern District of New York, represented the Federal Bureau of Investigation, U.S. Department of Justice, and National Security Agency against my client in litigation. Mr. Clopper wrote: “Nusrat is among the most open-minded lawyers I have litigated against.”

He described me as “impartial[],” “fair-minded[],” “collaborative,” and a “role model for collegiality in the legal profession.”

**c. Please describe the evidence that incarceration destroys communities.**

Response: The question of whether incarceration has impacts on communities is an issue for policymakers, who are involved in discussions with researchers, advocates, and the public.

I am aware that in 2018, Congress passed the First Step Act, which has been described as “the culmination of several years of congressional debate about what Congress might do to reduce the size of the federal prison population while also creating mechanisms to maintain public safety.” Congressional Research Service, *The First Step Act of 2018: An Overview*, R45558 at 1 (Mar. 4, 2019) <https://crsreports.congress.gov/product/pdf/R/R45558>. Among other things, the First Step Act increased access to time credits and “reduced the mandatory minimum sentences for certain drug offenses.” *Id.* at 5, 8–9.

The role of a judge is not to make policy. If confirmed as a district judge, my role would be limited to resolving individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. In the sentencing context, I would follow Congress’ directive in 18 U.S.C. § 3553(a) to sentence people convicted of federal crimes to “a sentence sufficient, but not greater than necessary, to comply with the purposes set forth” in the statute. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

**d. In your view, can incarceration promote public safety by protecting innocent people from violent criminals? If so, how much should this cost?**

Response: As I testified at my hearing, public safety is deeply important. Policymakers, researchers, advocates, and members of the public are engaged in discussions about how best to foster this goal and at what cost.

In enacting 18 U.S.C. § 3553(a), Congress directed federal district courts to sentence people convicted of federal crimes to “a sentence sufficient, but not greater than necessary, to comply with the purposes set forth” in the statute, and further directed that courts “shall consider” each of the specifically enumerated factors listed therein. In sentencing, district judges must consider the need to “reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense,” “to afford adequate deterrence to criminal conduct,” and “to protect the public from further crimes of the defendant,” among other factors.

I read Congress' directive in Section 3553(a) that courts must consider the need "to protect the public from further crimes of the defendant" to convey a determination by policymakers that incarceration can be necessary to protect members of the public from violent conduct.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on the propriety and cost of incarceration because it is an issue of policy. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially enforce the law, including Section 3553(a), and follow all precedents of the Supreme Court and Second Circuit.

8. **In 2016, you reviewed and commented on a report titled *Transforming the System*. The report calls on legislatures to "abolish cash bail requirements," to "encourage the use of warning and citations rather than arrests," and to use "restorative justice programs, including community prosecution programs and community courts" as an alternative to criminal prosecution.**

- a. **Do you agree that legislatures should abolish cash bail requirements?**

Response: As noted in my Senate Judiciary Questionnaire, I did not research, write, or edit this report by the Opportunity Agenda. I reviewed the report for the purpose of making limited comments on the report's discussion of court fine and fee collection practices and the requirements of Supreme Court precedents, including *Bearden v. Georgia*, 461 U.S. 660 (1983), which guard against incarceration for inability to pay fines. I was not involved in developing or commenting on any of the report's recommendations, and was not asked to do so.

Whether legislatures should change cash bail requirements is an issue for policymakers.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on whether legislatures should change cash bail requirements because it is an issue of policy. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

- b. **Please define “restorative justice.” In your view, under what circumstances, if any, can “restorative justice” serve as an alternative to criminal prosecution?**

Response: Please see my response to Question 8(a). I am not aware of a consensus definition of “restorative justice.” This is not a term that I have used and not an issue that I have worked on in my nearly 16 years of professional practice as a judicial law clerk and litigator.

Whether “restorative justice” can serve as an alternative to criminal prosecution is a question for policymakers.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on whether “restorative justice” can serve as an alternative to criminal prosecution because it is an issue of policy. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

- c. **Please describe “community courts.” In your view, under what circumstances, if any, can “community courts” serve as alternatives to state or federal court resolution of criminal prosecutions?**

Response: Please see my response to Question 8(a). I am not aware of a consensus definition of “community courts.” This is not a term that I have used and not an issue that I have worked on in my nearly 16 years of professional practice as a judicial law clerk and litigator.

Whether “community courts” can serve as an alternative to state or federal court resolution of criminal prosecutions is an issue for policymakers.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on whether “community courts” serve as alternatives to state or federal court resolution of criminal prosecutions because it is an issue of policy. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

- d. **Did you disagree with any of the conclusions or recommendations in *Transforming the System*? If so, did you voice your disagreement with any of the report's authors?**

Response: Please see response to Question 8(a).

9. **In 2016, you reviewed an ACLU report on drug use in the United States. The report states that “[c]riminalizing drug use simply has not worked as a matter of practice,” and that the “criminalization of drug use and possession is also inherently problematic because it represents a restriction on individual rights that is neither necessary nor proportionate to the goals it seeks to accomplish.”**

- a. **Do you agree that the criminalization of drug use “simply has not worked” and is “inherently problematic?” If so, do you support decriminalizing all drugs as the report recommends?**

Response: As noted in my Senate Judiciary Questionnaire, I did not research or write this report by Human Rights Watch and the ACLU. The report sets forth the institutional positions of my former employer, the ACLU. I reviewed the report for the purpose of making limited comments on its discussion of court fine and fee collection practices and the requirements of Supreme Court precedents, including *Bearden v. Georgia*, 461 U.S. 660 (1983), which guard against incarceration for inability to pay fines. I was not involved in developing or commenting on any of the report's recommendations.

Whether criminal laws concerning controlled substances are “inherently problematic” or should be changed are questions for policymakers.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on whether criminal laws concerning controlled substances are “inherently problematic” or should be changed because these are issues of policy. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

- b. **The report also states that “[o]ver the course of their lives, white people are more likely than Black people to use illicit drugs in general, as well as marijuana, cocaine, heroin, methamphetamines, and prescription drugs (for non-medical purposes) specifically.” To your knowledge, is there any available data or evidence supporting this generalization on the basis of race?**



Response: Please see response to Question 9(a). I was not involved in researching, writing, or commenting on this language in the report. I am not aware of any data relating to this question.

**10. In a 2020 blog post, you claimed that the detention of noncitizens by immigration officials “can be” a “death sentence” for detainees because of the COVID-19 pandemic. To your knowledge, has immigration detention caused the death of any noncitizen in Illinois?**

Response: I drafted the 2020 blog in my role as an attorney representing ACLU of Illinois clients—people with pre-existing medical conditions, including diabetes, hypertension, asthma, and heart disease, a number of whom were also over the age of 60—in federal court litigation. In 2020, these clients brought Fifth Amendment claims concerning their detention conditions in ICE custody in the McHenry County Adult Correctional Facility and the Jerome Combs Detention Center in Illinois during the COVID-19 pandemic. *See Dembele v. Prim*, No. 1:20-cv-2401 (N.D. Ill.); *Herrera-Herrera v. Kolitwenzew*, 2:20-cv-2120-SEM-TSH (C.D. Ill.); *Crainic v. Kolitwenzew*, No. 2:20-cv-02138 (C.D. Ill.).

ICE released one ACLU of Illinois client after the initiation of litigation, and two federal courts issued orders leading to the release of several others based on an individualized assessment. *See Dembele v. Prim*, No. 1:20-cv-2401, Dkt. 42 (N.D. Ill. May 7, 2020) (minute entry) (granting in part and denying in part the motion for a preliminary injunction and ordering ICE to provide conditions for the plaintiff/petitioner’s temporary release); *Herrera-Herrera v. Kolitwenzew*, No. 2:20-cv-2120, Dkt. 36 (C.D. Ill. May 19, 2020) (granting preliminary relief and habeas petition, and ordering release of petitioner from ICE custody following preliminary relief hearing and bench trial).

As a judicial nominee, it would be inappropriate for me to comment on the “cause” of death of any person in ICE custody. I am aware, however, that two detained people have died in ICE custody in Illinois. One of these people died in ICE custody at the McHenry County Adult Correctional Facility less than one year prior to the filing of *Dembele v. Prim*, which concerned ACLU of Illinois clients with pre-existing medical conditions who were detained in that same facility during the COVID-19 pandemic.

On September 12, 2019, a 37-year-old man died in ICE custody at the McHenry County Adult Detention Facility in Illinois. Hamed Aleaziz, A Mexican Immigrant in ICE Custody Died After Officials Waited More Than Seven Hours to Transfer Him to a Hospital, BuzzFeed News (Oct. 17, 2019), <https://www.buzzfeednews.com/article/hamedaleaziz/ice-custody-death-seven-hour-wait>. Dr. Marc Stern, “a public health expert and faculty member of the University of Washington” stated, “In the absence of ICE providing an explanation, a seven-hour delay in responding to this patient does not seem consistent with adequate care.” *Id.*

Additionally, on November 5, 2010, a 66-year-old man died at the ICE Broadview Service Staging Area in Illinois. *See* Human Rights Watch et al., Code Red: The Fatal

Consequences of Dangerously Substandard Medical Care in Immigration Detention 66 (2018),

[https://www.aclu.org/sites/default/files/field\\_document/coderedreportdeathsicdetention.pdf](https://www.aclu.org/sites/default/files/field_document/coderedreportdeathsicdetention.pdf). Medical experts' review of the ICE Detainee Death Report for this individual concluded that it was "undetermined" whether "poor care contributed or led to [the] death" and whether the report documented problematic detention conditions or violations of detention standards. *Id.*

**11. In a 2020 Chicago Law Magazine article, you said that "the structures of racial discrimination" in America are "so deep, so pernicious" that "they really need to be fought at a systemic level." You added that your goal is to "figure out how [you] can be the most effective using the law as a tool of social justice."**

**a. Do you believe that America is systemically racist?**

Response: I am not aware of a consensus definition of the term "systemically racist." Whether there are systemic issues in the United States relating to race is a subject of widespread discussion amongst policymakers and the public. In addition, while I have worked for many years for organizations that support racial equality and provide legal representation to clients who bring claims against racial discrimination, I will also note the honor I feel as the first Muslim woman ever nominated to serve as a federal judge. I am deeply grateful for the opportunities that this country has afforded me and my family since my parents immigrated to the United States.

Federal district judges are duty-bound to fairly and impartially adjudicate specific cases or controversies that are properly before the court, some of which may include claims of race discrimination in the United States, without regard to any personal beliefs the judge may or may not have.

Federal district judges may be required to preside over claims alleging that systemic factors, such as patterns or practices of racial discrimination, played a role in causing the violation of a plaintiff's rights. *See, e.g., Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336–37, 342–43 (1977) (holding that plaintiff met its burden of proof "to establish by a preponderance of the evidence that racial discrimination" in employment practices "was the . . . standard operating procedure[,] the regular rather than the unusual practice" of the defendant, a common carrier of motor freight with nationwide operations); *Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658, 694 (1978) (holding that municipal employers may be held liable under 42 U.S.C. §1983 for constitutional violations caused by the municipality's "policy or custom").

If confirmed as a district judge and presented with such a case, my duty would be to faithfully and impartially apply Supreme Court and Second Circuit precedent to the facts established by evidence in the record. My role would be limited to this critically important judicial function.

**b. Under what circumstances should judges use the law as a tool of social justice to fight structures of racial discrimination?**

Response: Please see my response to Question 11(a). In the article referenced, I was interviewed about my role as an advocate at the ACLU of Illinois—not about the role of a judge. My reference to “social justice” was to the principle of equal justice under the law, which I have sought to advance throughout my career as an advocate—both by representing U.S. veterans and other Americans who could not afford counsel in litigation to enforce their constitutional rights and by working with people and organizations with a wide range of views to create tools to help courts nationwide ensure fair and equal treatment of rich and poor.

Since 2008, I have worked as an attorney at non-profit, civil rights and civil liberties organizations. In this time, I have undertaken all of my work without charge to clients and have provided pro bono legal representation to indigent and low-income people, U.S. veterans, immigrants, people in prisons and jails, women, people with disabilities, and members of racial, ethnic, and religious minority groups

I was humbled to receive a letter submitted to the Committee in support of my confirmation from Janice Carter, a U.S. Air Force veteran and mother of a Navy serviceman. I provided pro bono representation to Ms. Carter in her efforts to secure notice and an opportunity to be heard before a state agency concerning the suspension of her driver’s license for unpaid fines and fees she could not afford. Ms. Carter wrote, “I did not know how to put together an application [for relief] by myself” and that “[t]he process was difficult to understand.” When that application was denied, I also provided pro bono representation to Ms. Carter in her effort to seek relief in federal court. *See White v. Shwedo*, No. 2:19-cv-3083 (D.S.C.).

As an advocate, I have also worked closely with judges, state court chief justices, and state court administrators in the National Task Force on Fines, Fees, and Bail Practices (“Task Force”) to advance equal justice under the law in courts across the country. Elizabeth Pollard Hines, a retired judge of the 15<sup>th</sup> District Court in Ann Arbor, wrote of our work on the Task Force to “craft[] the template for what was ultimately approved as the bench card for the ‘Lawful Collection of Legal Financial Obligations’ for use by judges nationwide.” She wrote:

[Nusrat] succeeded in listening to all of our differing viewpoints, experiences and opinions, synthesizing them in accordance with the law and creating a product we could all accept. On a variety of topics, if we wanted to find an objective, accurate statement of a legal principle or law to guide us with policy issues, we knew to ask Nusrat. Even if the ACLU’s official position sought more policy changes, Nusrat followed the law.

*See also* National Task Force on Fines, Fees & Bail Practices, *Lawful Collection of Legal Financial Obligations: A Bench Card for Judges* (2019) (copy supplied).

I also worked closely with judges, prosecutors, and members of the private bar on the American Bar Association Presidential Task Force on Building Public Trust in the American Justice System. Together, we produced the ABA Ten Guidelines on Court Fines and Fees, which guide court actors in ensuring that fines and fees collected through the court system comply with Supreme Court precedents requiring procedural safeguards before the incarceration of people for fines they cannot afford to pay. These precedents include: *Bearden v. Georgia*, 461 U.S. 660 (1983); *Tate v. Short*, 401 U.S. 395 (1971); and *Williams v. Illinois*, 399 U.S. 235 (1970). The American Bar Association House of Delegates (numbering more than 500 members) approved the Ten Guidelines on August 6, 2018. *See* ABA, *Ten Guidelines on Court Fines and Fees* (2018) (copy supplied).

If confirmed as a district judge, I would advance equal justice under the law in a fundamentally different way. Federal judges are duty-bound in each case to impartially consider the parties' arguments, scrupulously review the factual record, and to apply precedent of the Supreme Court and their Circuit to the facts established by evidence in the record, regardless of any personal views the judge may or may not have. Through this process, the judge ensures that every litigant has a fair opportunity to be heard and that any decisions reached are compelled by the application of the law to the facts. If confirmed as a district judge, I would faithfully and impartially discharge this critically important duty.

12. **After the Justice Department rescinded a guidance letter about court fine and fee payments in 2017, you wrote that “Jeff Sessions’ action makes clear that he and his Justice Department are unconcerned about courts trampling on the rights of poor people.” Separately, you suggested that former Attorney General Sessions “sent a message basically saying that the federal government doesn’t care about civil rights law when it comes to protecting poor people.” Do you still believe that the Justice Department under Attorney General Sessions was “unconcerned” about the rights of poor people?**

Response: The referenced blog and comment relate to the ACLU’s institutional concern about a decision of the U.S. Department of Justice (DOJ) in 2017 to rescind a 2016 DOJ guidance that had been issued to remind state court leaders of Supreme Court precedents requiring procedural safeguards before the incarceration of people for fines they cannot afford to pay. These precedents include: *Bearden v. Georgia*, 461 U.S. 660 (1983); *Tate v. Short*, 401 U.S. 395 (1971); and *Williams v. Illinois*, 399 U.S. 235 (1970). The 2016 DOJ guidance followed instances of people being incarcerated for unpaid fines and fees, allegedly without pre-deprivation ability-to-pay hearings, in more than a dozen states. *See Timbs v. Indiana*, 139 S. Ct. 682 (2019) (Brief of ACLU, R Street Institute, the Fines and Fees Justice Center, and Southern Poverty Law Center as *Amici Curiae* in Support of Petitioners, 2018 WL 4462202 at \*17–18 & \*1a-5a (Appendix A)).

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on the views or concerns of any political figure. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially enforce the law and follow all precedents of the Supreme Court and Second Circuit.

13. **In 2017, you moderated a panel called “Resistance and Liberation” at Princeton. During the panel, you said that “[p]olicymakers these days are showing explicit racism in a way we [haven’t seen in a long time.” Upon becoming the Legal Director of the ACLU of Illinois, you said that the ACLU “needs to continue to fight against the wholesale assault on civil rights and civil liberties by the federal government led by President Trump.” Do you still believe that the Trump Administration showed “explicit racism” when crafting policy?**

Response: Respectfully, I did not say that the Trump Administration showed “explicit racism” when “crafting policy” during either the April 8, 2017 event at Princeton referenced in the question or in the May 11, 2020 interview with Chicago Lawyer Magazine from which the second quote in the question is drawn. The two quotes referenced in this question were made more than three years apart.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on my personal views, if any, about the conduct or beliefs of policymakers. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially enforce the law and follow all precedents of the Supreme Court and Second Circuit.

14. **Given your repeated and forceful criticisms of police departments across the country, the FBI, the Justice Department, and conservative policymakers with whom you have political disagreements, how can litigants with whom you disagree be confident that you will hear their cases impartially as a judge?**

Response: I have deep respect for law enforcement and appreciate the risks they take and the important role they play in advancing public safety. I have also been dedicated throughout my career to working with people and organizations with a wide range of views and perspectives to advance equal justice under the law. If confirmed as a district judge, I would provide a fair and impartial forum for all litigants and counsel who appear before me, including law enforcement officers and agencies and people and organizations with different political views.

I believe the best evidence of my ability to fulfill this commitment comes from my nearly 16 years of professional practice.

My respect and admiration for law enforcement is reflected in my work at the ACLU of Illinois, where I have served as Legal Director since January 2020. During this time, I supported the filing of three administrative complaints in the Illinois Department of Human Rights on behalf of two Chicago police officers.

My utmost regard for the work of law enforcement is also shown by my work with them and their counsel to settle litigation with reforms that advance constitutional, effective, and safe policing in Biloxi, Milwaukee, and Chicago. I was humbled to receive letters submitted to the Committee in support of my confirmation from counsel who represented police departments, the Federal Bureau (FBI), and the U.S. Department of Justice Department (DOJ) in litigation against my clients.

Gerald Blessey, the former City Attorney for Biloxi, Mississippi, described our work to resolve litigation involving Biloxi police practices as follows:

Ms. Choudhury shared her extensive knowledge of practical, best practices seeking to minimize the burden of the reforms on the City, municipal court, and police department. Ms. Choudhury praised the efforts of the City, stating publicly that the Biloxi reforms, “provide a powerful model for protecting the rights of the poor while punishing and deterring offenses.” She is fair-minded and a pleasure to work with on these serious, complex, and challenging issues. . . . Her expressions of utmost respect for law enforcement personnel and the difficult challenges that police encounter as they protect and serve the public are consistent with my first-hand experience working with her on policing issues. I have every confidence in her temperament and ability to be an impartial judge and know her to be exceptionally well qualified.

Grant F. Langley, the former Milwaukee City Attorney, and Jan A. Smokowicz, the former Milwaukee Deputy City Attorney, represented the Milwaukee Police Department and the Milwaukee Fire and Police Commission in litigation against my clients. They wrote that I “displayed an unfailingly even temper and a reasonable and fair approach to resolving the many thorny issues that arose during” efforts to settle the litigation.

John Clopper, a former Assistant U.S. Attorney for the Southern District of New York, represented the Federal Bureau of Investigation, U.S. Department of Justice, and National Security Agency against my client in litigation. Mr. Clopper wrote: “Nusrat is among the most open-minded lawyers I have litigated against.” He described me as “impartial[,]” “fair-minded[,]” “collaborative,” and a “role model for collegiality in the legal profession.”

Consistent with my reverence for the principle of equal justice under law for all, I have worked collaboratively with organizations with divergent views, including by drafting amicus briefs to the U.S. Supreme Court supported by the Institute for Justice, the Cato

Institute, Rutherford Institute, the R Street Institute, and the ACLU. *See Chicago v. Fulton*, 141 S. Ct. 585 (2021) (Brief of ACLU, ACLU of Illinois, Cato Institute, Fines and Fees Justice Center, Institute for Justice, R Street Institute, and Rutherford Institute as *Amici Curiae* in Support of Respondents, 2020 WL 1305027); *Timbs v. Indiana*, 139 S. Ct. 682 (2019) (Brief of ACLU, R Street Institute, the Fines and Fees Justice Center, and Southern Poverty Law Center as *Amici Curiae* in Support of Petitioners, 2018 WL 4462202).

I am deeply grateful to receive a letter submitted to the Committee in support of my confirmation from the Institute for Justice, the R Street Institute, the Fines and Fees Justice Center, and a range of organizations with “different political and ideological perspectives,” who wrote to the Committee that I have shown “respect [for] . . . opposing counsel and parties” and a “willingness to work to find common ground” and that I “carefully consider points of view and will not hesitate to change or modify [my] position, if [I] am persuaded [I am] wrong.”

I have also worked closely and respectfully with judges, prosecutors, court administrators, members of the private bar, and defense counsel in the American Bar Association Presidential Task Force on Building Public Trust in the American Justice System and the National Task Force on Fines, Fees, and Bail Practices (“Task Force”).

Elizabeth Pollard Hines, a retired judge of the 15<sup>th</sup> District Court in Ann Arbor, Michigan who previously served as a prosecuting attorney for 15 years, wrote that on the Task Force, I demonstrated that I “listen, really listen[]” and am “even tempered, diplomatic and respectful to all.” Judge Hines also wrote: “On a variety of topics, if we wanted to find an objective, accurate statement of a legal principle or law to guide us with policy issues, we knew to ask Nusrat. Even if the ACLU’s official position sought more policy changes, Nusrat followed the law.”

Finally, I am grateful to have the support of a bipartisan group of 51 “legal scholars with wide-ranging legal expertise” and “diverse ideological and political views,” who wrote that they observed me “to be a fair-minded lawyer who engages with different views with respect and humility,” that I “clerked for federal judges appointed by Presidents of both parties,” and that I “wrote admiringly of both Justice Ginsburg and Justice Thomas’s originalist, historical analysis of how the Excessive Fines Clause applies to state and local governments.”

If confirmed as a district judge for the Eastern District of New York, I would strive, in each case, to uphold the solemn judicial oath to “administer justice . . . faithfully and impartially” to all parties and counsel who appear before me, including law enforcement officers and agencies and people and organizations with a wide range of views.

**15. Please define the term “implicit bias.”**

Response: The term “implicit bias” refers to “the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.” Cheryl Staats, Kirwan

Institute for the Study of Race and Ethnicity at the Ohio State University, State of the Science: Implicit Bias Review 6 (2013), [https://kirwaninstitute.osu.edu/sites/default/files/2019-06//SOTS-Implicit\\_Bias.pdf](https://kirwaninstitute.osu.edu/sites/default/files/2019-06//SOTS-Implicit_Bias.pdf).

16. **In a 2014 blog post for the ACLU, you said that “implicit racial biases plague all of us, including those charged with keeping our streets safe.” Please describe your implicit racial biases and how you will account for them as a federal judge.**

Response: Law enforcement officers perform an important and challenging job to help advance public safety every day. The blog post referenced cites to a body of academic research on attitudes or stereotypes that affect human understanding, actions, and decisions in an unconscious manner. *See, e.g.*, Cheryl Staats, Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, State of the Science: Implicit Bias Review (2013), [https://kirwaninstitute.osu.edu/sites/default/files/2019-06//SOTS-Implicit\\_Bias.pdf](https://kirwaninstitute.osu.edu/sites/default/files/2019-06//SOTS-Implicit_Bias.pdf). Based on this and other research, I understand that all human beings have implicit biases.

If confirmed as a district judge, I would strive to ensure that all people receive equal justice under the law and that no litigant or person in my courtroom is provided a preference based on race or any other characteristic. I would be bound by and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit, ensuring that any decisions in cases or controversies are based on an application of the law to the facts established in the record.

17. **In 2010 you authored a report titled *A Guide to Federal Circuit Authority on Permissible Government Actions to Promote Racial and Gender Equality*. The report was intended to be a “user-friendly tool for all policymakers interested in advancing equality in their communities” and “foster[ing] equitable public structures and systems.” In 2009, you urged government officials to “consider race and racial inequality in policymaking.” You have also suggested that it is “vitally important” to “take race into consideration” when distributing federal contracts and federal stimulus funds. What Constitutional or statutory authority supports race-based discrimination in distributing stimulus funds, awarding federal contracts, or drafting public policy?**

Response: Respectfully, that is not how I would characterize either the 2009 or 2010 ACLU guides on Supreme Court precedent or the 2009 blog, which are referenced in the question.

In the 2009 blog, I wrote, “[F]ederal law and regulations continue to prohibit federally-funded programs from engaging in racial discrimination.” I sought to “dispel [the] confusion” amongst members of the public who incorrectly believed that the Supreme Court’s ruling in *Ricci v. Stefano*, 557 U.S. 557, 592 (2009), had interpreted the Fourteenth Amendment Equal Protection Clause. I explained that the Supreme Court held in *Ricci* that the City of New Haven had violated the right of white and Latino firefighters to be free from discriminatory treatment under Title VII of the Civil Rights Act of 1964



when the City decided to reject the results of an employment test. *See id.* I also explained that the Supreme Court’s decision in *Ricci* did not address the Equal Protection Clause. *See id.*

The referenced blog also linked to a 2009 ACLU guide that identified Supreme Court precedents current through July 2009 that would apply to any federal, state, and local government “actions to advance racial equality and promote opportunity for individuals from all racial backgrounds while respecting equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.” The 2009 guide noted—with emphasis in several places—that “federal law and regulations continue to **prohibit** federally-funded programs from engaging in racial discrimination.” (Emphasis in original).

The 2010 guide sought to promote compliance with the Constitution by identifying Supreme Court and Circuit “case law current through May 2010” that addresses “the requirements of the equal protection provisions of the U.S. Constitution that must be met before a local, state, or federal government can use racial classifications to remedy discrimination in contracting.” ACLU & The Opportunity Agenda, *Promoting Opportunity and Equality in America: A Guide to Federal Circuit Authority on Permissible Government Actions to Promote Racial and Gender Equality* 1 & n.7, 9 (2010). The 2010 guide provided a more detailed discussion of the Supreme Court precedents addressed in the 2009 guide.

The Supreme Court has held that the use of any race-based classifications by federal, state, or local government is subject to strict scrutiny. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). Such classifications are permissible only “if they are narrowly tailored to further compelling governmental interests.” *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297, 310 (2013).

In *Shaw v. Hunt*, 517 U.S. 899 (1996), which was decided the year after *Adarand*, the Supreme Court explained:

A State’s interest in remedying the effects of past or present racial discrimination *may in the proper case* justify a government’s use of racial distinctions. For that interest to rise to the level of a compelling state interest, it must satisfy two conditions. First, the discrimination must be identified discrimination. While the States and their subdivisions may take remedial action when they possess evidence of past or present discrimination, they must identify that discrimination, public or private, with some specificity before they may use race-conscious relief. A generalized assertion of past discrimination in a particular industry or region is not adequate because it provides no guidance for a legislative body to determine the precise scope of the injury it seeks to remedy. . . . Second, the institution that makes the racial distinction must have a strong basis in evidence to conclude that remedial action was necessary, before it embarks on an affirmative action program.

517 U.S. at 909–10 (quotation marks and citations omitted) (emphasis supplied); *see also Wisconsin State Legislature v. Wisconsin Elections Comm'ns*, 142 S. Ct. 1245, 1249–50 (2022) (reiterating that a “strong basis in evidence” is required before undertaking remedial action) (citing *Shaw*, 517 U.S. at 910).

A general “effort to alleviate the effects of societal discrimination is not a compelling interest” that meets the *Shaw* standards. 517 U.S. at 909–10 (citing *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 277 (1986)). In *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 505 (1989), the Supreme Court struck down, on equal protection grounds, a municipality’s 30 percent minority business set-aside program, finding that the record failed to show “discrimination in the Richmond construction industry” or the required narrow tailoring to remedy past discrimination.

In *Jana-Rock Construction, Inc. v. New York State Department of Economic Development*, the Second Circuit recognized that “it has been firmly established that state affirmative action programs that employ explicit racial classifications are subject to strict scrutiny.” 438 F.3d 195, 205 (2d Cir. 2006); *see also id.* at 200 (citing *Adarand*, 515 U.S. at 227). The Second Circuit held that “once the government has shown that its decision to resort to explicit racial classifications survives strict scrutiny by being narrowly tailored to achieve a compelling interest,” a plaintiff challenging the definition of “Hispanic” as “underinclusive . . . must demonstrate that his or her exclusion was motivated by a discriminatory purpose.” *Id.* at 200.

Pending before the Supreme Court are two cases concerning the use of race as a factor in higher education admissions. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 142 S. Ct. 895 (2022) (granting certiorari); *Students for Fair Admissions, Inc. v. Univ. of N. Carolina*, 142 S. Ct. 896 (2022) (granting certiorari). Supreme Court decisions in these cases may provide further guidance to lower courts on the question posed.

If confirmed as a district judge and presented with a case or controversy that properly raises the issue of the use of race in distributing stimulus funds, awarding federal contracts, or drafting public policy, I would faithfully and impartially apply all precedents of the Supreme Court and Second Circuit, including but not limited to the aforementioned precedents and any forthcoming decisions in the *Harvard* and *UNC* cases. Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment further on matters that could be the subject of future litigation.

18. **On October 6, 2017, you retweeted an ACLU attorney, who wrote: ““VICTORY!! Federal Court Strikes Down Kentucky’s Mandatory Ultrasound Requirement.” The tweet linked to an ACLU press release. The release described a law requiring that doctors show patients an ultrasound of their unborn child as an “anti-abortion law” that “subjected” women to a “demeaning and degrading invasion into their personal health care decisions.” If you are confirmed as a judge, what legal framework—including Second Circuit and Supreme Court precedent—would you use to evaluate**

**a claim that requiring an ultrasound is a “demeaning and degrading invasion” of a right to privacy?**

Response: If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit, including in the area of abortion regulations.

The Supreme Court has held that the liberty interest protected by the 14th Amendment Due Process Clause provides a right to abortion subject to the limitations set forth in *Roe* and *Casey*. See *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). Applying these precedents, in *Whole Woman’s Health v. Hellerstedt*, the Supreme Court held that “[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right” and are therefore “constitutionally invalid.” 136 S. Ct. 2292, 2300 (2016) (quoting *Casey*, 505 U.S. at 878); see also *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103, 2112 (2020). The Supreme Court granted certiorari and heard oral argument in a case that concerns these standards. See *Dobbs v. Jackson Women’s Health Org.*, 141 S. Ct. 2566 (2021) (granting certiorari). Supreme Court precedent must be followed by the Second Circuit.

If confirmed as a district judge and presented with a case or controversy that properly raises the issue of whether requiring an ultrasound prior to abortion violates the liberty interest protected by due process, I would faithfully and impartially apply all precedents of the Supreme Court and Second Circuit, including, but not limited to *Roe*, *Casey*, *Hellerstedt*, *Russo*, and any forthcoming decision in *Dobbs*. Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment further on matters that could be the subject of future litigation.

**19. As the Legal Director of the ACLU of Illinois, you reviewed and commented on an ACLU and Human Rights Watch report titled *The Only People It Really Affects Are the People It Hurts: The Human Rights Consequences of parental Notice of Abortion in Illinois*.**

**a. Did you disagree with any of the report’s statements, findings, or recommendations? If so, did you voice your concerns with anyone at the ACLU or Human Rights Watch?**

Response: The report in question was conceived and drafted by Human Rights Watch and senior colleagues at the ACLU of Illinois to advance the longstanding institutional position of my employer, the ACLU of Illinois, against a 1995 Illinois law. The ACLU of Illinois is a multi-issue organization. Since 2020, I have served as the organization’s Legal Director, a role that requires me to review the work product of colleagues, including those involved in this report, who work on areas of law that are not my focus.

The issues addressed in this report are the subject of discussion and debate by policymakers and the public.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on the report's statements, findings, and recommendations because these are issues of policy and are the subject of ongoing litigation. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

- b. **The report notes that the ACLU of Illinois helps children bypass their parents and obtain abortions through the Judicial Bypass Coordination project. Please describe your understanding of this project and any involvement in the project that you have had.**

Response: The Supreme Court has upheld state laws mandating that pregnant minors seeking an abortion obtain the consent or notice of a parent or guardian as long as there is an adequate judicial bypass procedure. *See Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 899 (1992) (joint opinion) (discussing parental consent laws); *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 326–27 & n.1 (2006) (collecting cases addressing permissibility of parental consent and notification laws where there is an adequate judicial bypass procedure). Illinois law permits a person under the age of 18 to petition a court to obtain an abortion without parental notification upon a showing that the individual is mature and competent to decide whether to have an abortion or that notification to a qualifying adult family member under the law is not in their best interest. 750 ILCS 70, sec. 25(b), (d) (scheduled to be repealed on June 1, 2022). Illinois law provides a right to counsel for minors in such proceedings. 750 ILCS 70, sec. 25(b).

Since 2013, the Director of the ACLU of Illinois Women's and Reproductive Rights Project has coordinated staff and volunteers in the Judicial Bypass Coordination Project to provide legal representation to people under the age of 18 in accordance with Illinois law, 750 ILCS 70, sec. 25. From 2020 through February 2022, the Director of the ACLU of Illinois Women's and Reproductive Rights Project reported to me, as did other senior litigators and project directors at the ACLU of Illinois.

I have not, and do not, provide legal representation to ACLU of Illinois clients through the Judicial Bypass Coordination Project.

- c. **The report states that the ACLU of Illinois “use[s] the terms ‘youth’ and ‘young people’ to refer to anyone under the age of 18” to “affirm the**

**autonomy and maturity of people under 18 to make the best decisions for themselves regarding their sexual and reproductive health care.” In your view, what role should parents play in making healthcare decisions for children under the age of 18?**

Response: In *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1925), the Supreme Court held that the Fourteenth Amendment’s Due Process Clause protects the fundamental right of parents to “establish a home and bring up children” and “to control the education of their own.” The Supreme Court has recognized the “extensive precedent” that has developed since *Meyer* concerning the fundamental right of parents to make decisions concerning “the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 66 (2000), (citing cases). If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent from the Supreme Court and Second Circuit, including *Meyer* and *Troxel*.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on the role parents should play in making health care decisions for their children under the age of 18 because this is a policy issue. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

- d. **In your view, does “international human rights law” prevent states from requiring abortion clinics to notify parents before performing abortions for children?**

Response: In my nearly 16 years of professional practice as a judicial law clerk and litigator, I have not studied the question posed about whether international human rights law may prevent states from requiring abortion clinics to provide parental notice before performing abortions for minors. I am aware that the United States has signed and ratified certain human rights conventions, such as the International Covenant on Civil and Political Rights, and has signed but not ratified others, such as the Convention on the Rights of the Child.

The Supreme Court has stated that “not all international law obligations automatically constitute binding federal law enforceable in United States courts.” *Medellin v. Texas*, 552 U.S. 491, 504 (2008). A “self-executing” treaty has effect as domestic law, whereas a “non-self-executing” treaty does not. *Id.* at 504–505. A treaty is “not domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be self-executing and is ratified on these terms.” *Id.* at 505 (quotation marks and citation omitted); *see also* *Whitney v. Robertson*, 124 U.S. 190, 194 (1888) (“When the stipulations are

not self-executing, they can only be enforced pursuant to legislation to carry them into effect.”).

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on any personal views that I may or may not have about whether international human rights law prevents states from requiring abortion clinics to provide parental notice before performing abortions for minors. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

**20. Please describe your understanding of Supreme Court and Second Circuit precedent concerning the permissibility of requiring prospective voters to show identification in order to vote.**

Response: In *Crawford v. Marion County Election Board*, the Supreme Court held that laws requiring voters to present identification are not facially unconstitutional. 553 U.S. 181 (plurality op. of Stevens, J.). I am not aware of any Second Circuit precedent addressing this issue. If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and Second Circuit, including precedents concerning voter identification laws.

**21. What Second Circuit and Supreme Court precedent would you apply in evaluating whether a redistricting map is racially gerrymandered?**

Response: “The Equal Protection Clause of the Fourteenth Amendment limits racial gerrymanders in legislative districting plans. It prevents a State, in the absence of ‘sufficient justification,’ from ‘separating its citizens into different voting districts on the basis of race.’” *Cooper v. Harris*, 137 S. Ct. 1455, 1463 (2017) (quoting *Bethune–Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 797 (2017)). Such a claim requires proof “that race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Id.* (quotation marks omitted). “[I]f racial considerations predominated over others, the design of the district must withstand strict scrutiny.” *Id.* at 1464. I am not aware of Second Circuit precedent with respect to racial gerrymandering. If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and Second Circuit, including precedents on the issue of racial gerrymandering.

**22. Please list the fundamental rights protected by the Constitution.**

Response: The Supreme Court has explained that certain rights are “so rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934). In substantive due process cases, “fundamental rights” are rights protected by the Constitution that are “deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (quotation marks and citations omitted).

For example, in *McDonald v. City of Chicago*, the plurality held that the Second Amendment’s individual right to keep and bear arms for self defense is applicable to the States because it is “a provision of the Bill of Rights that protects a right that is *fundamental* from an American perspective.” 561 U.S. 742, 791 (2010) (emphasis supplied). The Supreme Court has also referred to the free exercise of religion and freedoms of speech and press as fundamental rights. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972) (referring to the “fundamental rights and interests . . . protected by the Free Exercise Clause”); *Gitlow v. People of State of New York*, 268 U.S. 652, 666, (1925) (“[F]reedom of speech and of the press. . . are among the fundamental personal rights and ‘liberties’ protected by the due process clause of the Fourteenth Amendment from impairment by the States.”). Additionally, the Court has also referred to voting rights as “fundamental.” *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964) (“Undoubtedly, the fight of suffrage is a *fundamental* matter in a free and democratic society. Especially since the fight to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.”) (emphasis supplied).

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

Response: The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment protects certain substantive rights that are “objectively, deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (quotation marks and citations omitted). Justice Scalia explained in his concurring opinion in *McDonald v. City of Chicago* that under the doctrine of substantive due process, the Due Process Clause of the Fourteenth Amendment “incorporate[es] certain guarantees in the Bill of Rights” to protect against intrusion by state and local governments, under precedent that “is both long established and narrowly limited.” 561 U.S. 742, 791 (2010) (Scalia, J. concurring).

The Supreme Court’s precedents thus make clear that unless the demanding *Glucksberg* test is met, federal courts must allow legislatures and the public to debate and decide what balance to strike between legitimate state interests and individual liberties. *See* 521 U.S. at 719, 735 (holding that the Due Process Clause does not protect a right to physician-assisted suicide and recognizing that “the States are currently engaged in serious, thoughtful examinations of physician-assisted suicide and other similar issues”).

If confirmed as a district judge, I would be bound by, and would faithfully and impartially apply all Supreme Court and Second Circuit precedents, including those concerning fundamental rights.

**24. Do felon dispossession statutes violate the Second Amendment? If not, can states prohibit non-violent felons from possessing a firearm?**

Response: In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment “confer[s] an individual right to keep and bear arms” and that this right “is not unlimited.” 554 U.S. 570, 595, 626 (2008). The Supreme Court made clear in *Heller* that “nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons . . .” *Id.* at 626. If confirmed as a district judge for the Eastern District of New York, I will be bound by, and will faithfully and impartially apply, all precedents of the Supreme Court and Second Circuit, including but not limited to *Heller*. Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment further on issues that may be the subject of pending litigation.

**25. Have you ever done any work, legal or non-legal, with or for a gun control group? If so, please identify the group and describe the nature of your work.**

Response: To the best of my recollection, I have not done any work, legal or non-legal, with or for a gun control group.

**26. Please describe your understanding of the constitutionality of nationwide or universal injunctions based on current Supreme Court and Second Circuit precedent.**

Response: Federal courts considering a request for injunctive relief must follow the standards and procedures of Federal Rule of Civil Procedure 65. The Supreme Court has recognized that an “injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). Federal courts must ensure that any injunctive relief is “no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

The Supreme Court and lower courts are considering the legal authority of district courts to issue nationwide injunctions. *See, e.g., Dep’t of Homeland Sec. v. New York*, 140 S. Ct. 599 (2020) (Gorsuch, J., concurring) (“Injunctions like these thus raise serious questions about the scope of courts’ equitable powers under Article III.”). It would be inappropriate for me, as a pending judicial nominee, to comment on the propriety of nationwide injunctions because such questions are currently pending in courts. *See* Canon 3(A)(6), Code of Conduct for United States Judges. If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit, including those addressing the proper scope of injunctive relief.



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

Response: In *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1925), the Supreme Court held that the Fourteenth Amendment's Due Process Clause protects the fundamental right of parents to "establish a home and bring up children" and "to control the education of their own." The Supreme Court has recognized the "extensive precedent" that has developed since *Meyer* concerning the fundamental right of parents to make decisions concerning "the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (citing cases). If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent from the Supreme Court and Second Circuit, including precedent addressing parental rights regarding the education of their children.

**28. In a False Claims Act case, what is the standard used by the Second Circuit for determining whether a false claim is material?**

Response: The Supreme Court has recognized that "[t]he materiality standard" for claims under the False Claims Act "is demanding" and "[m]ateriality . . . cannot be found where noncompliance is minor or insubstantial." *Universal Health Servs., Inc. v. United States*, 579 U.S. 176, 194 (2016). In a nonprecedential decision, the Second Circuit reiterated this standard and noted that it is met when the government is shown to "have made the payment as a result of the defendant's alleged misconduct." *Coyne v. Amgen, Inc.*, 717 F. App'x 26, 29 (2d Cir. 2017). A "complaint must present concrete allegations from which the court may draw the reasonable inference that the misrepresentations . . . caused the Government to make the [payment at issue]." *Id.*

**29. When you are considering a case, do you have a process for ensuring that you correctly understand how the law should apply, without letting personal preferences shape your view? If so, what is your process or approach?**

Response: As an attorney, when I am considering a case, I conduct a careful investigation of the facts and evidence in order to assess the likely facts as best as I can without formal fact-finding. I also carefully research the applicable law and impartially apply the law to the likely facts, as I understand them. In this way, I determine whether the facts meet the legal standard for each of the claims under consideration, regardless of any personal views.

**30. 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 all subparts: If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all Supreme Court precedents, including each of the cases listed above. The Code of Conduct for United States Judges prohibits judges from commenting on legal issues that could become the subject of litigation. For this reason, it is generally inappropriate for me, as a pending judicial nominee, to comment on the merits of any particular Supreme Court precedent that I may be required to interpret or enforce, if confirmed as a judge. I believe that it is extremely unlikely, however, that the constitutionality of *de jure* racial segregation in public schools or anti-miscegenation laws would arise in a case before me. Consequently, like prior judicial nominees, I believe that I can make exceptions to the general rule prohibiting comment on the correctness of Supreme Court precedent for *Brown v. Board of Education* and *Loving v. Virginia*, and state that I agree that *Brown* and *Loving* were correctly decided.

31. **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 March 29, 2021, I submitted an application to Senator Charles Schumer’s judicial screening committee. On April 4, 2021, I submitted an application to Senator Kirsten Gillibrand’s office. On April 13, 2021, I interviewed separately with Senator Schumer’s judicial screening committee and with staff from Senator Gillibrand’s office. On May 31, 2021, I interviewed with Senator Schumer. On September 3, 2021, I interviewed with attorneys from the White House Counsel’s Office. Since that date, I have been in contact with officials from the White House Counsel’s Office and the Office of Legal Policy at the United States Department of Justice. On January 19, 2022, my nomination was submitted to the Senate.

32. **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: I have spoken with Chris Kang, who generally described the judicial nomination process and congratulated me after President Biden announced his intent to nominate me for the Eastern District of New York. As I reported in my Senate Judiciary Committee Questionnaire, at no point has anyone discussed with me any pending or specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

- 33. 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: I have spoken with Jill Dash, who generally described the judicial nomination process. I also communicated by email with Amy Larsen, Lia Minkoff, and Joel Dodge of the American Constitution Society New York Chapter after submitting applications to the judicial screening processes for Senator Charles Schumer and Senator Kirsten Gillibrand. As I reported in my Senate Judiciary Committee Questionnaire, at no point has anyone discussed with me any pending or specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

- 34. 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, as far as I know. I am not aware, however, of the employer of every person with whom I speak.

- 35. 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, as far as I know. I am not aware, however, of the employer of every person with whom I speak.

- 36. Demand Justice is a progressive organization dedicated to “restor[ing] ideological balance and legitimacy to our nation’s courts.”**

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

Response to subpart (a): No.

Response to subparts (b) and (c): I have spoken with Chris Kang, who generally described the judicial nomination process and congratulated me after President Biden announced his intent to nominate me for the Eastern District of New York. I do not know whether I ever communicated with Katie O'Connor while she was employed by the ACLU, which I believe may have ended in 2013. I have not been in contact with any of the other individuals listed, nor with anyone else known to be associated with Demand Justice, although I am unaware of the current or former employers of all persons with whom I speak. As I reported in my Senate Judiciary Committee Questionnaire, at no point has anyone discussed with me any pending or specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

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

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

Response to subpart (a): No.

Response to subparts (b) and (c): In 2021, I spoke with Nan Aron and Spencer Myers of Alliance for Justice, who generally described the judicial nomination process. I do not know whether I ever communicated with Rakim Brooks while he was employed by the ACLU, which I believe may have ended in 2020 or early 2021. I have not been in contact with any of the other individuals listed, nor with anyone else known to be associated with Alliance for Justice, although I am not aware of the employer of every person with whom I speak. As I reported in my Senate Judiciary Committee Questionnaire, at no point has anyone discussed with me any pending or specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

**38. 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? 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.**
- b. **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, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.**
- c. **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, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response to all subparts: No, as far as I know. I am not aware, however, of the employer of every person with whom I speak.

**39. The Open Society Foundations is a progressive organization that “work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens.”**

- a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
- b. **Are you currently in contact with anyone associated with the Open Society Foundations?**
- c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response to all subparts: During the time I was employed by the ACLU (2008–2020), the Open Society Foundations (OSF) may have provided grants to support certain parts of the ACLU’s programmatic work. I do not recall personally participating in any presentations, meetings, or proposals regarding any such grants. In addition, it is my understanding that some of my former classmates, acquaintances, and colleagues have been or are employed by OSF.

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

Response to all subparts: No, as far as I know. I am not aware, however, of the employer of every person with whom I speak.

41. **Do the answers you have provided to these questions reflect your true and personal views?**

Response: I have sought to provide answers to factual questions, like Question 40, to the best of my ability and recollection. I have sought to answer legal questions, such as Question 28, by providing my understanding of the law to the best of my ability. With respect to questions about my personal views, consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on or express personal views about issues that could become the subject of litigation. Federal judges are required to scrupulously review the factual record in any given case and to impartially and neutrally apply the law, including precedents of the Supreme Court and the relevant Circuit, to those facts, setting aside any personal views they may have, if any.

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

Response: All answers to these questions are my own. On May 4, 2022, the Department of Justice Office of Legal Policy (OLP) sent me the Committee’s questions. I drafted my answers, and, where necessary, conducted legal research and reviewed my records to refresh my recollection. Consistent with the practice of past nominees, I submitted draft answers to the Office of Legal Policy for feedback. I reviewed and considered OLP’s feedback, and then submitted my final answers to the Committee.

**Senator Marsha Blackburn**  
**Questions for the Record to Nusrat J. Choudhury**  
**Nominee for the Eastern District of New York**

**1. Do you support defending the police?**

Response: I have deep respect for law enforcement and appreciate the risks they take and the important role they play in advancing public safety. My respect and admiration for law enforcement is reflected in my work at the ACLU of Illinois, where I have served as Legal Director since January 2020. During this time, I supported the ACLU of Illinois' provision of legal representation to two Chicago police officers in the filing of three administrative complaints in the Illinois Department of Human Rights.

My utmost regard for the work of law enforcement is also shown by my work with them and their counsel to settle litigation with reforms that advance constitutional, effective, and safe policing. I was humbled to receive letters submitted to the Committee in support of my confirmation from opposing counsel in these cases.

Gerald Blessey, the former City Attorney for Biloxi, Mississippi, described our work to resolve litigation involving Biloxi police practices as follows:

Ms. Choudhury shared her extensive knowledge of practical, best practices seeking to minimize the burden of reforms on the City, municipal court, and police department. . . . She is fair-minded and a pleasure to work with on these serious, complex, and challenging issues. . . . Her expressions of utmost respect for law enforcement personnel and the difficult challenges that police encounter as they protect and serve the public are consistent with my first-hand experience working with her on policing issues.

Grant F. Langley, the former Milwaukee City Attorney, and Jan A. Smokowicz, the former Milwaukee Deputy City Attorney, represented the Milwaukee Police Department and the Milwaukee Fire and Police Commission in litigation against my clients. They wrote that I “displayed an unfailingly even temper and a reasonable and fair approach to resolving the many thorny issues that arose during” efforts to settle the litigation.

John Clopper, a former Assistant U.S. Attorney for the Southern District of New York, represented the Federal Bureau of Investigation, U.S. Department of Justice, and National Security Agency against my client in litigation. Mr. Clopper wrote: “Nusrat is among the most open-minded lawyers I have litigated against.” He described me as “impartial[,]” “fair-minded[,]” “collaborative,” and a “role model for collegiality in the legal profession.”

If confirmed as a district judge for the Eastern District of New York, I would strive, in each case, to uphold the solemn judicial oath to “administer justice . . . faithfully and impartially” to all parties and counsel who appear before me, including law enforcement officers and agencies.

**2. Last year, you participated in a panel discussion titled “Race, Sex and Policing.” During the discussion, you suggested a need for “reimagining the role of policing in our society.” What did you mean by that?**

Response: Respectfully, I would characterize my comments as descriptive rather than offering a statement of support for a particular viewpoint. I have great respect for the work police do to ensure rule of law and keep communities safe under challenging conditions as shown by my support for ACLU of Illinois legal representation of police officers and by the work I have done with law enforcement and their counsel to settle litigation with reforms that advance constitutional, effective, and safe policing.

At the event in question, I addressed the efforts of clients to whom I provide legal representation in the enforcement of a federal Consent Decree that advances “constitutional and effective” policing in Chicago and “ensure[s] that Chicago police officers are provided with the training, resources, and support they need to perform their jobs professionally and safely.” Consent Decree ¶ 2, *Illinois v. Chicago*, No. 17-cv-6260, ECF No. 703-1 (N.D. Ill. Jan. 31, 2019); *see id.* ¶¶ 669, 709 (providing a Coalition of community organizations authority to enforce the Consent Decree). In the referenced quote, I was noting that different people use different terms to refer to their work on these issues.

I am not aware of any consensus definition of “reimagining” policing. Whether policing should be “reimagined” is a question for policymakers.

Consistent with the Code of Conduct for United States Judges, as a pending judicial nominee, it would be inappropriate for me to comment on my personal views, if any, about whether policing in our society should be “reimagined” and any changes that would entail. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

**3. In a July 2021 letter to the Chicago Police Department, you opposed allowing police officers to pursue criminal suspects on foot. How do you expect law enforcement to fulfill their duty to protect the public and enforce our criminal laws without pursuing suspects and criminals?**

Response: Public safety is important to all communities. Respectfully, the July 2021 letter does not “oppose[] allowing police officers to pursue criminals on foot.”

The July 2021 letter that I helped prepare constituted legal advocacy on behalf of clients. It was sent by a Coalition of 14 organizations that collectively enforce a federal Consent Decree governing police reform in Chicago, which includes my clients—the ACLU of Illinois, Communities United, Community Renewal Society, One Northside, and Next



Steps. See Consent Decree ¶¶ 669, 709, *Illinois v. Chicago*, No. 17-cv-6260, ECF No. 703-1 (N.D. Ill. Jan. 31, 2019). The letter was signed by eight attorneys who provide legal representation to different Coalition organizations, and was sent to the Chicago Police Department and other entities that enforce the Consent Decree.

The Coalition's letter stems from the 2017 findings of a U.S. Department of Justice investigation into the Chicago Police Department, which found that "dangerous and unnecessary foot pursuits" contributed to "a pattern or practice of unreasonable force in violation of the Fourth Amendment." U.S. Department of Justice, Civil Rights Division and U.S. Attorney's Office for the Northern District of Illinois, Investigation of the Chicago Police Department 23, 25 (2017) ("DOJ Report"), <https://www.justice.gov/opa/file/925846/download>.

The July 2021 letter addresses the Coalition's views and recommendations for how to improve a June 2021 Chicago Police Department policy governing police foot pursuits in order to advance officer and community safety. The Coalition recommended that the Chicago policy should restrict foot chases, which carry safety risks for the officer, community members, and the person being chased, in the situation where officers do not have more than reasonable suspicion that a person being chased is engaged in theft or criminal trespass.

The question of what policies and practices best advance compliance with our laws and the safety of officers, the public, and people suspected of crimes are important questions for policymakers and the public.

Consistent with the Code of Conduct for United States Judges, as a pending judicial nominee, it would be inappropriate for me to comment on my personal views, if any, about how law enforcement should protect the public and enforce criminal laws. The role of a judge is not to make policy, but to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

- 4. In a 2009 blogpost, you urged government officials to "consider race and racial inequality in policymaking" and argued that governments can make policy on the basis of race while still respecting the Constitution's equal protection guarantees. Do you believe that the government can make policy decisions that discriminate on the basis of race without running afoul of the Constitution?**

Response: Respectfully, I did not state in the referenced blog that governments can "discriminate on the basis of race" or make policy "on the basis of race."

In the 2009 blog, I wrote, "[F]ederal law and regulations continue to prohibit federally-funded programs from engaging in racial discrimination." I sought to "dispel [the] confusion" amongst members of the public who incorrectly believed that the Supreme

Court's ruling in *Ricci v. Stefano*, 557 U.S. 557, 592 (2009), had interpreted the Fourteenth Amendment Equal Protection Clause. I explained that the Supreme Court held in *Ricci* that the City of New Haven had violated the right of white and Latino firefighters to be free from discriminatory treatment under Title VII of the Civil Rights Act of 1964 when the City decided to reject the results of an employment test. *See id.* I also explained that the Supreme Court's decision in *Ricci* did not address the Equal Protection Clause. *See id.*

The referenced blog also linked to a 2009 ACLU guide that identified Supreme Court precedents current through July 2009 that would apply to any federal, state, and local government "actions to advance racial equality and promote opportunity for individuals from all racial backgrounds while respecting equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution." The 2009 guide noted—with emphasis in several places—that "federal law and regulations continue to *prohibit* federally-funded programs from engaging in racial discrimination." (Emphasis in original).

The Supreme Court has held that the use of any race-based classification by federal, state, or local government is subject to strict scrutiny. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). Such classifications are permissible only if they are narrowly tailored to further compelling governmental interests. *Fisher v. University of Texas at Austin*, 570 U.S. 297 (2013).

In *Shaw v. Hunt*, 517 U.S. 899 (1996), which was decided the year after *Adarand*, the Supreme Court explained:

A State's interest in remedying the effects of past or present racial discrimination *may in the proper case* justify a government's use of racial distinctions. For that interest to rise to the level of a compelling state interest, it must satisfy two conditions. First, the discrimination must be identified discrimination. While the States and their subdivisions may take remedial action when they possess evidence of past or present discrimination, they must identify that discrimination, public or private, with some specificity before they may use race-conscious relief. A generalized assertion of past discrimination in a particular industry or region is not adequate because it provides no guidance for a legislative body to determine the precise scope of the injury it seeks to remedy. . . . Second, the institution that makes the racial distinction must have a strong basis in evidence to conclude that remedial action was necessary, before it embarks on an affirmative action program.

517 U.S. at 909–10 (quotation marks and citations omitted) (emphasis supplied); *see also Wisconsin State Legislature v. Wisconsin Elections Comm'ns*, 142 S. Ct. 1245, 1249–50 (2022) (reiterating that a "strong basis in evidence" is required before undertaking the remedial action) (citing *Shaw*, 517 U.S. at 910).

Pending before the Supreme Court are two cases concerning the use of race as a factor in higher education admissions. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 142 S. Ct. 895 (2022) (granting certiorari); *Students for Fair Admissions, Inc. v. Univ. of N. Carolina*, 142 S. Ct. 896 (2022) (granting certiorari). Supreme Court decisions in these cases may provide further guidance to lower courts on the question posed.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on my personal views, if any, about whether the government can make policy decisions that involve consideration of race or racial inequality. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case.

If confirmed as a district judge and presented with a case or controversy that properly raises the issue of whether the government can consider race or racial inequality in making policy decisions, I would faithfully and impartially apply all precedents of the Supreme Court and Second Circuit, including but not limited to *Adarand*, *Fisher*, *Shaw*, and any forthcoming decisions in the *Harvard* and *UNC* cases.

**5. When is it permissible for the government to discriminate based on race and create racially discriminatory policies and programs?**

Response: Please see my response to Question 4.

**6. As legal director for the ACLU of Illinois, you approved of a report that opposed laws requiring children under the age of 18 to notify parents before getting an abortion. The report you approved stated that involving parents in abortion decisions “violates a range of human rights, including young people’s rights to health, to be heard, to privacy and confidentiality.” In your view, what rights do parents have to rear their children as they see fit and make decisions regarding their children’s health and safety?**

Response: The report in question was conceived and drafted by Human Rights Watch and senior colleagues at the ACLU of Illinois to advance the longstanding institutional position of my employer, the ACLU of Illinois, against a 1995 Illinois law. The ACLU of Illinois is a multi-issue organization. Since 2020, I have served as the organization’s Legal Director, a role that requires me to review the work product of colleagues, including those involved in this report, who work on areas of law that are not my focus.

In *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1925), the Supreme Court held that the Fourteenth Amendment’s Due Process Clause protects the fundamental right of parents to “establish a home and bring up children” and “to control the education of their own.” The Supreme Court has recognized the “extensive precedent” that has developed since *Meyer* concerning the fundamental right of parents to make decisions concerning “the care,

custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 66 (2000), (citing cases).

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on my personal views, if any, about parents’ rights to rear their children and make decisions regarding their children’s health and safety. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case.

If confirmed as a district judge, I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and Second Circuit, including *Meyer*, *Troxel*, and other precedents addressing parental rights regarding the care, custody, and control of their children.

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

### Questions for the Record for Nusrat Choudhury, Nominee for the Eastern District of New York

#### 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. **Are members of the bar ethically obligated to be truthful when engaging in advocacy?**

Response: Yes. Throughout my career, I have consistently strived to be truthful and to abide by the rules of professional responsibility, which require attorneys to maintain high standards of integrity and truthfulness in the course of advocating for clients, in and out of court. *See, e.g.*, Ill. R. Prof'l Conduct R. 3.3(a) (eff. Jan. 1, 2010) (prohibiting attorneys from "knowingly . . . mak[ing] a false statement of fact or law to a tribunal"); Ill. R. Prof'l Conduct R. 4.1(a) (eff. Jan. 1, 2010) (prohibiting attorneys from "knowingly" making a "false statement of material fact or law to a third person").

2. **Is racial discrimination wrong?**

Response: Racial discrimination in violation of constitutional requirements for equal protection is wrong. The Supreme Court has held that, under the Fourteenth and Fifth Amendments, the use of any race-based classification by federal, state, or local government is subject to strict scrutiny. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). Such classifications are permissible only “if they are narrowly tailored to further compelling governmental interests. *Fisher v. University of Texas at Austin*, 570 U.S. 297 (2013).

3. **In a July 2021 letter to the Chicago Police Department, on which you were the only signatory, you wrote with regard to CPD’s foot pursuit policy: “Making matters worse, the policy promotes dangerous and unjustified foot pursuits because it explicitly permits foot pursuits for all Class A misdemeanors, which include minor offenses that do not threaten public safety: sale of liquor to a minor, possession of alcohol by a minor, prostitution, obscenity, public indecency, adultery, theft, criminal trespass, gambling, and possession of drug paraphernalia. The mere presence of reasonable articulable suspicion to believe that a person engaged in any of these violations (or even probable cause) does not justify the significant and inherent risk of danger and death posed by a police foot pursuit.”**

a. **Do you still believe that so-called “minor offenses” like “theft” or “criminal trespass” do not threaten public safety?**

Response: Public safety is critically important to all communities. Law enforcement officers perform an important and challenging job to help advance this goal every day.

The July 2021 letter that I helped prepare constituted legal advocacy on behalf of clients. It was sent by a Coalition of 14 organizations that collectively enforce a federal Consent Decree governing police reform in Chicago, which includes my clients—the ACLU of Illinois, Communities United, Community Renewal Society, One Northside, and Next Steps. *See* Consent Decree ¶¶ 669, 709, *Illinois v. Chicago*, No. 17-cv-6260, ECF No. 703-1 (N.D. Ill. Jan. 31, 2019). The letter was signed by eight attorneys who provide legal representation to different Coalition organizations, and was sent to the Chicago Police Department and other entities that enforce the Consent Decree.

The Coalition’s letter stems from the 2017 findings of a U.S. Department of Justice investigation into the Chicago Police Department, which found that “dangerous and unnecessary foot pursuits” contributed to “a pattern or practice of unreasonable force in violation of the Fourth Amendment.” U.S. Department of Justice, Civil Rights Division and U.S. Attorney’s Office for the Northern District of Illinois, Investigation of the Chicago Police Department 23, 25 (2017) (“DOJ Report”), <https://www.justice.gov/opa/file/925846/download>.

The July 2021 letter addresses the Coalition’s views and recommendations for how to improve a June 2021 Chicago Police Department policy governing police foot pursuits in order to advance officer and community safety. The Coalition recommended that the Chicago policy should restrict foot chases, which carry safety risks for the officer, community members, and the person being chased, in the situation where officers do not have more than reasonable suspicion that a person being chased is engaged in theft or criminal trespass.

The questions of whether the criminal offenses of theft or criminal trespass threaten public safety and how these laws are enforced are issues for policymakers.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to express a personal view as to whether theft and criminal trespass are appropriately considered “minor offenses” or whether these offenses threaten safety because these are issues of policy. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

4. **Should law enforcement officers ever be allowed to pursue criminal suspects on foot?**

Response: Please see my response to Question 3.

The July 2021 letter of the Coalition enforcing the federal Consent Decree governing Chicago police addresses the Coalition’s views and recommendations for how to improve a June 2021 Chicago Police Department policy governing police foot pursuits in order to advance officer and community safety. The Coalition recommended that the Chicago policy should restrict—not prohibit—foot chases due to safety concerns.

The question of whether law enforcement officers should be allowed to pursue criminal suspects on foot is an issue for policymakers.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to express a personal view as to whether law enforcement officers should be allowed to pursue criminal suspects on foot. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

5. **In your letter, you suggested that catching a suspected criminal “is rarely more important than making sure the person, members of the public, and police officers**

**are all safe.” Did you mean this as a factual statement? Is it more important that police protect suspects during active pursuit than to protect the public?**

Response: Please see my response to Question 3.

The July 2021 letter referenced in the question is from a Coalition of 14 organizations that collectively enforce a federal Consent Decree governing Chicago police reform. It addresses the Coalition’s views and recommendations for how to improve a June 2021 Chicago Police Department foot pursuit policy in order to advance officer and community safety. The letter sets forth the Coalition’s view that the Chicago policy should incorporate the language of similar policies in other cities, including Austin, Texas, which state that the benefits of a foot pursuit “rarely” exceed the risk of harm. The Coalition also noted its view that “foot pursuits carry a significant and inherent risk of danger and death to officers, people being pursued, and members of the public.”

The question of how to balance the risks of harm to police, members of the public, and suspects during foot pursuits as well as the risks of harm stemming from the activities that give rise to foot pursuits is one for policymakers.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on this question because it is an issue of policy. The role of a judge is not to make policy, but to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

6. **If you are confirmed, as a judge, would there be statutory terms or legal terms of art that you will not use from the bench or in opinions? If so, what are the terms that you will not use and why?**

Response: To my knowledge, there are no statutory terms or legal terms of art that I would not use from the bench or in opinions, if I were to be confirmed as a district judge.

7. **In your 2021 letter to the Chicago Police Department, you wrote that the department’s “policy uses the word ‘subject’ to refer to people being chased on foot by police,” and that “[t]he repeated use of the word ‘subject’ is dehumanizing and undercuts the reality that foot pursuits threaten the lives and safety of human beings, including the person being pursued on foot by the police.” If you are confirmed, will you use the word “suspect” in an opinion or in court?**

Response: Please see my response to Question 3.

The July 2021 letter referenced in the question is from a Coalition of 14 organizations that collectively enforce a federal Consent Decree governing Chicago police reform. It



addresses the Coalition's views and recommendations for how to improve a June 2021 Chicago Police Department foot pursuit policy in order to advance officer and community safety. The letter sets forth the Coalition's views concerning the use of different terms. Merriam-Webster's dictionary defines a "suspect" as a person who is "regarded or deserving to be regarded with suspicion." If confirmed to serve as a district judge, I would use the term "suspect" when it is appropriate to do so in light of this definition and the application of the law to the facts as established by the evidence in the record in each case.

8. **In 2015, you were a panelist on a discussion at Princeton University titled, "Bringing the Battle Home: How Activism Informs Policy." During that discussion, you suggested that the killing of unarmed black men by police "happens every day" in America. During your confirmation hearing, you declined to answer whether this was factually accurate and said that you made this statement in the context of advocacy.**

a. **Now that you have had time to look into the facts, how many black men are killed by police per year in the United States?**

Response: I did not state that "the killing of unarmed Black men by police happens every day in America." I strongly disavow this statement. I regret not disavowing this statement during my hearing. And to be clear, the statement is not true. Such a statement is inconsistent with my deep respect for law enforcement, appreciation for the risks they take, and the important role they play in advancing public safety. And it does not reflect the work I have done in partnership with law enforcement and their counsel to advance constitutional, effective, and safe policing in cities nationwide, including Biloxi, Milwaukee, and Chicago.

When asked at my hearing whether I made this statement seven years ago, I stated, "I don't recall that statement, but it is something I may have said in that context." In the moment, I did not know the basis for the question, so even though I did not believe that I had made the statement, I incorrectly left open the possibility that I had in fact done so. However, I have now reviewed my submission to the Committee and all publicly available material. There is no record that I made this statement, and I did not do so. Additionally, I regret that I failed to state unequivocally at my hearing that the statement is simply not true.

The only record of my remarks at the 2015 event are tweets posted by people I do not know. The tweet that appears to be the basis for misattributing this statement to me is anonymous, inaccurate, and does not capture the full context of the discussion. I made note of this in my Senate Judiciary Questionnaire. *See* Nusrat Jahan Choudhury SJQ at 27 (reporting the March 28, 2015 event at the Princeton School of Public and International Affairs and noting that "although press coverage is supplied, several of the statements attributed to me are inaccurate").

I strive to be cautious in my public communications to ensure that assertions are based on facts. I have deep respect and compassion for law enforcement who put their

lives on the line. I would not raise false impressions or questions about their commitment to public safety. My utmost regard for the work of law enforcement is shown by my work with them and their counsel to settle litigation with reforms that advance constitutional, effective, and safe policing.

I am aware that disproportionate uses of force by law enforcement can undermine community trust and safety. These issues are extremely complicated and must be discussed based on accurate facts and statistics—and that is what I have endeavored to do as an advocate working with law enforcement and their counsel on these issues. I would reiterate, again, that the statement I was asked about was not an accurate statement, and I regret not saying so during my hearing.

My respect and admiration for law enforcement is reflected in my work at the ACLU of Illinois, where I have served as Legal Director since January 2020. During this time, I supported the filing of three administrative complaints in the Illinois Department of Human Rights on behalf of two Chicago police officers.

I was humbled to receive letters submitted to the Committee in support of my confirmation from opposing counsel in litigation involving police. Gerald Blessey, the former City Attorney for Biloxi, Mississippi, described our work to resolve litigation involving Biloxi police practices as follows:

[Ms. Choudhury] is fair-minded and a pleasure to work with on these serious, complex, and challenging issues.

I understand that Ms. Choudhury has been accused of making statistically inaccurate statements critical of law enforcement. She was always fact-based in her communications with us; our settlement was based on an agreed, accurate data base. Her expressions of utmost respect for law enforcement personnel and the difficult challenges that police encounter as they protect and serve the public are consistent with my first-hand experience working with her on policing issues. I have every confidence in her temperament and ability to be an impartial judge and know her to be exceptionally well qualified for the position.

Grant F. Langley, the former Milwaukee City Attorney, and Jan A. Smokowicz, the former Milwaukee Deputy City Attorney, represented the Milwaukee Police Department and the Milwaukee Fire and Police Commission in litigation against my clients. They wrote that I “displayed an unfailingly even temper and a reasonable and fair approach to resolving the many thorny issues that arose during” efforts to settle the litigation.

John Clopper, a former Assistant U.S. Attorney for the Southern District of New York, represented the Federal Bureau of Investigation, U.S. Department of Justice, and National Security Agency against my client in litigation. Mr. Clopper wrote: “Nusrat is among the most open-minded lawyers I have litigated against.” He

described me as “impartial[],” “fair-minded[],” “collaborative,” and a “role model for collegiality in the legal profession.”

If confirmed as a district judge for the Eastern District of New York, I would strive, in each case, to uphold the solemn judicial oath to “administer justice . . . faithfully and impartially” to all parties and counsel who appear before me, including law enforcement officers and agencies.

The question above asks, “how many black men are killed by police per year in the United States.” To my knowledge, there is no comprehensive, official nationwide database that reports this stastic. As noted in part b of this question, since 2015, the Washington Post has maintained a database based on reports of fatal shootings by on-duty police officers. Julie Tate, et al., How the Washington Post is Examining Police Shootings in the United States, Wash. Post (Jul. 7, 2016).

According to the Washington Post, the number of Black men killed by police each year, since the Washington Post began collecting these reports in 2015, is as follows:

2015: 248  
2016: 225  
2017: 213  
2018: 219  
2019: 245  
2020: 241  
2021: 134  
2022 (to date): 17

According to the Washington Post, the number of unarmed Black men killed by police each year, since it began collecting these reports in 2015, is as follows:

2015: 36  
2016: 19  
2017: 20  
2018: 22  
2019: 11  
2020: 17  
2021: 6  
2022 (to date): 2

According to the Washington Post, the number of Black men killed by police each year for whom it is “unknown” whether the individual possessed a weapon, since the Washington Post began collecting these reports in 2015, is as follows:

2015: 5  
2016: 8  
2017: 4

2018: 0  
2019: 1  
2020: 4  
2021: 13  
2022 (to date): 5

The aforementioned statistics are drawn from Fatal Force, Washington Post, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (last visited May 12, 2022).

**b. In fact, based on available data on police shootings, the number of unarmed black men that were killed by police is substantially lower than you suggested. According to data from the Washington Post, the numbers per year are substantially lower than you claimed:<sup>1</sup>**

- i. 2015: 36**
- ii. 2016: 19**
- iii. 2017: 20**
- iv. 2018: 22**
- v. 2019: 11**
- vi. 2020: 17**
- vii. 2021: 6**
- viii. 2022: 2**

**These numbers reflect cases categorized by the Washington Post as black, male, unarmed individuals, although the descriptions of individual cases do include those who struggled with the police, attacked officers, attempted to take the officers' firearm, fled in high speed chases, or violently resisted arrest, which inflate the total numbers slightly. The average number—excluding 2022—is between 18-19 fatal police shootings of unarmed black men per year. For context, as per the 2020 U.S. Census, the population of the United States is 331 million persons, of which 41.1 million were African-American.**

**Do you have any factual basis to contest this data?**

Response: Please see my response to Question 8A. I did not state that “the killing of unarmed Black men by police happens every day in America.” I strongly disavow this statement, and I regret not disavowing this statement during my hearing. And to be clear, the statement is not true. Such a statement is inconsistent with my deep respect for law enforcement, appreciation for the risks they take, and the important role they play in advancing public safety. And it does not reflect the work I have done in partnership with law

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<sup>1</sup> *Fatal Force: Police Shootings Database*, WASHINGTON POST (Apr. 28, 2022), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

enforcement and their counsel to advance constitutional, effective, and safe policing in cities nationwide, including Biloxi, Milwaukee, and Chicago.

9. **A survey conducted by *Skeptic* magazine in February 2021 showed that more than a third of liberal respondents thought that the number of unarmed black individuals killed by police each year was “about 1,000” or more. The number for very liberal respondents was even higher, with over fifty percent estimating the number was “about 1,000” or more. This is orders of magnitude greater than the actual number reflected above.<sup>2</sup> Do you think that disinformation like your statement at Princeton has contributed to liberal Americans’ misunderstanding of the order of magnitude of racial issues in the country?**

Response: Please see my response to Question 8A. I did not state that “the killing of unarmed Black men by police happens every day in America.” I strongly disavow this statement, and I regret not disavowing this statement during my hearing. And to be clear, the statement is not true. Such a statement is inconsistent with my deep respect for law enforcement, appreciation for the risks they take, and the important role they play in advancing public safety. And it does not reflect the work I have done in partnership with law enforcement and their counsel to advance constitutional, effective, and safe policing in cities nationwide, including Biloxi, Milwaukee, and Chicago.

10. **Do you support abolishing cash bail requirements?**

Response: Whether legislatures should change cash bail requirements is an issue for policymakers.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on whether cash bail requirements should be abolished because that is an issue of policy. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

11. **You reviewed and commented on a 2016 report titled *Transforming the System*, which called on legislatures to “abolish cash bail requirements” and to “encourage the use of warning and citations rather than arrests.” Did you agree with these recommendations when you reviewed and commented on the report?**

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<sup>2</sup> Kevin McCaffree & Anondah Saide, *How Informed are Americans about Race and Policing?*, Skeptic Research Ctr., CUPES-007 (Feb. 20, 2021), <https://www.skeptic.com/research-center/reports/Research-Report-CUPES007.pdf>.

Response: As noted in my Senate Judiciary Questionnaire, I did not research, write, or edit this report by the Opportunity Agenda. I reviewed the report for the purpose of making limited comments on the report's discussion of court fine and fee collection practices and the requirements of Supreme Court precedents, including *Bearden v. Georgia*, 461 U.S. 660 (1983), which guard against incarceration for inability to pay fines. I was not involved in developing or commenting on any of the report's recommendations, and was not asked to do so.

Whether cash bail requirements should be abolished and whether warnings and citations are preferable to arrests are issues for policymakers.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on whether cash bail requirements should be abolished or whether warnings and citations should be used instead of arrests because these are issues of policy. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

12. **This same report called on Congress to repeal mandatory minimum sentences and shorten sentence lengths across the board. What is your understanding as to why federal mandatory minimums were adopted?**

Response: As noted in my Senate Judiciary Questionnaire, I did not research, write, or edit this report by the Opportunity Agenda. I reviewed the report for the purpose of making limited comments on the report's discussion of court fine and fee collection practices and the requirements of Supreme Court precedents, including *Bearden v. Georgia*, 461 U.S. 660 (1983), which guard against incarceration for inability to pay fines. I was not involved in developing or commenting on any of the report's recommendations, and was not asked to do so.

In my nearly 16 years of professional practice as a judicial law clerk and litigator, I have not had the occasion to study why Congress enacted federal mandatory minimum sentences for certain criminal offenses. Questions relating to whether federal mandatory minimum sentences are beneficial or should be reduced are issues for policymakers.

The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

13. **If you are confirmed, as a judge, how do you plan to approach sentencing enhancements and sentencing discretion within the guidelines?**

Response: If confirmed as a district judge, I would impartially apply the law to the facts established by the evidence in the record of each case and would impose sentences that carry out Congress' directive in 18 U.S.C. § 3553(a) that district courts sentence people convicted of federal crimes to "a sentence sufficient, but not greater than necessary, to comply with the purposes set forth" in the statute. I would follow Section 3553(a)'s directive to consider each of the specifically enumerated factors listed therein, including: the sentencing range established by the Sentencing Guidelines, which includes consideration of the base offense level and any enhancements or adjustments; the need to "reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense"; "to afford adequate deterrence to criminal conduct"; "to protect the public from further crimes of the defendant"; "any pertinent policy statement" of the Sentencing Commission; "the need to avoid unwarranted sentence disparities among the defendants with similar records who have been found guilty of similar conduct." The Supreme Court has recognized that district courts "must consult [the Sentencing] Guidelines and take them into account when sentencing," although they are now "not bound to apply the Guidelines." *United States v. Booker*, 543 U.S. 220, 264 (2005).

In the sentencing, I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

14. **Is it proper for a district judge to consider society's interest in retribution when determining a proper sentence?**

Response: Pursuant to 18 U.S.C. § 3553(a), judges must impose sentences that are "sufficient, but not greater than necessary" to promote the purposes of punishment, including providing just punishment, deterrence, incapacitation and rehabilitation.

15. **Is it appropriate for judges to consider public protests or public pressure when reaching decisions in high profile cases?**

Response. No. The role of a judge is to decide individual cases by applying the law—including binding precedent from the Supreme Court and the relevant Circuit—faithfully and impartially to the facts as established by the evidence in the record in each case. If confirmed as a district court judge, my role would be limited to that judicial function.

a. **If not, why did you tell students at an event at Princeton that the judge in the so-called immigration ban case in 2020 "heard the 1000 protestors on the street" and that "judges hear"?**

Response: The only record of my remarks at the April 8, 2017 event are three tweets posted during the event by people I do not know. The statement referenced in the question is based on an anonymous tweet and does not capture the full context of the discussion. The focus of my remarks was the importance of exercising the First Amendment rights to speech, expression, association, and protest on contentious issues because the exercise of these rights is foundational to a healthy democracy.

**b. Why did you tweet in 2017 to “Spread the news and \* keep protesting \*. The courts hear you – and they need to know that #NoBanNOWall matters”?**

Response: The tweet referenced in the question retweeted a post by the national ACLU Twitter account, which drew attention to a Ninth Circuit ruling in litigation against a federal immigration policy that was also the subject of ACLU litigation. The purpose and focus of my tweet was to encourage the exercise of First Amendment rights. It was not intended to suggest that courts make decisions based on protests.

The role of a judge is to decide individual cases by applying the law—including binding precedent from the Supreme Court and the relevant Circuit—faithfully and impartially to the facts as established by the evidence in the record in each case. If confirmed as a district court judge for the Eastern District of New York, my role would be limited to that judicial function.

**16. How do you intend to consider public opinion and protests in your decisionmaking if you are confirmed to the court?**

Response: The role of a judge is to decide individual cases by applying the law—including binding precedent from the Supreme Court and the relevant Circuit—faithfully and impartially to the facts as established by the evidence in the record in each case. If confirmed as a district court judge for the Eastern District of New York, my role would be limited to that judicial function. I would not take into consideration public opinion or protests in reaching decisions in any case or controversy.

**17. 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: The judges for whom I clerked—Judge Barrington D. Parker, Jr. of the U.S. Court of Appeals for the Second Circuit and Judge Denise L. Cote of the U.S. District Court for the Southern District of New York—both emphasized the principles of judicial restraint and economy, the importance of deciding only those issues needed to render a decision in a case, the need for scrupulous review of the factual record, and faithful adherence to precedent of the Supreme Court and Second Circuit. I would strive to follow their approach if confirmed as a district judge for the Eastern District of New York.

All federal judges are required to approach each case with an open mind and to impartially apply the law to the facts as established by the evidence in the record, setting aside any personal views they may have. District judges have a duty to follow the precedents of the Supreme Court and their Circuit, including precedent regarding interpretive methods or judicial philosophy. If confirmed, I would swear an oath to discharge that duty faithfully and impartially.



I have not studied the judicial philosophies of Supreme Court Justices, and therefore cannot determine whether I would follow the philosophy of any particular Justice. I deeply respect all of the Justices who have served on the Supreme Court for their judicial temperament, open-minded and rigorous approach to the law, faithful adherence to precedent, and other qualities.

18. **Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an ‘originalist’?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court provided a description of originalism by explaining that, in interpreting the Constitution, courts are “guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” *Id.* at 576 (quotation marks and alteration omitted). I have never used the term “originalist” or any other label to describe my writing or approach to legal analysis. If confirmed as a district judge, however, I would faithfully and impartially follow all precedent from the Supreme Court regarding the interpretive methods for resolving constitutional cases.

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

Response: I have never used the phrase “living constitutionalism,” nor have I been able to identify a consensus definition of an interpretive method referred to as “living constitutionalism.” To my knowledge, there is no Supreme Court precedent defining this term, and I do not have a personal definition. I have never used the term “living constitutionalist” or any other label to describe my writing or approach to legal analysis. Please also see my response to Question 18.

20. **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: The Supreme Court has noted that, in constitutional interpretation, courts are “guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (quotation marks and alteration omitted). The Supreme Court has also explained that when “the Constitution’s text does not alone resolve” a question of interpretation, the Court has turned to the “historical background of [the text] to understand its meaning.” *Crawford v. Washington*, 541 U.S. 36, 43–44 (2004).

If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and Second Circuit, including *Heller* and *Crawford*. For this reason, if confronted with a

situation where the original public meaning of the text of a constitutional provision was unambiguous and fully resolved the issue presented, I would be bound by that interpretation.

21. **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: In *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020), the Supreme Court explained that courts “normally interpret[] a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” If, however, following the statute’s enactment, “a new application [of statutory text] emerges that is both unexpected and important,” courts must “enforce the plain terms” of the text even if the new application was not anticipated by the legislature when it enacted the statute. *Id.* at 1750. “[T]he same judicial humility that requires [courts] to refrain from adding to statutes requires [courts] to refrain from diminishing them.” *Id.* at 1753.

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

Response: No. The Constitution sets forth enduring principles that have guided our nation for more than 200 years and will continue to do so. The Constitution changes through the amendment process set forth in Article V.

23. **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: The Constitution and federal law place a number of limits on government action that imposes requirements on private institutions, including religious organizations and small businesses operated by observant owners.

For example, under the Religious Freedom Restoration Act of 1993 (RFRA), the “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule 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. §§ 2000bb–1(a), (b).

In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 717–19 (2014), the Supreme Court held that RFRA applies to small businesses or corporations operated by observant owners with sincerely held religious beliefs. In *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020), the Supreme Court held that RFRA applied to religious organizations such as Little Sisters of the Poor.

Additionally, the First Amendment’s Free Exercise Clause also places restrictions on government action impacting private institutions, including religious organizations and

small businesses operated by observant owners. The Supreme Court has instructed courts to first determine whether a challenged law or government action is neutral on its face and in its enactment or enforcement. If the law is not facially neutral, and/or if the record establishes that the law's enactment or enforcement was motivated by religious animus, the law is subject to strict scrutiny. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533–42 (1993); *Masterpiece Cakeshop v. Colorado Civil Rts. Comm'n*, 138 S. Ct. 1719, 1729 (2018).

Furthermore, under the First Amendment, the “ministerial exception” provides that “courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020).

If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent from the Supreme Court and Second Circuit, including precedents in this area.

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

Response: Please see my response to Question 23.

25. **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, 65–66 (2020) (per curiam), the Supreme Court held that the religious organization applicants were entitled to a preliminary injunction blocking enforcement of the New York Governor's executive order placing occupancy restrictions on houses of worship as a COVID-19 measure. The applicants “made a strong showing that the challenged restrictions violate the minimum requirement of neutrality to religion” because the regulations “single[d] out houses of worship for especially harsh treatment” and “statements made in connection with the challenged rules [could] be viewed as targeting the ultra-Orthodox [Jewish] community.” *Id.* at 67 (quotation marks omitted). Applying strict scrutiny, the Supreme Court concluded that it was “hard to see how the challenged regulations [could] be regarded as ‘narrowly tailored.’” *Id.* The Court determined that the challenged restrictions would cause irreparable harm to members of the applicant organizations and that it had “not been shown that granting the applications [would] harm the public.” *Id.* at 68. The Supreme Court concluded that the executive order's “severe restrictions on the applicants' religious services must be enjoined.” *Id.* at 69.

26. **Please explain the Supreme Court’s holding and rationale in *Tandon v. Newsom*.**

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam), the Supreme Court held that the Ninth Circuit erred in failing to preliminarily enjoin, pending appeal, California’s restrictions on private gatherings during the COVID-19 pandemic, holding that the applicants, who sought to gather for at-home religious exercise, were likely to succeed in showing that the restrictions violated the Free Exercise Clause of the First Amendment. The Supreme Court made clear that “government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.” *Id.* at 1296 (emphasis in original). The Court explained, “It is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue.” *Id.* Because the challenged restrictions treated comparable secular activity more favorably than religious exercise, strict scrutiny applied and would be satisfied only if the government were to “show that the religious exercise at issue is more dangerous than [comparable secular] activities even when the same precautions are applied.” *Id.* at 1297. “The State cannot ‘assume the worst when people go to worship but assume the best when people go to work.’” *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020) (per curiam)).

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

Response: Yes. The Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act of 1993 both apply whether or not Americans exercise their religious beliefs at home or inside a house of worship.

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

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1723–1724 (2018), the Supreme Court held that the Colorado Civil Rights Commission’s decision to issue a cease-and-desist order in a proceeding arising from a cakeshop owner’s refusal to sell a wedding cake to a same-sex couple violated the Free Exercise Clause of the First Amendment. The record demonstrated “clear and impermissible hostility toward the sincere religious beliefs that motivated” the petitioner, which the Supreme Court found sufficient to show animus in violation of the Free Exercise Clause. *Id.* at 1729–31.

29. **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?**

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

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

Response to Question 29 and subparts (a) and (b): The Supreme Court has held that sincere religious beliefs “stem from [a person’s] moral, ethical, or religious beliefs about what is right and wrong,” are “held with the strength of traditional religious convictions,” and “need not be confined in either source or content to traditional or parochial concepts of religion.” *Welsh v. United States*, 398 U.S. 333, 339–40 (1970); *see also Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829, 833 (1989) (noting that a sincerely held religious belief must be “rooted in religion” rather than “[p]urely secular”). The Supreme Court has further guided courts that the question of whether a religious belief is sincere is “not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court held in the Religious Freedom Restoration Act (RFRA) context that “[t]o qualify for RFRA’s protection, an asserted belief must be sincere,” and that “the federal courts have no business addressing” the question of “whether the religious belief asserted in a RFRA case is reasonable.” *Id.* at 717, 724 & n.28 (quotation marks omitted). If confirmed and presented with a case in which the issue of a party’s sincerely held religious belief were challenged or otherwise at issue, I would follow binding precedent of the Supreme Court and Second Circuit, including *Welsh*, *Frazee*, *Thomas*, and *Hobby Lobby*.

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

Response: As a judicial nominee, it would not be appropriate for me to comment on what is, or is not, the official position of any religious organization.

**30. 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, 2060, 2066 (2020), the Supreme Court held that the ministerial exception, grounded in the First Amendment’s Religion Clauses, barred the plaintiffs’ employment discrimination claims against religious schools brought under the Age Discrimination in Employment Act and the Americans with Disabilities Act. Although religious organizations are normally not exempt from the requirements of generally applicable anti-discrimination statutes, the ministerial exception provides that “courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions.” *Id.* at 2060. Because there was “abundant record evidence” that the plaintiffs

“performed vital religious duties” in their teaching roles, the Supreme Court concluded that their employers were entitled to claim the ministerial exception. *Id.* at 2066.

31. **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, 1878–82 (2021), the Supreme Court invalidated Section 3.21 of the City of Philadelphia’s foster care contract, which required foster care agencies to provide services to prospective foster parents without regard to their sexual orientation. The Supreme Court found that strict scrutiny applied because the provision at issue “incorporates a system of individual exemptions, made available . . . at the sole discretion of the Commissioner,” and the inclusion of such “a formal mechanism for granting exceptions renders a policy not generally applicable.” *Id.* at 1878–79. Applying strict scrutiny, the Court concluded that “the interest of the City in the equal treatment of prospective foster parents and foster children . . . cannot justify denying [plaintiff] an exception for its religious exercise” under the Free Exercise Clause. *Id.* at 1882.

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

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), the Supreme Court vacated the judgment below and remanded to the Court of Appeals of Minnesota a lawsuit brought under the Religious Land Use and Institutionalized Persons Act (RLUIPA) by members of an Amish community against a county ordinance requiring the installation of a modern subsurface septic system for the disposal of gray water. Justice Gorsuch joined the full Court in vacating the judgment and remanding the case with instructions that the Court of Appeals of Minnesota reconsider the case in light of the Supreme Court’s decision in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). Justice Gorsuch’s concurring opinion described the Justice’s view that the “courts below misapprehended RLUIPA’s demands.” *Mast*, 141 S. Ct. at 2432 (Gorsuch, J., concurring). Justice Gorsuch noted that the state courts incorrectly applied the “compelling interest” test on the facts presented, “fail[ed] to give due weight to exemptions other groups enjoy” and to “rules in other jurisdictions,” and rejected alternative measures “based on certain assumptions” without demonstrating the required narrow tailoring. *See id.* at 2432–33 (Gorsuch, J., concurring).

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

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

- b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**
- c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**
- d. **Meritocracy or related values such as work ethic are racist or sexist?**

Response to all subparts of Question 33: No. I am not aware of any trainings of this nature. I am also unaware of the content of trainings provided by the Federal Judicial Center, the Eastern District of New York, or the Second Circuit, or what role, if any, I would have in developing the content of any such trainings, if I am confirmed as a district judge. All trainings provided by and for federal courts should be based on sound pedagogy and comply with all applicable legal requirements, including the Constitution.

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

Response: Yes. Please see my response to Question 33.

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

Response: I am not aware of a consensus definition of the term “systemically racist.” Whether there are systemic issues in the criminal justice system is an issue for policymakers and is the subject of widespread discussion amongst policymakers and the public.

Federal district judges are duty-bound to fairly and impartially adjudicate specific cases or controversies that are properly before the court, some of which may include claims of race discrimination, without regard to any personal beliefs they may, or may not, have.

Federal district judges may be required to preside over claims alleging that systemic factors, such as patterns or practices of racial discrimination played a role in causing the violation of a plaintiff’s rights. *See, e.g., Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336–37, 342–43 (1977) (holding that plaintiff met its burden of proof “to establish by a preponderance of the evidence that racial discrimination” in employment practices “was the . . . standard operating procedure[,] the regular rather than the unusual practice” of the defendant, a common carrier of motor freight with nationwide operations); *Monell v. New York City Dep’t of Social Servs.*, 436 U.S. 658, 694 (1978) (holding that municipal employers may be held liable under 42 U.S.C. §1983 for constitutional violations caused by the municipality’s “policy or custom”).

If confirmed as a district judge and presented with such a case, I would faithfully and impartially apply Supreme Court and Second Circuit precedent to the facts established by

evidence in the record. My role would be limited to this critically important judicial function.

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

Response: The Appointments Clause of the Constitution provides the President the power, with the advice and consent of the Senate, to appoint individuals to certain political positions in the federal government. U.S. Constitution, Art. II, § 2, cl. 2. Under the Fifth Amendment Due Process Clause, the federal government is subject to the antidiscrimination provisions of the Equal Protection Clause of the Fourteenth Amendment. *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954). Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on legal issues that could become the subject of litigation, including the question of whether it is appropriate to consider skin color or sex when making political appointments.

37. **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: If I am so fortunate as to be confirmed as a district judge, I would strive to hire highly qualified, smart, capable staff from a wide variety of backgrounds, and with diverse experiences and interests, and to do so in compliance with all applicable federal, state, and local laws, including laws prohibiting discrimination on the basis of race and other protected characteristics.

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

Response: If confirmed, I would be bound by Supreme Court precedent regardless of the size or composition of the Supreme Court, and it would be inappropriate for me to comment on whether the size of that Court should be changed in any way.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), the Supreme Court held that the Second Amendment protects “an individual right to keep and bear arms.”

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

Response: No. All rights enumerated in the Constitution or recognized by the Supreme Court are equally deserving of legal protection. In holding that the individual right to keep and bear arms protected by the Second Amendment is a fundamental right, the Supreme Court applied the same Due Process incorporation analysis applied to other individual



rights enumerated in the Constitution. See *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (Due Process incorporation analysis requires determining whether the Second Amendment right to keep and bear arms “is fundamental to our scheme of ordered liberty” and is “deeply rooted in this Nation’s history and tradition”). If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent from the Supreme Court, including *McDonald*.

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

Response: Please see my response to Question 40.

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

Response: Under Article II of the Constitution, the President “shall take care that the laws be faithfully executed.” U.S. Const., Art. II, § 3. In the context of criminal law, the “Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case.” *United States v. Nixon*, 418 U.S. 683, 693 (1974). In the context of executive agencies, the Supreme Court has held that there is “a general presumption of unreviewability of decisions not to enforce” by executive agencies. *Heckler v. Chaney*, 470 U.S. 821, 834 (1985). Congress may “indicate[] an intent to circumscribe agency enforcement discretion,” and may “provide[] meaningful standards for defining the limits of that discretion,” such that “courts may require that the agency follow that law”—otherwise, as a general matter, “an agency refusal to institute proceedings is a decision ‘committed to agency discretion by law’” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701(a)(2). *Heckler*, 470 U.S. at 834–35. The Supreme Court has also held that private citizens generally “lack[] standing to contest the policies of the prosecuting authority” when that citizen is neither prosecuted nor threatened with prosecution. *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

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

Response: If confirmed as a district judge and presented with a case in which the distinction between an act of “prosecutorial discretion” and that of a “substantive administrative rule change” were at issue and properly presented to the court, I would resolve the issue by faithfully and impartially applying Supreme Court and Second Circuit precedent to the facts as established by evidence in the record. To my knowledge, neither the Supreme Court nor the Second Circuit has resolved this distinction, but cases raising this question are pending in other federal courts. Consistent with the Code of Conduct for United States Judges, it is inappropriate for me, as a pending judicial nominee, to comment on legal issues that could become the subject of litigation.

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

Response: No. Article I of the Constitution vests Congress with “all legislative Powers herein granted.” U.S. Const., Art. I, § 1. Congress enacted the Federal Death Penalty Act, which provides that a defendant found guilty of certain offenses “shall be sentenced to death if, after consideration of the factors set forth in” the Act, “it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.” 18 U.S.C. § 3591(a). The Constitution does not confer on the President the authority to “abolish” laws passed by Congress or state laws, such as death penalty statutes that otherwise comply with the Constitution as set forth in the Supreme Court’s death penalty jurisprudence. *See Gregg v. Georgia*, 428 U.S. 153, 186–87 (1976) (holding that state death penalty statutes do not per se violate the Eighth and Fourteenth Amendment’s prohibition of “cruel and unusual” punishment).

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

Response: In *Alabama Association of Realtors v. Department of Health and Human Services*, 141 S. Ct. 2485, 2486 (2021) (per curiam), the Supreme Court vacated the district court’s stay of an order concluding that the Centers for Disease Control (CDC) lacked statutory authority to impose an eviction moratorium during the Covid-19 pandemic. The Supreme Court’s ruling permitted the district court’s injunction to go into effect, which blocked the CDC’s nationwide eviction moratorium. *Id.* The Court applied the four-factor test announced in *Nken v. Holder*, 556 U.S. 418 (2009), finding that the plaintiffs had satisfied the test because, among other things, they had demonstrated sufficient evidence of irreparable harm and a likelihood of success on the merits of their lawsuit. *Alabama Association of Realtors*, 141 S. Ct. at 2488–90.

**Senator Josh Hawley**  
**Questions for the Record**

**Nusrat Choudhury**  
**Nominee, U.S. District Court for the Eastern District of New York**

- 1. Last year, you approved an ACLU report on parental notice requirements for abortion in Illinois. The report that you approved says that a law that simply requires that children merely *inform* their parents before obtaining an abortion “undermines the safety, health, and dignity of young people” and “violates a range of human rights.” Do you likewise believe that it is dangerous and a violation of human rights to let parents have a say in whether their young children should be given puberty-blocking drugs?**

Response: The report in question was conceived and drafted by Human Rights Watch and senior colleagues at the ACLU of Illinois to advance the longstanding institutional position of my employer, the ACLU of Illinois, against a 1995 Illinois law. The ACLU of Illinois is a multi-issue organization. Since 2020, I have served as the organization’s Legal Director, a role that requires me to review the work product of colleagues, including those involved in this report, who work on areas of law that are not my focus.

Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on legal issues that could become the subject of litigation, including questions relating to parental rights and the provision of puberty-blocking drugs to children. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

- 2. You wrote a 2009 article where you interviewed the chair of the Southern Poverty Law Center. During the interview, you encouraged readers to support that organization. When you wrote the article, were you aware that, two years earlier, progressive journalist Alexander Cockburn said, “I’ve long regarded Morris Dees and his Southern Poverty Law Center as collectively one of the greatest frauds in American life”?**

Response: I am not aware of the article referenced in the question and do not recall writing anything of this nature or calling on members of the public to donate to the Southern Poverty Law Center.

- 3. 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: I am not aware of the full context of that quote. As stated here, I do not agree with it. Every federal judge must fulfill the judicial oath to “administer justice without respect to persons, and do equal right to the poor and to the rich,” and to “faithfully and impartially discharge and perform all the duties incumbent upon” the judge “under the Constitution and laws of the United States.” 28 U.S.C. § 453.

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

Response: My understanding is that the judicial oath requires a judge to “administer justice without respect to persons, and do equal right to the poor and to the rich,” and to “faithfully and impartially discharge and perform all the duties incumbent upon” the judge “under the Constitution and laws of the United States,” which includes all precedent from the Supreme Court and the relevant Circuit Court of Appeals.

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

The Supreme Court addressed the scope of the *Younger* abstention doctrine in *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69 (2013). It held that federal courts refrain from exercising their jurisdiction over a case or controversy in deference to the States under this doctrine when there is any one of three “exceptional circumstances” involving state proceedings: (1) “ongoing state criminal prosecutions,” (2) “certain ‘civil enforcement proceedings,’” or (3) “pending ‘civil proceedings involving certain orders . . . uniquely in furtherance of the state court’s ability to perform their judicial functions.’” *Id.* at 78 (citing *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 368 (1989)). Although “not dispositive,” there are three “additional factors appropriately considered by the federal court before invoking *Younger*”: whether there is “(1) ‘an ongoing state judicial proceeding, which (2) implicates important state interests, and (3) . . . provide[s] an adequate opportunity to raise [federal] challenges.’” *Sprint*, 571 U.S. at 81 (citing *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982)). The Second Circuit is bound by Supreme Court precedent and has applied *Sprint*’s approach in a non-precedential opinion. *See Mir v. Shah*, 569 Fed. App’x 48, 50–51 (2d Cir. 2014) (applying *Sprint*, 571 U.S. 69, and finding *Younger* abstention appropriate).

The *Rooker-Feldman* doctrine deprives federal courts of subject matter jurisdiction to hear claims 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.” *Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The Second Circuit has identified four requirements for *Rooker-Feldman* to apply:

First, the federal-court plaintiff must have lost in state court. Second, the plaintiff must complain[ ] of injuries caused by [a] state-court judgment[.] Third, the plaintiff must invit[e] district court review and rejection of [that] judgment[ ]. Fourth, the state-court judgment must have been “rendered before the district court proceedings commenced—i.e., *Rooker–Feldman* has no application to federal-court suits proceeding in parallel with ongoing state-court litigation. The first and fourth of these requirements may be loosely termed procedural; the second and third may be termed substantive.

*Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 84, 85 (2d Cir. 2005) (quotation marks and citations omitted).

Under *Pullman* abstention, federal courts “ought not to consider the Constitutionality of a state statute in the absence of a controlling interpretation of its meaning and effect by the state courts.” *Arizonans for Official English v. Arizona*, 520 U.S. 43, 75 (1997) (citing *Poe v. Ullman*, 367 U.S. 497, 526 (1961) (Harlan, J., dissenting)). In a case where a plaintiff brings both a federal claim and a state law claim, a federal court should abstain from exercising its “equity jurisdiction when a federal constitutional ruling could be avoided by a controlling decision of a state court, and a state court decision can be pursued consistent with full protection of the constitutional claim.” *Nicholson v. Scopetta*, 344 F.3d 154, 167 (2d Cir. 2003). The Second Circuit has held that courts “have an independent obligation to consider whether *Pullman* abstention is appropriate.” *Id.* at 168.

The Supreme Court has described the *Buford* abstention doctrine as follows:

Where timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar; or (2) where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.

*New Orleans Pub. Serv., Inc.*, 491 U.S. at 361. The Second Circuit has

identified three factors to consider in connection with the determination of whether federal court review would work a disruption of a state’s purpose to establish a coherent public policy on a matter involving substantial concern to the public. Those factors are as follows: “(1) the degree of specificity of the state regulatory scheme; (2) the need to give one or another debatable construction to a state statute; and (3) whether the subject matter of the litigation is traditionally one of state concern.”

*Liberty Mut. Ins. Co. v. Hurlbut*, 585 F.3d 639, 650 (2d Cir. 2009) (quoting *Hachamovitch v. DeBuono*, 159 F.3d 687, 697 (2d Cir. 1998)).

*Colorado River* abstention applies in “exceptional circumstances,” where the resolution of concurrent state-court litigation could result in “comprehensive disposition of litigation” and “conservation of judicial resources.” *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813, 817 (1976). In determining whether this abstention doctrine applies, courts consider the following six factors:

(1) whether the controversy involves a res over which one of the courts has assumed jurisdiction, (2) whether the federal forum is less inconvenient than the other for the parties; (3) whether staying or dismissing the federal action will avoid piecemeal litigation; (4) the order in which the actions were filed, and whether proceedings have advanced more in one forum than in the other; (5) whether federal law provides the rule of decision; and (6) whether the state procedures are adequate to protect the plaintiff’s federal rights.

*Woodford v. Cmty. Action Agency of Greene Cty., Inc.*, 239 F.3d 517, 522 (2d Cir. 2001) (citations omitted). Additionally, the Supreme Court has emphasized:

No one factor is necessarily determinative; a carefully considered judgment taking into account both the obligation to exercise jurisdiction and the combination of factors counselling against that exercise. *Only the clearest of justifications will warrant dismissal.*

*Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 15–16 (1983) (quotation marks and citation omitted) (emphasis in *Moses H. Cone*).

Under the *Brillhart/Wilton* abstention doctrine, a federal court will refrain from resolving a case when a plaintiff seeks “purely declaratory relief” and there is a parallel, pending state-court action. *Kanciper v. Suffolk Cty. Soc. for the Prevention of Cruelty to Animals, Inc.*, 722 F.3d 88, 93 (2d Cir. 2013); *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995). The Second Circuit identified five factors for courts to consider in determining whether the doctrine applies: “(1) whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved”; “(2) whether a judgment would finalize the controversy and offer relief from uncertainty”; (3) “whether the proposed remedy is being used merely for procedural fencing or a race to res judicata,” (4) “whether the use of a declaratory judgment would increase friction between sovereign legal systems or improperly encroach on the domain of a state or foreign court,” and (5) “whether there is a better or more effective remedy.” *Niagara Mohawk Power Corp. v. Hudson River-Black River Regulating Dist.*, 673 F.3d 84, 105 (2d Cir. 2012) (quotation marks omitted).

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

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

Response: In my 16 years of professional legal practice, I do not recall ever working on a legal case or representation in which I opposed a party's religious liberty claim.

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

Response: All federal district judges are bound to faithfully follow precedent of the Supreme Court and the relevant Circuit. The Supreme Court has instructed that, when there is no binding precedent concerning the interpretation of a particular constitutional provision, courts are "guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *Dist. of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (quotation marks and citation omitted). If confirmed as a district court judge for the Eastern District of New York, I would be bound by, and would faithfully, fully, and impartially follow all precedents of the Supreme Court and the Second Circuit with respect to methods of constitutional interpretation, including *Heller*.

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

Response: The Supreme Court has instructed that federal courts "do not resort to legislative history to cloud a statutory text that is clear." *Ratzlaf v. United States*, 510 U.S. 135, 147–48 (1994); *see also Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011) ("Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it."). The Second Circuit has held that, if the plain meaning of a statute "is ambiguous, then a court may resort to the canons of statutory construction" to help resolve the ambiguity. *Nat. Res. Def. Council, Inc. v. Muszynski*, 268 F.3d 91, 98 (2d Cir. 2001). If the application of canons of statutory interpretation do not resolve the ambiguity, a court may then "resort to other interpretive aids (like legislative history)." *Id.* at 98. The Supreme Court has cautioned that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). If confirmed as a district judge, I would follow Supreme Court and Second Circuit precedent guiding that legislative history is to be consulted if and only if the statutory text in question is ambiguous.

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

Response: The Supreme Court has instructed that, "[i]n surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represent[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'" *Garcia v. United States*, 469 U.S.

70, 76 (1984) (quoting *Zuber v. Allen*, 396 U.S. 168, 186 (1969)). The Supreme Court has advised that other forms of legislative history are not as probative. See, e.g., *NLRB v. SW Gen., Inc.*, 137 S. Ct. 929, 943 (2017) (“[F]loor statements by individual legislators rank among the least illuminating forms of legislative history.”).

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

Response: It is generally inappropriate to consult the laws of foreign nations when interpreting provisions of the U.S. Constitution. The Supreme Court has, on limited occasions, referenced foreign law, such as English common law, in constitutional interpretation. See, e.g., *Timbs v. Indiana*, 139 S. Ct. 682, 687–88 (2019) (citing Magna Carta § 20, 9 Hen. Ill, ch. 14 in 1 Eng. Stat. at Large 5 (1225); 4 W. Blackstone, Commentaries on the Laws of England 372 (1769); and English Bill of Rights, 1 Wm. & Mary, ch. 2, § 10, in 3 Eng. Stat. at Large 441 (1689)). The Supreme Court has also, on occasion, considered the interpretations of other signatory parties in treaty interpretation. See *Water Splash v. Menon*, 137 S. Ct. 1504, 1512 (2017) (“[T]his Court has given ‘considerable weight’ to the views of other parties to a treaty.”).

**8. 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: In *Bucklew v. Precythe*, 139 S. Ct. 1112, 1129 (2019), the Supreme Court “(re)confirmed that anyone bringing a method of execution claim alleging the infliction of unconstitutionally cruel pain must meet the *Baze-Glossip* test.” To satisfy this test, “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.” *Id.* at 1125 (citing *Glossip v. Gross*, 576 U.S. 863, 868–78 (2015), and *Baze v. Rees*, 553 U.S. 35, 52 (2008)). To my knowledge, the Second Circuit has not had occasion to interpret or apply the *Baze-Glossip* test. If confirmed as a district judge, I will be bound by, and will faithfully and impartially apply precedents of the Supreme Court and Second Circuit, including *Bucklew*, *Glossip*, and *Baze*.

**9. 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: Please see my response to Question 8.



**10. 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: In *District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52, 67–74 (2009), the Supreme Court held that a habeas petitioner does not have a due process right to access DNA evidence for testing.

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

Response: No.

**12. 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: The Religious Freedom Restoration Act of 1993 (RFRA) prohibits the federal government from “substantially burden[ing] a person’s exercise of religion even if the burden results from a rule 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. §§ 2000bb–1(a), (b). The Supreme Court has held that RFRA does not apply to state and local governmental action. *See City of Boerne v. Flores*, 521 U.S. 507 (1997), *superseded by statute as stated in Ramirez v. Collier*, 142 S. Ct. 1264, 1277 (2022). In *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878–82 (1990), the Supreme Court held that, under the First Amendment’s Free Exercise Clause, strict scrutiny is not applied to otherwise valid, facially neutral state laws of general applicability.

If a state governmental action is not neutral or is not generally applicable, the law “must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32 (1993). State government action that appears neutral on its face is not in fact neutral if “the object or purpose of the [state action] is suppression of religion or religious conduct.” *Id.* at 533. Additionally, state governmental action is not neutral if statements made by officials at a public meeting demonstrate that the action was motivated by hostility to religion. *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*, 138 S. Ct. 1719 (2018).

Further, a state or local law may not be generally applicable if it prohibits or fails to provide exemptions for certain religious conduct while permitting secular conduct that

implicates the same governmental interests. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876–77 (2021) (“Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature.”); *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (“[G]overnment regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise.”).

Finally, the Supreme Court has recognized that “the First Amendment bars the application of a neutral, generally applicable law to religiously motivated action” when the faith-based exercise at issue is protected not just by the Free Exercise Clause but also other constitutional protections, such as the freedom of speech or press or the right of parents to direct the education of their children. *Smith*, 494 U.S. at 881.

**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 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 response to Question 12.

**14. 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 Second Circuit is bound by Supreme Court precedent. The Supreme Court has held that sincere religious beliefs “stem from [a person’s] moral, ethical, or religious beliefs about what is right and wrong,” are “held with the strength of traditional religious convictions,” and “need not be confined in either source or content to traditional or parochial concepts of religion.” *Welsh v. United States*, 398 U.S. 333, 339–40 (1970); *see also Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829, 833 (1989) (noting that a sincerely held religious belief must be “rooted in religion” rather than “[p]urely secular”). The Supreme Court has guided courts that the question of whether a religious belief is sincere is “not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). Even atheism can count as a sincerely held belief. *Torcaso v. Watkins*, 367 U.S. 488, 490, 495–96 (1961). In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court held in the Religious Freedom Restoration Act context that “[t]o qualify for RFRA’s protection, an asserted belief must be sincere,” and that “the federal courts have no business addressing” the question of “whether the religious belief asserted in a RFRA case is reasonable.” *Id.* at 717, 724 & n.28 (quotation marks omitted).

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

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

Response: In *District of Columbia v. Heller*, the Supreme Court held “that the Second Amendment confers an individual right to keep and bear arms.” 554 U.S. 570, 622 (2008). If confirmed as a district judge, I would be bound by, and would faithfully and impartially follow all precedent from the Supreme Court, including *Heller*.

**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: I have never served as a judge, and thus have not issued any judicial opinions, orders, or other decisions on these issues.

**16. 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: Writing in dissent, Justice Holmes stated in *Lochner v. New York*, 198 U.S. 45 (1905), that the “Constitution is not intended to embody a particular economic theory.” *Id.* at 75 (Holmes, J., dissenting). I read this statement as Justice Holmes’ view that the Fourteenth Amendment did not mandate the majority opinion’s holding that “the freedom of master and employee to contract with each other in relation to their employment, and in defining the same, cannot be prohibited or interfered with, without violating the Federal Constitution.” *Id.* at 64.

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

Response: In *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), the Supreme Court effectively overruled *Lochner* and rejected its characterization of the freedom of contract as absolute. *See also Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963) (the “doctrine that prevailed in *Lochner* . . . has long since been discarded”). The Supreme Court reasoned in *West Coast Hotel*: “The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law.” 300 U.S. at

391. The Supreme Court also noted that “the Constitution does not recognize an absolute and uncontrollable liberty,” and that “freedom of contract is a qualified, and not an absolute, right.” *Id.* at 391–92 (quoting *Chicago, Burlington & Quincy R. Co. v. McGuire*, 219 U.S. 549, 565 (1911)). If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all binding precedent of the Supreme Court, including *West Coast Hotel*. Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on the merits of any particular precedent that I may be called upon to interpret or enforce.

**17. 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: Please see my response to Question 21. I am not aware of any particular Supreme Court opinions that are no longer good law without having been formally overruled or clearly abrogated.

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

Response: Yes. If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and Second Circuit. The duty of all federal judges is to impartially apply the law to the facts as established by the evidence in the record, setting aside whatever personal views they may have, if any. If confirmed, I would swear an oath to discharge that duty fully and faithfully.

**18. 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?**

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

**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 to all subparts: The Supreme Court explained that the prohibition against monopoly in Section 2 of “the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful

acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.” *United States v. Grinnell Corp.*, 384 U.S. 563, 570–71 (1966). In *Eastman Kodak Company v. Image Technical Services, Inc.*, the Supreme Court found that “evidence that [the defendant] controls nearly 100% of the parts market and 80% to 95% of the service market, with no readily available substitutes, is . . . sufficient” to establish monopoly power under Section 2 of the Sherman Act. 504 U.S. 451, 481 (1992). The Second Circuit explained in *International Distribution Centers, Inc. v. Walsh Trucking Co., Inc.*, that “market share analysis, while essential, is not necessarily determinative in the calculation of monopoly power under” Section 2 of the Sherman Act. 812 F.2d 786, 792 (2d Cir. 1987). The Second Circuit instructed that courts must also consider “[o]ther market characteristics,” including “the strength of the competition, the probable development of the industry, the barriers to entry, the nature of the anticompetitive conduct and the elasticity of consumer demand.” *Id.*

If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and Second Circuit, including precedents concerning issues of monopoly power.

**19. Please describe your understanding of the “federal common law.”**

Response: In *Rodriguez v. Federal Deposit Insurance Corporation*, the Supreme Court addressed federal common law as follows:

Judicial lawmaking in the form of federal common law plays a necessarily modest role under a Constitution that vests the federal government’s “legislative Powers” in Congress and reserves most other regulatory authority to the States. As this Court has put it, “there is no federal general common law.” Instead, only limited areas exist in which federal judges may appropriately craft the rule of decision. These areas have included admiralty disputes and certain controversies between States. In contexts like these, federal common law often plays an important role. But before federal judges may claim a new area for common lawmaking, strict conditions must be satisfied. . . . In the absence of congressional authorization, common lawmaking must be “necessary to protect uniquely federal interests.”

140 S. Ct. 713, 717 (2020) (citations omitted).

**20. 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: With respect to provisions of the U.S. Constitution, the Supreme Court has

explained that it is the “duty of [federal courts] to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803). With respect to the provisions of state constitutions, the Supreme Court has confirmed that “the views of the state’s highest court with respect to state law are binding on the federal courts.” *Wainwright v. Goode*, 464 U.S. 78, 84 (1983). If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and Second Circuit, including *Marbury* and *Wainwright*.

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

Response: Federal district courts must interpret provisions of the U.S. Constitution in accordance with precedent of the Supreme Court and the relevant Circuit, including precedents setting forth methods of interpretation. With respect to the state constitutional provisions, “the views of the state’s highest court with respect to state law are binding on the federal courts.” *Wainwright v. Goode*, 464 U.S. 78, 84 (1983).

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

Response: The U.S. Constitution is “the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. Art. VI cl. 2.

The protections of the U.S. Constitution are binding on states, “notwithstanding” anything to the contrary in a state’s constitution. Under our federalist system, states may interpret similar or identical provisions of their state constitutions to provide greater protection for individual liberties than under the federal Constitution, but may not restrict those liberties in a manner that conflicts with or violates federal constitutional rights. *See, e.g., PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980) (finding that precedent had not “limit[ed] the authority of the State to exercise . . . its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution”).

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

Response: If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all Supreme Court precedents, including *Brown v. Board of Education*, 347 U.S. 483 (1954). The Code of Conduct for United States Judges prohibits judges from commenting on legal issues that could become the subject of litigation. For this reason, it is generally inappropriate for me, as a pending judicial nominee, to comment on the merits of any particular Supreme Court precedent that I may be required to interpret or enforce, if confirmed as a judge. I believe

that it is extremely unlikely, however, that the constitutionality of *de jure* racial segregation in public schools would arise in a case before me. Consequently, like prior judicial nominees, I believe that I can make exceptions to the general rule prohibiting comment on the correctness of Supreme Court precedent for *Brown v. Board of Education*, and state that I agree that *Brown* was correctly decided.

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

- a. **If so, what is the source of that authority?**
- b. **In what circumstances, if any, is it appropriate for courts to exercise this authority?**

Response to the question and all subparts: Federal courts considering a request for injunctive relief must follow the standards and procedures of Federal Rule of Civil Procedure 65. The Supreme Court has recognized that an “injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). Federal courts must ensure that any injunctive relief is “no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

The Supreme Court and lower courts are considering the legal authority of district courts to issue nationwide injunctions. *See, e.g., Dep’t of Homeland Sec. v. New York*, 140 S. Ct. 599 (2020) (Gorsuch, J., concurring) (“Injunctions like these thus raise serious questions about the scope of courts’ equitable powers under Article III.”). It would be inappropriate for me, as a pending judicial nominee, to comment on the propriety of nationwide injunctions because such questions are currently pending in courts. *See* Canon 3(A)(6), Code of Conduct for United States Judges.

If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit, including those addressing the proper scope of injunctive relief.

**23. 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 response to Question 22.

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

Response: Federalism is a foundational principle of our constitutional system,

designed to ensure “a healthy balance of power between the States and the Federal Government” in order to “reduce the risk of tyranny and abuse from either front.” *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). The Supreme Court has “long recognized the role of the States as laboratories for devising solutions to difficult legal problems.” *Oregon v. Ice*, 555 U.S. 160, 171 (2009). Federalism “allows local policies ‘more sensitive to the diverse needs of a heterogeneous society,’ permits ‘innovation and experimentation,’ enables greater citizen ‘involvement in democratic processes,’ and makes government ‘more responsive by putting the States in competition for a mobile citizenry.’” *Bond v. United States*, 564 U.S. 211, 221 (2011) (quoting *Gregory*, 501 U.S. at 458).

**25. 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 response to Question 4.

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

Response: Generally speaking, federal courts may award damages to remedy past harm that has already occurred, and may award injunctive relief to address ongoing harm or to prevent future harm that has not yet occurred. The availability of a particular form of relief depends on the circumstances of an individual case.

**27. What is your understanding of the Supreme Court’s precedents on substantive due process?**

Response: The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment protects certain substantive rights that are “objectively, deeply rooted in this Nation’s history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (quotation marks and citations omitted). Justice Scalia explained in his concurring opinion in *McDonald v. City of Chicago* that, under the doctrine of substantive due process, the Due Process Clause of the Fourteenth Amendment “incorporat[es] certain guarantees in the Bill of Rights” to protect against intrusion by state and local governments, under precedent that “is both long established and narrowly limited.” 561 U.S. 742, 791 (2010) (Scalia, J. concurring).

The Supreme Court’s precedents thus make clear that unless the demanding *Glucksberg* test is met, federal courts must allow legislatures and the public to debate and decide what balance to strike between legitimate state interests and individual liberties. *See* 521 U.S. at 719, 735 (holding that the Due Process Clause does not protect a right to physician-assisted suicide and recognizing that “the States are currently engaged in serious, thoughtful examinations of physician-assisted suicide and other similar issues”). *Glucksberg* identified cases in which the Court recognized certain Due Process rights not specifically enumerated in the Constitution’s text:



the rights 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); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, *ibid.*; *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952), and to abortion, [*Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992)] supra.

521 U.S. at 720 (citations condensed). In the years following *Glucksberg*, the Supreme Court also recognized that the Due Process Clause affords the right to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999), and the right of same-sex couples to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

**28. 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: Please see my responses to Questions 12 and 13.

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

Response: The Supreme Court has referred to both “freedom of worship” and “free exercise of religion,” but does not appear to have delineated any differences between the two terms. *Compare Lee v. Weisman*, 505 U.S. 577, 591 (1992) (referring to the right protected by the First Amendment Free Exercise Clause as the “freedom of worship”) with *Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012, 2019–20 (referring to the right protected by the Free Exercise Clause as “the free exercise of religion”). The Supreme Court has also recognized that the Free Exercise Clause “embraces” both “freedom of worship” and “freedom of conscience.” *Lee*, 505 U.S. at 591.

**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: The Religious Freedom Restoration Act of 1993 (RFRA) prohibits the federal government from “substantially burden[ing] a person’s exercise of religion even if the burden results from a rule 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. §§ 2000bb–1(a), (b). In *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court held that federal regulations mandating specified employers’ group health plans to provide coverage for certain contraceptive methods “clearly impose[d] a substantial burden” on religious belief because application of the regulations would impose significant costs on an employer, “if [the employer] insist[ed] on providing insurance coverage in accordance with their religious beliefs.” 573 U.S. 682, 726 (2014). If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and the Second Circuit, including but not limited to *Hobby Lobby*.

- 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 response to Question 14.

- 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 text of the Religious Freedom Restoration Act (RFRA) plainly indicates that it “applies to all Federal law, and the implementation of that law, whether statutory or otherwise.” 42 U.S.C. §§ 2000bb-3(a). For example, in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 736 (2014), the Supreme Court held that federal regulations mandating specified employers’ group health plans to provide coverage for certain contraceptive methods imposed a substantial burden on the defendant business owners’ free exercise of their sincerely held religious beliefs and thus violated RFRA. “RFRA also permits Congress to exclude statutes from RFRA’s protections.” *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) (citing 42 U.S.C. § 2000bb–3(b)).

- 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: I have never served as a judge, and thus have not issued any judicial opinions on these issues.

- 29. 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 understand this statement to mean that federal judges should faithfully and impartially apply the law to the facts in the record in any case or controversy properly before the court, without regard to any personal views they may have or whether the result is one that the judge “likes.”

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

Response: Yes. To the best of my knowledge, I have done so on only one occasion.

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

*Johnson v. Jessup*, 381 F. Supp. 3d 619 (M.D.N.C. 2019).

**31. 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: To the best of my recollection, I have not deleted or attempted to delete any social media content since I was first contacted by the White House about being under consideration for this nomination.

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

Response: I am not aware of a consensus definition of the term “systemically racist.” Whether there are systemic issues in the United States relating to race is a subject of widespread discussion amongst policymakers and the public. In addition, while I have worked for many years for organizations that support racial equality and provide legal representation to clients who bring claims against racial discrimination, I will also note the honor I feel as the first Muslim woman ever nominated to serve as a federal judge. I am deeply grateful for the opportunities that this country has afforded me and my family since my parents immigrated to the United States.

Federal district judges are duty-bound to fairly and impartially adjudicate specific cases or controversies that are properly before the court, some of which may include claims of race discrimination in the United States, without regard to any personal beliefs they may or may not have.

Federal district judges may be required to preside over claims alleging that systemic factors, such as patterns or practices of racial discrimination played a role in causing the violation of a plaintiff’s rights. *See, e.g., Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336–37, 342–43 (1977) (holding that plaintiff met its burden of proof “to establish by a preponderance of the evidence that racial discrimination” in employment

practices “was the . . . standard operating procedure[,] the regular rather than the unusual practice” of the defendant, a common carrier of motor freight with nationwide operations); *Monell v. New York City Dep’t of Social Servs.*, 436 U.S. 658, 694 (1978) (holding that municipal employers may be held liable under 42 U.S.C. §1983 for constitutional violations caused by the municipality’s “policy or custom”).

If confirmed as a district judge and presented with such a case, I would faithfully and impartially apply Supreme Court and Second Circuit precedent to the facts established by evidence in the record. My role would be limited to this critically important judicial function.

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

Response: Yes.

**34. How did you handle the situation?**

Response: As an attorney, my obligation has been to zealously represent the interests of ACLU and ACLU of Illinois clients within the bounds of the law. In this role, I investigate the available evidence and assess the likely facts as best as I can without formal fact-finding. I also carefully research the law and impartially apply the law to the likely facts in order to determine whether the legal standard for potential claims has been met. I have followed this approach without hesitation, even in situations where it required me to take a litigation position that did not align with any personal views that I may have had.

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

Response: Yes.

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

Response: Federalist No. 78.

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

Response: The public and policymakers are engaged in discussion and debate concerning this question, which implicates ethical, religious, philosophical, and public policy matters. The role of a judge, however, is not to make policy but to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function, and I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

**38. 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: I testified before the U.S. Commission on Civil Rights as described in my Senate Judiciary Committee Questionnaire. U.S. Comm'n on Civil Rts., Briefing Meeting Transcript, Municipal Policing and Courts: A Search for Justice or a Quest for Revenue, Mar. 18, 2016, <https://www.usccr.gov/files/calendar/transcript/03-18-16-Municipal-Courts-Briefing-Transcript.pdf>.

**39. 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)?
- b. The Supreme Court's substantive due process precedents?
- c. Systemic racism?
- d. Critical race theory?

Response to all subparts: No.

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

- a. Apple?
- b. Amazon?
- c. Google?
- d. Facebook?
- e. Twitter?

Response to all subparts: I do not own any individual shares in any company. My assets are set forth in my Financial Disclosure Statement, which was submitted to this Committee.

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

Response: I have occasionally reviewed and/or offered advice to colleagues including minor suggested edits to briefs, and did not place my name on the brief because my contributions were too minimal to warrant entering an appearance in the case.

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

Response: Cases in which I reviewed and/or offered advice such as minor suggested edits to a brief without placing my name on the brief include: *Indiana v. Timbs*, 134 N.E.3d 12 (Ind. 2019) (Proposed Amicus Curiae Brief of ACLU, Cato Institute, Drug Policy Alliance, Fines and Fees Justice Center, Law Enforcement Act Partnership, and R Street Institute as *Amici Curiae* in Support of

Appellee, 2019 WL 8509555); *People of State of Ill. v. Bowers*, No. 4-20-0509 (Ill. Ct. App. 4th Jud. Dist. Apr. 15, 2021) (Motion for Leave to File Brief of *Amici Curiae* ACLU of Illinois, *et al.*, in Support of Defendant-Appellant and Proposed Brief).

**42. Have you ever confessed error to a court?**

Response: To the best of my recollection, I have not confessed error to a court.

**a. If so, please describe the circumstances.**

**43. 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: All judicial nominees take the oath before testifying before the Senate Judiciary Committee, which requires them to provide truthful information in their responses to all questions, including those concerning judicial philosophy, so that the United States Senate can fulfill its advice and consent function under the Constitution.

**Questions for the Record for Nusrat Jahan Choudhury  
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**  
**Nusrat Choudhury, Nominee to the United States District Court for the**  
**Eastern District of New York**

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

Response: The sworn duty of a judge is to approach each case with an open mind and to impartially apply the law to the facts as established by the evidence in the record, setting aside any personal views the judge may have. District judges have a duty to follow the precedents of the Supreme Court and their Circuit, including precedent regarding interpretive methods or judicial philosophy. If confirmed, I would swear an oath to discharge that duty faithfully and impartially.

In terms of an overall approach to judging, the judges for whom I clerked—Judge Barrington D. Parker, Jr. of the U.S. Court of Appeals for the Second Circuit and Judge Denise L. Cote of the U.S. District Court for the Southern District of New York—both emphasized the principles of judicial restraint and economy, the importance of deciding only those issues needed to resolve a case, the need for scrupulous review of the factual record, and faithful adherence to precedent of the Supreme Court and Second Circuit. I would strive to follow their approach if confirmed as a district judge for the Eastern District of New York.

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

Response: If the Supreme Court or Second Circuit has previously interpreted a federal statutory provision, that interpretation would be binding precedent. If there is no binding precedent, a district judge should first consider the text of the statute, which is “the authoritative statement” as to the statute’s meaning. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). “When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.” *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 462 (2002) (quotation marks omitted).

Only if the plain meaning of a statute “is ambiguous, then a court may resort to the canons of statutory construction” to help resolve the ambiguity. *Nat. Res. Def. Council, Inc. v. Muszynski*, 268 F.3d 91, 98 (2d Cir. 2001). If the application of canons of statutory interpretation do not resolve the ambiguity, a court may then “resort to other interpretive aids (like legislative history).” *Id.* at 98. The Supreme Court has instructed, however, that federal courts “do not resort to legislative history to cloud a statutory text that is clear.” *Ratzlaf v. United States*, 510 U.S. 135, 147–48 (1994); *see also Milner v. Dep’t of the Navy*, 562 U.S. 562, 574 (2011) (“Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it.”). The Supreme Court has cautioned that “legislative history is itself often murky, ambiguous, and contradictory.” *Exxon Mobil Corp.*, 545 U.S. at 568.



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

Response: If the Supreme Court or Second Circuit has previously interpreted a constitutional provision, that interpretation would be binding precedent. If there is no binding precedent, a district judge should first consider the text of the constitutional provision, “guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” *Dist. of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (quotation marks and citation omitted). The Supreme Court has explained that when “the Constitution’s text does not alone resolve” a question of interpretation, the Court has turned to the “historical background of [the text] to understand its meaning.” *Crawford v. Washington*, 541 U.S. 36, 43–44 (2004).

In the rare case where there is no Supreme Court or Second Circuit precedent on the constitutional interpretation question, and where the sources listed in my answer to Question 2 do not resolve the issue, courts may also consider secondary sources such as contemporary dictionaries, commentaries, and state constitutions to determine the ordinary public meaning of the Constitutional text at the time of ratification. *See Heller*, 554 U.S. at 581 (citing contemporary dictionaries in interpreting Second Amendment).

If confirmed as a district judge, I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and Second Circuit, including *Heller* and *Crawford*.

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

Response: Please see my response to Question 3.

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

Response: Please see my response to Question 2.

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

Response: As discussed in my answer to Question 2, courts should rely on the statutory text as the primary and authoritative source for interpretation. “[T]he inquiry ceases” where the statutory text is clear and unambiguous. *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016); *see also Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 462 (2002).

The Supreme Court discussed in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the principles that courts should follow when confronted with claims that the meaning of a statute’s terms may have changed over time. The Supreme Court explained that courts should “normally interpret[] a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” *Id.* at 1738. If, however, in the years following a statute’s enactment, the courts are presented with “a new application” of statutory text “that is both unexpected and important,” courts must “enforce the plain terms of the law” as set forth in the text, even if the new application was not contemplated by the legislature when it enacted the statute. *Id.* at 1750; *see also id.* at 1753 (“[T]he same judicial humility that requires us to refrain from adding to statutes requires us to refrain from diminishing them”).

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

Response: The Supreme Court has explained that “the irreducible constitutional minimum of standing contains three elements”:

First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical . . . Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly . . . traceable to the challenged action of the defendant, and not . . . the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

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

Response: The Necessary and Proper Clause of Article I of the U.S. Constitution, provides Congress the power to “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” U.S. Const. Art. I, § 8, cl. 18. In *M’Culloch v. Maryland*, 17 U.S. 316, 353 (1819), the Supreme Court held that the Necessary and Proper Clause permitted Congress to incorporate a federal Bank of the United States under a power that was “implied, and involved in the grant of specific powers in the constitution; because the end involves the means necessary to carry it into effect.” Since the *M’Culloch* decision, the Supreme Court has recognized that Congress has certain powers deemed necessary and proper to carry out responsibilities conferred in constitutional provisions outside of the Necessary and Proper Clause. *See, e.g., United States v. Fox*, 95 U.S. 670, 672 (1877) (Congressional power to enact federal criminal laws); *United States v. Comstock*, 560 U.S. 126, 129–30, 146 (2010) (power to imprison); *United*

*States v. Kebodeaux*, 570 U.S. 387, 394 (2013) (power to require the registration of military sex offenders).

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

Response: If confirmed as a district judge, my duty would be to follow the Supreme Court and Second Circuit’s precedents with respect to any evaluation of disputes concerning Congressional authority to enact a federal statute. The Supreme Court has instructed that “[i]f no enumerated power authorizes Congress to pass a certain law, that law may not be enacted.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 535 (2012). Because “the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise,” a court should not automatically strike down a law when “Congress used the wrong labels” or failed to identify the source of its authority. *Id.* at 569–70 (quotation marks omitted). Moreover, the exercise of Congressional authority pursuant to certain provisions of the Constitution may still violate other constitutional provisions. *See, e.g., Reno v. American Civil Liberties Union*, 521 U.S. 844, 849 (1997) (striking down portions of federal statute regulating internet transmission of obscene or indecent messages to minors as a violation of the First Amendment).

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

Response: The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment protects certain substantive rights that are “objectively, deeply rooted in this Nation’s history and tradition,” and “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (quotation marks omitted).

Under the Supreme Court’s precedents, unless the demanding *Glucksberg* test is met, federal courts must allow legislatures and the public to debate and decide what balance to strike between legitimate state interests and individual liberties. *See Glucksberg*, 521 U.S. at 719 (holding that the Due Process Clause does not protect a right to physician-assisted suicide and recognizing that “the States are currently engaged in serious, thoughtful examinations of physician-assisted suicide and other similar issues”). *Glucksberg* identified cases in which the Court recognized certain due process rights not specifically enumerated in the Constitution’s text:

the rights 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); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, *ibid.*; *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v.*

*California*, 342 U.S. 165 (1952), and to abortion, [*Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992)] supra.

521 U.S. at 720 (citations condensed). The Supreme Court also “assumed, and strongly suggested” that there is a “right to refuse unwanted lifesaving medical treatment.” *Id.* In the years following *Glucksberg*, the Supreme Court also recognized that the Due Process Clause affords the right to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999), and the right of same-sex couples to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

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

Response: Please see my response to Question 9.

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

Response: Please see my response to Question 9. If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all binding precedent of the Supreme Court and Second Circuit, including with respect to substantive due process doctrine, regardless of whether the rights at issue in a given matter concerned economic or non-economic rights.

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

Response: Under Article I, Section 8 of the Constitution (the Commerce Clause), Congress has the power to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” Art. I, § 8, cl. 3. The Supreme Court has interpreted the Commerce Clause to empower Congress to regulate “three broad categories of activity”: (1) “the use of the channels of interstate commerce,” (2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce,” and (3) “activities that substantially affect interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558–59 (1995). Congress may not use its Commerce Clause power to “compel[] individuals to become active in commerce by purchasing a product.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 552 (2012). In other words, Congress may not regulate “inaction.” *Id.*

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

Response: A group of people is a “suspect class” if the group has “the traditional indicia of suspectedness.” *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974). The Supreme Court has instructed that these “traditional indicia” include whether the group has an “immutable characteristic determined solely by the accident of birth” or

whether the group is “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.” *Id.*; see also *Lyng v. Castillo*, 477 U.S. 635, 638 (1986). The Supreme Court has recognized that race, religion, national origin, and alienage are suspect classifications. See, e.g., *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (recognizing race, religion and alienage as suspect classifications); *Graham v. Richardson*, 403 U.S. 365, 371–32 (1971) (recognizing race, national origin, and alienage as suspect classifications).

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

Response: Separation of powers and the checks and balances between the three branches of the federal government are foundational to the Constitution’s design. The Supreme Court has emphasized that “the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as ‘a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.’” *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (quoting *Buckley v. Valeo*, 424 U.S. 1, 122 (1976)). “[I]ndividuals, too, are protected by the operations of separation of powers and checks and balances.” *Bond v. United States*, 564 U.S. 211, 223 (2011).

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

Response: If confirmed as a district judge and presented with such an issue, I would begin with “the Constitution’s text and structure, as well as precedent and history bearing on the question.” *Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015). I would closely review the constitutional text related to the powers granted to that branch of government, adhere to Supreme Court and Second Circuit precedent regarding the history and meaning of that text, and impartially determine whether the disputed action—as established by evidence in the record—overstepped the constitutional boundaries of that branch. For example, where there are disputes about “the claims of Presidential power,” the Supreme Court applies “Justice Jackson’s familiar tripartite framework from” *Youngstown. Id.* (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring)).

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

Response: None. All federal district judges are bound by, and must faithfully and impartially apply Supreme Court and their Circuit precedent to the specific facts in the record before them. Judges should treat all litigants with respect, but a judge’s personal feelings or empathies should play no role in the judge’s consideration of a case.

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

Response: Judges should seek to avoid both results, which are equally undesirable.

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 the frequency with which the Supreme Court has exercised judicial review to strike down federal statutes as unconstitutional during different time periods or what changes, if any, there have been in the frequency of, or underlying rationales for, such decisions. If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court. I would swear an oath to discharge that duty fully and faithfully, regardless of historical patterns in the Supreme Court’s jurisprudence.

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

Response: “Judicial review” refers to the long-established authority of federal courts to adjudicate cases concerning the legality of legislative and executive actions. *See Marbury v. Madison*, 5 U.S. 137 (1803) (declaring the Judiciary Act of 1789 unconstitutional). The Supreme Court has stated that “in a case or controversy,” only the judiciary has “[t]he power to interpret the Constitution.” *City of Boerne v. Flores*, 521 U.S. 507, 524 (1997), *superseded by statute on other grounds as stated in Holt v. Hobbs*, 574 U.S. 352, 357 (2015). To my knowledge, the Supreme Court has not, however, used the term “judicial supremacy.” I am generally unfamiliar with the term “judicial supremacy” and I am unaware of any consensus definition of that term, nor of binding precedent concerning how it would apply in cases or controversies that may come before the federal courts.

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

Response: Article VI requires all federal and state legislators, executive officers, and judicial officers to be “bound by Oath or Affirmation, to support [the United States]

Constitution.” U.S. Const., Art. VI. State officials in the executive, legislative and judicial branches are bound to follow the United States Supreme Court’s decisions interpreting the Constitution. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (“No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.”).

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: Courts remain “the least dangerous branch” when judges adhere to their oath to impartially interpret and apply the law to the specific facts established in the record in each case or controversy, and by reaching only those properly presented issues that must be resolved—not when they make policy. If confirmed as a district judge, my role would be limited to that judicial function. I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and Second Circuit.

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: If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent from the Supreme Court and Second Circuit. It would be improper for me to deem any particular Supreme Court or Second Circuit precedent to be “questionable” in reasoning or correctness, as I would be bound by, and would faithfully and impartially apply all of these precedents.

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: Congress has directed district judges to apply the specific factors set forth in 18 U.S.C. § 3553(a) when sentencing an individual defendant and to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth” in the statute. One (out of several) of these factors is “the need to avoid unwarranted sentence disparities among defendants *with similar records* who have been found guilty *of similar conduct*.” 18 U.S.C. § 3553(a)(6) (emphasis supplied). Section 3553(a) does not, however, permit a district judge to consider the defendant’s

group identity/identities (such as race, gender, nationality, sexual orientation, or gender identity) in the sentencing analysis.

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: Issues relating to the “fair, just, and impartial treatment of all individuals” in American society is an important topic of debate and discussion for policymakers and the public. The role of a judge, however, is to decide individual cases and controversies by approaching the case with an open mind, considering the parties’ arguments, scrupulously reviewing the factual record, and faithfully applying the law to the facts established in the record. In that role, I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and Second Circuit. Additionally, consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on statements made by the President.

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

Response: Black’s Law Dictionary defines “equity” as “[f]airness; impartiality; evenhanded dealing” and “[t]he body of principles constituting what is fair and right[.]” Black’s Law Dictionary defines “equality” as “[t]he quality, state, or condition of being equal; esp., likeness in power or political status.” *See* Black’s Law Dictionary (11th ed. 2019).

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

Response: The Fourteenth Amendment does not use the term “equity” in its provision that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const., amend. XIV, § 1. I am not aware of any Supreme Court precedent referencing the definition of “equity” provided in Question 24.

If confirmed as a district judge and presented with a case or controversy asserting a claim to “equity” in the application of a specific provision of the Constitution, a statute, or a regulation, I would research the applicable law, and faithfully and impartially apply the law to the facts as established in the record.

27. **How do you define “systemic racism?”**



Response: I am not aware of a consensus definition of the term “systemic racism.” Whether there are systemic issues in the United States relating to race is a subject of widespread discussion amongst policymakers and the public.

Merriam-Webster’s dictionary defines “systemic” as “of, or relating to, or common to a system.” Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/systemic>. Merriam-Webster’s dictionary defines “racism” as “a belief that race is a fundamental determinant of human traits and capacities and that racial differences produce an inherent superiority of a particular race,” and “the systemic oppression of a racial group to the social, economic, and political advantage of another.” *Id.*, <https://www.merriam-webster.com/dictionary/racism>.

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

Response: Black’s Law Dictionary defines critical race theory as “[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities.” Critical Race Theory, Black’s Law Dictionary (11th ed. 2019).

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

Response: Please see my responses to Questions 27 and 28.

**30. As the director for the ACLU of Illinois, you reviewed a report in the Human Rights Watch which took issue with an Illinois law requiring parental notice of abortion. When making a life-altering medical decision about her life and the life of her unborn child, should the default position be that a child counsel with her parents before making that decision?**

Response: The report in question was conceived and drafted by Human Rights Watch and senior colleagues at the ACLU of Illinois to advance the longstanding institutional position of my employer, the ACLU of Illinois, against a 1995 Illinois law. The ACLU of Illinois is a multi-issue organization. Since 2020, I have served as the organization’s Legal Director, a role that requires me to review the work product of colleagues, including those involved in this report, who work on areas of law that are not my focus.

The Supreme Court has upheld state laws mandating that pregnant minors seeking an abortion obtain the consent or notice of a parent or guardian as long as there is an adequate judicial bypass procedure. *See Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 899 (1992) (joint opinion) (discussing parental consent laws); *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 326–27 & n.1 (2006) (collecting cases addressing permissibility of parental consent and notification laws where there is an adequate judicial bypass procedure). The question of whether

the default position should be that people under the age of 18 consult with their parents before making certain medical decisions is a question for policymakers.

Consistent with the Code of Conduct for United States Judges, it is inappropriate for me, as a pending judicial nominee, to comment on legal issues that could become the subject of litigation and any personal views that I may or may not have about whether people under the age of 18 should consult with their parents before making certain medical decisions. The role of a judge is to resolve individual cases and controversies that are properly before the court by impartially applying the law to the facts as established by the evidence in the record in each case. If confirmed as a district judge, my role would be limited to that critically important judicial function. I would be bound by, and would faithfully and impartially follow all precedents of the Supreme Court and Second Circuit.

**31. The Human Rights Watch report notes that the ACLU of Illinois, of which you were the legal director, helped children bypass their parents through the “Judicial Bypass Coordination project.” Will you please tell us what your role was in this project?**

Response: The Supreme Court has upheld state laws mandating that pregnant minors seeking an abortion obtain the consent or notice of a parent or guardian as long as there is an adequate judicial bypass procedure. *See Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 899 (1992) (joint opinion) (discussing parental consent laws); *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 326–27 & n.1 (2006) (collecting cases addressing permissibility of parental consent and notification laws where there is an adequate judicial bypass procedure). Illinois law permits a person under the age of 18 to petition a court to obtain an abortion without parental notification upon a showing that the individual is mature and competent to decide whether to have an abortion or that notification to a qualifying adult family member under the law is not in their best interest. 750 ILCS 70, sec. 25(b), (d) (scheduled to be repealed on June 1, 2022). Illinois law provides a right to counsel for minors in such proceedings. 750 ILCS 70, sec. 25(b).

Since 2013, the Director of the ACLU of Illinois Women’s and Reproductive Rights Project has coordinated staff and volunteers in the Judicial Bypass Coordination Project to provide legal representation to people under the age of 18 in accordance with Illinois law, 750 ILCS 70, sec. 25. From 2020 through February 2022, the Director of the ACLU of Illinois Women’s and Reproductive Rights Project reported to me, as did other senior litigators and project directors at the ACLU of Illinois.

I have not, and do not, provide legal representation to ACLU of Illinois clients through the Judicial Bypass Coordination Project.

**Senator Ben Sasse**  
**Questions for the Record for Nusrat Jahan Choudhury**  
**U.S. Senate Committee on the Judiciary**  
**Hearing: “Nominations”**  
**April 27, 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: The judges for whom I clerked—Judge Barrington D. Parker, Jr. of the U.S. Court of Appeals for the Second Circuit and Judge Denise L. Cote of the U.S. District Court for the Southern District of New York—both emphasized the principles of judicial restraint and economy, the importance of deciding only those issues needed to render a decision in a case, the need for scrupulous review of the factual record, and faithful adherence to precedent of the Supreme Court and Second Circuit. I would strive to follow their approach if confirmed as a district judge for the Eastern District of New York.

All federal judges are required to approach each case with an open mind and to impartially apply the law to the facts as established by the evidence in the record, setting aside any personal views they may have. District judges have a duty to follow the precedents of the Supreme Court and their Circuit, including precedent regarding interpretive methods or judicial philosophy. If confirmed, I would swear an oath to discharge that duty faithfully and impartially.

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

Response: I have never served as a judge and have never used the term “originalist” or any other label to describe my writing or approach to legal analysis. I am aware that the Supreme Court has instructed that, when interpreting the Constitution in the absence of controlling precedent on the constitutional interpretation question at issue, courts are “guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” *Dist. of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (quotation marks and citation omitted). If confirmed as a district judge, I would faithfully and impartially follow all precedent from the Supreme Court and Second Circuit, including but not limited to *Heller* and other precedents regarding the interpretive methods for resolving constitutional cases.

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

Response: I have never served as a judge and have never used the term “textualist” or any other label to describe my writing or approach to legal analysis. I am aware that the Supreme Court has instructed that courts should “normally interpret[] a statute in accord with the ordinary public meaning of its terms at the time of its enactment,” and must not “overlook plain statutory commands on the strength of nothing more than suppositions about intentions or guesswork about expectations.” *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1738, 1754 (2020). If confirmed as a district judge, I would faithfully and impartially follow all precedent from the Supreme Court and Second Circuit, including but not limited to *Bostock* and other precedents regarding the interpretive methods for resolving cases concerning constitutional or statutory interpretation.

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

Response: No. More than two centuries ago, in *M’Culloch v. Maryland*, 17 U.S. 316, 415 (1819), the Supreme Court observed that the Constitution is “intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.” The Constitution does not change unless amended pursuant to the procedures set forth in Article V. If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent from the Supreme Court and Second Circuit, including with respect to methods of 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 deeply respect all of the Justices who have served on the Supreme Court for their judicial temperament, open-minded and rigorous approach to the law, faithful adherence to precedent, and other qualities. My admiration for the Justices is not based on the decisions they have authored or how they may have voted in any particular case.

I have deep respect and admiration for Justice Sandra Day O’Connor for her role as the first woman to sit on the Supreme Court and for her reputation for striving to reach consensus with other Justices, meticulously researching the law, and fostering civic education.

**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: All federal district judges are bound to faithfully follow precedent of the Supreme Court and their Circuit, regardless of whether anyone expresses the view that a particular Supreme Court or Circuit precedent “conflicts with the original public meaning of the Constitution.” If confirmed as a district judge for the Eastern District of New York, my duty would be to faithfully follow all Supreme Court and Second Circuit precedent. I would play no role in determining when, or under what circumstances, a federal Court of

Appeals may elect to revisit and either overturn or reaffirm their own precedent. Generally, a federal Court of Appeals may take such action only when sitting *en banc* pursuant to Federal Rule of Appellate Procedure 35.

- 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: Please see my response to Question 7.

- 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 Supreme Court or the relevant Circuit has interpreted a federal statutory provision, that interpretation would be binding precedent on all district judges in that Circuit. If there is no binding precedent, a lower court judge must first look at the statutory text because “the authoritative statement *is the statutory text*, not the legislative history or any other extrinsic material.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) (emphasis supplied). “[T]he inquiry ceases,” however, when “the statutory language is unambiguous and the statutory scheme is coherent and consistent.” *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016) (quotation marks omitted).

The Supreme Court has instructed that federal courts “do not resort to legislative history to cloud a statutory text that is clear.” *Ratzlaf v. United States*, 510 U.S. 135, 147–48 (1994); *see also Milner v. Dep’t of the Navy*, 562 U.S. 562, 574 (2011) (“Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it.”). The Second Circuit has held that, if the plain meaning of a statute “is ambiguous, then a court may resort to the canons of statutory construction” to help resolve the ambiguity. *Nat. Res. Def. Council, Inc. v. Muszynski*, 268 F.3d 91, 98 (2d Cir. 2001). If the application of canons of statutory interpretation do not resolve the ambiguity, a court may then “resort to other interpretive aids (like legislative history).” *Id.* But the Supreme Court has cautioned that “legislative history is itself often murky, ambiguous, and contradictory.” *Exxon Mobil Corp.*, 545 U.S. at 568.

If confirmed as a district judge, I would follow Supreme Court and Second Circuit precedent guiding that legislative history is to be consulted if and only if the statutory text in question is ambiguous and application of canons of statutory interpretation do not resolve the ambiguity. I am not aware of any precedent allowing district judges to insert their own views as to “general principles of justice” when interpreting a statute.

- 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. Congress has directed district judges to apply the specific factors set forth in 18 U.S.C. § 3553(a) when sentencing an individual defendant and to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth” in the statute. One (out of several) of these factors is “the need to avoid unwarranted sentence disparities among defendants *with similar records* who have been found guilty *of similar conduct*.” 18 U.S.C. § 3553(a)(6) (emphasis supplied). Section 3553(a) does not, however, direct or permit a district judge to consider whether defendants of a particular minority group receive on average longer sentences for a particular crime than defendants of other racial or ethnic groups.

**Questions from Senator Thom Tillis**  
**for Nusrat Jahan Choudhry**  
**Nominee to be US District Judge for the**  
**Eastern District of New York**

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

Response: Yes. Federal judges are duty-bound to set aside whatever personal views the judge may have, if any, on the issues presented and to impartially apply the law to the facts as established by the evidence in the record.

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

Response: My understanding is that the term “judicial activism” means different things to different people. If the term “judicial activism” refers to judicial decisions based on a judge’s personal views, rather than the impartial application of the law to the facts as established by the evidence in the record, then I agree that it is inappropriate. If the term “judicial activism” refers to judges deciding issues that are not squarely presented in the case or controversy before them or are not otherwise necessary to render a decision in the matter, then I also agree that it is inappropriate.

The judges for whom I clerked—Judge Barrington D. Parker, Jr. of the U.S. Court of Appeals for the Second Circuit and Judge Denise L. Cote of the U.S. District Court for the Southern District of New York—both emphasized the principles of judicial restraint and economy, the importance of deciding only those issues needed to render a decision in a case, the need for scrupulous review of the factual record, and faithful adherence to precedent of the Supreme Court and Second Circuit. I would strive to follow their approach if confirmed as a district judge for the Eastern District of New York.

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

Response: Yes, as to both. The duty of a judge is to impartially apply the law to the facts as established by the evidence in the record and, in that process, to ensure that the judge sets aside any personal views the judge may have concerning any issue presented. A federal judge must fulfill the judicial oath to “administer justice . . . [and] faithfully and impartially discharge and perform all the duties incumbent upon” the judge “under the Constitution and laws of the United States” in all cases.

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

Response: No. The role of a judge is not to make policy or to second-guess policy decisions made by the legislature, but to decide individual cases and controversies through scrupulous review of the factual record and the impartial application of the law to the facts as established by the evidence in the record in each case.

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

Response: Federal judges are duty-bound to set aside whatever personal views the judge may have, if any, and to impartially apply the law to the facts as established by the evidence in the record, regardless of the outcome in the case and whether that outcome is viewed as “undesirable” by the judge or anyone else.

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

Response: No. Federal judges are duty-bound to set aside whatever personal policy or political preferences the judge may have, if any, on the issues presented in a specific case or controversy and to impartially apply the law to the facts as established by the evidence in the record.

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

Response: In *District of Columbia v. Heller*, the Supreme Court held “that the Second Amendment confers an individual right to keep and bear arms.” 554 U.S. 570, 622 (2008). In *McDonald v. City of Chicago*, it held that “the right to possess a handgun in the home for the purpose of self-defense . . . applies equally to the Federal Government and the States.” 561 U.S. 742, 791 (2010). The Supreme Court granted certiorari and heard oral arguments in a case involving a Second Amendment claim against certain provisions of New York State’s concealed-carry law, and a decision in that case may provide additional precedent to guide lower courts. *See New York State Rifle and Pistol Ass’n. v. Bruen*, No. 20-843, 141 S. Ct. 2566 (2021) (Oct. Term 2021). If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent from the Supreme Court, including *Heller*, *McDonald*, and any forthcoming decision in *Bruen*.

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

Response: As with any case or controversy that may come before me, if confirmed, I would consider the parties’ arguments with an open mind, scrupulously review the factual record, comprehensively research the relevant law, and impartially apply the law to the facts as established by the evidence in the record. I would be bound by, and would faithfully and impartially apply, any precedents of the Supreme Court and Second Circuit concerning Second Amendment challenges to government policies or practices. Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending



judicial nominee, to comment on the merits of any particular legal dispute that may come before the court.

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

Response: Under the doctrine of qualified immunity, government officials are shielded from liability for damages under 42 U.S.C. § 1983 “unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time.” *Dist. of Columbia v. Wesby*, 138 S. Ct. 577, 589–90 (2018) (quotation marks omitted). “Clearly established means that, at the time of the officer’s conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful.” *Id.* (quotation marks omitted). If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all binding precedent of the Supreme Court and Second Circuit, including but not limited to *Wesby* and other precedent concerning qualified immunity.

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

Response: Whether current law adequately protects law enforcement officers in the field is an important question for policymakers in Congress and at the state level. The role of a district judge, however, is to decide individual cases and controversies by considering the parties’ arguments with an open mind, scrupulously reviewing the factual record, and applying the law impartially to the facts as established by the evidence in the record in each case. If confirmed as a district judge for the Eastern District of New York, my role would be limited to that judicial function. I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and Second Circuit, including with respect to the doctrine of qualified immunity.

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

Response: The duty of a judge is to impartially apply the law to the facts as established by the evidence in the record. If confirmed as a district judge for the Eastern District of New York, my role would be limited to that judicial function. The Supreme Court’s precedents provide guidance and instruction for lower federal courts to follow in determining the application of the qualified immunity doctrine to the facts of a particular case in order to determine the degree of immunity that may extend to a law enforcement officer’s actions in that case. In that judicial role, I would be bound by, and would faithfully and impartially follow, all precedent from the Supreme Court and the Second Circuit, including with respect to 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: In my nearly 16 years of professional legal practice, I have not had occasion to work on cases involving patent eligibility. If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow all precedent of the Supreme Court and Second Circuit. Consistent with the Code of Conduct for United States Judges, it is generally inappropriate for me, as a pending judicial nominee, to comment on the merits of any particular Supreme Court or Circuit precedent that I may be called upon to interpret or enforce and to comment on legal issues that could become the subject of litigation.

**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 all subparts: If confirmed as a district judge and presented with a case or controversy that properly raises any of the hypotheticals listed above, I would impartially apply the law, including Supreme Court and Second Circuit precedents, to the facts as established by the evidence in the record. Consistent with the Code of Conduct for United States Judges, it would be inappropriate for me, as a pending judicial nominee, to comment on the merits of any legal issues or disputes that may come before the court.

**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 response to Question 13.

**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: To the best of my recollection, while serving as a law clerk to judges on the Southern District of New York and on the Second Circuit, I may have worked on a handful of copyright cases and appeals. In my nearly 16 years of professional legal practice, I have not litigated any matters involving copyright law.

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

Response: I do not recall having any particular experiences involving the Digital Millennium Copyright Act.

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

Response: I do not recall having any experience addressing intermediary liability for online service providers that host unlawful content posted by users.

**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: To the best of my recollection, while serving as a law clerk to judges on the Southern District of New York and Second Circuit, I may have worked on

a handful of cases concerning intellectual property. In my nearly 16 years of professional legal practice, I have represented clients in several cases and amicus briefs concerning First Amendment and free speech issues. I do not recall having any experience addressing free speech and intellectual property issues.

**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 Supreme Court or the relevant Circuit has interpreted a federal statutory provision, that interpretation would be binding precedent on all district judges in that Circuit. If there is no binding precedent, a lower court judge must first look at the statutory text because “the authoritative statement *is the statutory text*, not the legislative history or any other extrinsic material.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) (emphasis supplied). “[T]he inquiry ceases,” however,” when “the statutory language is unambiguous and the statutory scheme is coherent and consistent.” *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016) (quotation marks omitted).

The Supreme Court has instructed that federal courts “do not resort to legislative history to cloud a statutory text that is clear.” *Ratzlaf v. United States*, 510 U.S. 135, 147–48 (1994); *see also Milner v. Dep’t of the Navy*, 562 U.S. 562, 574 (2011) (“Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it.”). The Second Circuit has held that, if the plain meaning of a statute “is ambiguous, then a court may resort to the canons of statutory construction” to help resolve the ambiguity. *Nat. Res. Def. Council, Inc. v. Muszynski*, 268 F.3d 91, 98 (2d Cir. 2001). If the application of canons of statutory interpretation do not resolve the ambiguity, a court may then “resort to other interpretive aids (like legislative history).” *Id.* at 98. But the Supreme Court has cautioned that “legislative history is itself often murky, ambiguous, and contradictory.” *Exxon Mobil Corp.*, 545 U.S. at 568.

If confirmed as a district judge, I would follow Supreme Court and Second Circuit precedent guiding that legislative history is to be consulted if and only if the statutory text in question is ambiguous.

- 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: An expert federal agency’s advice or analysis as to the interpretation of legislative text, as contained in an agency opinion letter, policy statement, agency manual, or enforcement guideline, receives *Skidmore* deference. *See Skidmore v. Swift*, 323 U.S. 134 (1944). Applying *Skidmore* deference, the agency’s advice and analysis is “entitled to respect,” but only to the extent they are persuasive, which is not the level of deference afforded under the *Chevron* doctrine. *Christensen v. Harris Cty.*, 529 U.S. 576, 587 (2000).

- 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: Federal judges are duty-bound to set aside whatever personal policy or political preferences the judge may have, if any, on the issues presented in a specific case or controversy and to impartially apply the law to the facts as established by the evidence in the record. If I confirmed as a district judge and presented with a case or controversy that properly raised the question of what is sufficient to provide notice of copyright infringement to an online service provider, I would impartially apply the law, including Supreme Court and Second Circuit precedents, to the facts as established by the evidence in the record. Respectfully, consistent with the Code of Conduct for United States Judges, it is generally inappropriate for me, as a pending judicial nominee, to comment on the merits of legal issues that may come before the court.

**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?**
- 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 to both subparts: If confirmed as a district judge and presented with a case or controversy that properly raises the question of how to interpret and apply the DCMA in its current form or as it may be amended, I would impartially apply the law, including Supreme Court and Second Circuit precedents, to the facts as established by the evidence in the record. The issue of whether the DMCA is

adequate in the internet era and whether any new laws are needed present important questions for policy makers. Federal judges are duty-bound to set aside whatever personal policy or political preferences the judge may have, if any, on the issues presented in a specific case or controversy and to impartially apply the law to the facts as established by the evidence in the record. Consistent with the Code of Conduct for United States Judges, it is generally inappropriate for me, as a pending judicial nominee, to comment on legal issues that may arise before the court.

**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: The Second Circuit has instructed:

The more it appears that the plaintiff’s choice of a U.S. forum was motivated by forum-shopping reasons—such as attempts to win a tactical advantage resulting from local laws that favor the plaintiff’s case, the habitual generosity of juries in the United States or in the forum district, the plaintiff’s popularity or the defendant’s unpopularity in the region, or the inconvenience and expense to the defendant resulting from litigation in that forum—the less deference the plaintiff’s choice commands and consequently, the easier it becomes for the defendant to succeed on a *forum non conveniens* motion . . . .

*Iragorri v. United Techs. Corp.*, 274 F.3d 65, 72 (2d Cir. 2001). If confirmed as a district judge and presented with a case or controversy that properly raises a challenge to a plaintiff’s choice of where to file litigation, I would be bound by and would faithfully and impartially apply precedents of the Supreme Court and Second Circuit, including but not limited to *Iragorri* and any other precedents concerning a plaintiff’s choice of forum.

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

Response: District judges preside over the matters that are assigned to them according to the local rules of the district court on which they serve. As a general matter, district judges should not encourage or discourage any litigant from filing a case in any particular court. Once a matter is filed, “unless the balance is strongly in favor of the defendant, the plaintiff’s choice of forum should rarely be disturbed.” *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947), *superseded by statute on other*

grounds as recognized in *Hartford Fire Ins. Co. v. Westinghouse Elec. Corp.*, 725 F. Supp. 317 (S.D. Miss. 1989). However, if a federal court finds that “trial in the chosen forum would establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff’s convenience” or that “the chosen forum [is] inappropriate because of considerations affecting the court’s own administrative and legal problems,” then the court may exercise “discretion to dismiss a case on the ground of *forum non conveniens* when an alternative forum has jurisdiction to hear [the] case.” *Sinochem Int’l Co. Ltd. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 429 (2007) (quotation marks omitted).

- 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. I do not believe it would be appropriate for a judge to ever engage in “forum selling” by proactively taking steps to attract a particular type of case or litigant.

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

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

Response to both subparts: Under 28 U.S.C. § 1651(a): “[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” Mandamus is a “drastic and extraordinary” remedy. *Ex parte Fahey*, 332 U.S. 258, 259 (1947). The Supreme Court has recognized that federal appellate courts have traditionally issued such writs for the purpose of “confi[n]g” the court against which mandamus is sought “to a lawful exercise of its prescribed jurisdiction.” *Roche v. Evaporated Milk Ass’n*, 319 U.S. 21, 26 (1943). This “extraordinary remedy” is justified by “only exceptional circumstances amounting to a judicial ‘usurpation of power,’” *Will v. United States*, 389 U.S. 90, 95 (1967), or a “clear abuse of discretion,” *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383 (1953).



Three conditions must be met for a court to issue a mandamus: (1) “the party seeking issuance of the writ [must] have no other adequate means to attain the relief” sought; (2) the requester’s “right to issuance of the writ” must be “clear and indisputable”; and (3) the issuing court “must be satisfied that the writ is appropriate under the circumstances.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004) (quotation marks and citation omitted).

As a judicial nominee, it would be inappropriate for me to comment on pending matters, including any claims that a district judge may have abused discretion or otherwise violated a legal duty. *See* Canon 3(A)(6), Code of Conduct for United States Judges.

**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?**

- 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?**
- 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 to the question and both subparts: If confirmed as a district judge for the Eastern District of New York, I would be bound by, and would faithfully and impartially follow, the Federal Rules of Civil Procedure and the Local Rules of United States District Courts for the Southern and Eastern Districts of New York, [https://www.nysd.uscourts.gov/sites/default/files/local\\_rules/2021-10-15%20Joint%20Local%20Rules.pdf](https://www.nysd.uscourts.gov/sites/default/files/local_rules/2021-10-15%20Joint%20Local%20Rules.pdf). As a pending judicial nominee, it would be inappropriate for me to comment on the merits of those Local Rules or any proposals to amend those rules with respect to patent cases.

**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?**

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

Response to both subparts: Please see my response to Question 19.