Senator Dick Durbin
Questions for the Record
Judge Edward Sunyol Kiel
Nominee to be United States District Judge, District of New Jersey

1. You have been involved in your court's Pretrial Opportunity Program (POP), which is designed to provide participants who have documented histories of significant substance abuse with treatment and—if successful—with a reduction of their sentence.

Please expand on your work with the POP Court. In your view, why are programs like these important?

Response: Serving as judge in our District's Pretrial Opportunity Program (Program) has been one of the most rewarding experiences I have had as a Magistrate Judge. Our District's Program brings together all stakeholders in the criminal justice system to provide an opportunity to those defendants who have shown a genuine commitment to substance abuse treatment and a desire to maintain their sobriety to participate in the Program. The Program is selective and rigorous, and the United States Attorney's Office must approve each defendant's entry into the Program. Upon completion of the Program, a defendant is eligible for a reduced or non-custodial sentence.

I have been a Magistrate Judge for over four years and a judge, along with District Judge Esther Salas, for the Program since January 2020. In that time, I have witnessed the incredible transformation of many of the Program's participants from leading lives controlled by substance abuse and involvement with the criminal justice system, to sober and productive lives. Pretrial diversionary programs for non-violent offenders whose criminal behavior is driven largely by their addiction, in my experience, works. However, all stakeholders in the criminal justice system must buy into the goals of the Program and work cooperatively to give each participant the best chance for success.

Pretrial diversionary programs that focus on treating substance abuse that played a major role in the defendant's criminal activity are important for several reasons. First, these programs treat the source of the criminal activity, which significantly reduces recidivism. Second, these programs divert criminal defendants from prisons where the opportunity for intensive supervision and treatment options is often not available or limited. Third, these programs benefit society in that successful participants have made significant changes to their lives, are not incarcerated, and are active and contributing members of their community. As a judge in our District Program, I have seen many of our participants make amazing transformations in their lives. They often reconnect with family members, have gainful and satisfying employment, and have learned the life-skills necessary for sober lives.

2. **During your hearing, you were asked questions regarding your affiliation with the Asian American Legal Defense and Education Fund (AALDEF).**

   What is your involvement with AALDEF?

Response: My involvement with AALDEF was limited to representing, pro bono, workers who were not paid overtime and minimum wages. I believe the last *pro bono* matter I handled at the request of AALDEF involved claims on behalf of workers at a Korean restaurant who were not paid overtime and minimum wages. That matter was filed in 2012. I have neither been involved nor affiliated with AALDEF since then.

As for fundraising for AALDEF, it appears that in 2010, I was a member of a committee of the Asian Pacific American Lawyers Association of New Jersey (APALA-NJ) that organized a golf outing. A portion of the proceeds from the golf outing were to be donated to AALDEF. My role in the committee was to be a point of contact for any inquiries regarding registering golfers and coordinating with the venue. I have no recollection of being involved in any decision about how the funds from the golf outing would be allocated. I do not recall hosting a separate fundraiser for AALDEF.

3. **During your hearing, you were also asked to comment on the ongoing Israel-Hamas conflict.**

   a. **Do you condemn the October 7, 2023, Hamas attacks on Israel?**

      Response: Yes.

   b. **Do you condemn anti-Semitism?**

      Response: Yes.

   c. **Do you condemn Islamophobia?**

      Response: Yes.

Senator Lindsey Graham
Questions for the Record
Judge Edward Sunyol Kiel
Nominee to be United States District Judge, District of New Jersey

1. **Please explain whether you agree or disagree with the following statement: "The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach."**

Response: I disagree with the statement. Judges are not to inject their personal beliefs and views into consideration of issues and cases pending before them. I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's response was: "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?**

Response: Judges are prohibited from taking this approach. I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

3. **During your confirmation hearing, you told Senator Hawley that you "don't believe [you've] ever done any fundraising" for the Asian American Legal Defense and Education Fund ("AALDEF"). On an online flier, however, you were listed as a point of contact for the fifth annual Golf Classic and Dinner at the Wild Turkey Golf Club to benefit the AALDEF in 2010.**

   a. **Did you participate in this event? If so, what was your role?**

   Response: It appears that in 2010, I was a member of a committee of the Asian Pacific American Lawyers Association of New Jersey (APALA-NJ) that organized a golf outing. A portion of the proceeds from the golf outing were to be donated to AALDEF. My role in the committee was to be a point of contact for any inquiries regarding registering golfers and coordinating with the venue. I have no recollection of being involved in any decision about how the funds from the golf outing would be allocated. I do not recall hosting a separate fundraiser for AALDEF.

   b. **Did you participate in any other fundraisers on behalf of the AALDEF? What were they? What was your role?**

Response: To the best of my recollection, no.

4. **Do you consider a law student's public endorsement of or praise for an organization listed as a "Foreign Terrorist Organization," such as Hamas or the Popular Front for the Liberation of Palestine, to be disqualifying for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Yes. However, I do not ask law clerk applicants about any particular political viewpoint. Rather, my interviews with potential law clerks focus on their interest in the law, why they are seeking a clerkship with a judge in the District of New Jersey, their academic record, and whether they will fit into the culture of our chambers. If I were to be informed of a potential candidate's public statement supporting organizations that have been designated as a "Foreign Terrorist Organization," I would consider this fact to be disqualifying.

5. **In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University's student bar association wrote "Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary." Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."**

Response: Yes. If a candidate qualified for an interview and I were to be informed of such a public statement, I would inquire about the candidate's support of any organization that has been designated as a terrorist organization. Any affirmative support of a terrorist organization or discriminatory opinion held by a candidate would be disqualifying. Such opinions deeply conflict with my chamber's culture of inclusivity, respect, and dignity. Additionally, such a public statement by a candidate would inform me of the candidate's judgment, which would also be considered in the hiring process.

6. **Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence.**

Response: 28 U.S.C. § 2255(a) provides: "A prisoner in custody under [a federal] sentence … claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence." Furthermore, 18 U.S.C. § 3582(c) provides a mechanism by which a prisoner in custody may seek a sentencing modification under the First Step Act.

7. Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.

Response: Students for Fair Admissions is a nonprofit organization that filed lawsuits against the University of North Carolina and Harvard College, alleging that their race-based admission programs violated the Constitution. After separate bench trials, the lower courts found both admissions programs to be permissible under the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court reversed the lower courts' decisions and held that consideration of race in the college admission process is unconstitutional. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

8. Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?

Response: Yes.

If yes, please list each job or role where you participated in hiring decisions.

Response: I served on the hiring committee at my former law firm for associate-attorney positions. As a Magistrate Judge, I have hired law clerks, interns, and staff members.

9. Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?

Response: No.

10. Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?

Response: No.

11. Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?

Response: No.

If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

Response: Not applicable.

12. Under current Supreme Court and Third Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?

Response: Yes. "[R]acial classifications, imposed by whatever federal, state, or local government actor, must be analyzed by a reviewing court under strict scrutiny [and] such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995); *Pryor v. National Collegiate Athletic Ass'n*, 288 F.3d 548, 562 (3d Cir. 2002) (holding that "[r]acial classifications, well intentioned or not, must survive the burdensome strict scrutiny analysis").

13. Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.

Response: The owner of a limited liability company that designs websites (Designer) filed a lawsuit to enjoin the Colorado Civil Rights Commission and the Colorado Office of the Attorney General from enforcing the Colorado Anti-Discrimination Act (CADA). The Designer was concerned with having to create websites that went against the Designer's religious belief that marriage should be reserved to unions between one man and one woman. The Supreme Court reversed the lower courts and held that to compel an individual to produce expressive content violates the Free Speech Clause of the First Amendment. The CADA was held to be unconstitutional. *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023)

14. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: "*If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein*."

Is this a correct statement of the law?

Response: Yes. In *Barnette*, the Supreme Court held that the Free Speech Clause of the First Amendment protects students from being forced to salute the American flag or say the Pledge of Allegiance. *Barnette* has not been overruled. *See 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

15. How would you determine whether a law that regulates speech is "content-based" or "content-neutral"? What are some of the key questions that would inform your analysis?

Response: "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). To determine whether a law is content-based, courts must consider whether the "regulation of speech 'on its face' draws distinctions based on the message a speaker conveys." *Id*. (quoting *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 566 (2011)). Meanwhile, "[a] regulation that serves purposes unrelated to the content of expression is deemed [content] neutral, even if it has an incidental effect on some speakers or messages but not others." *McCullen v. Coakley*, 573 U.S. 464, 480 (2014) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

16. What is the standard for determining whether a statement is not protected speech under the true threats doctrine?

Response: "True threats," which are "'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence'" are not protected by the First Amendment. *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (alteration in original) (quoting *Virginia v. Black*, 538 U.S. 343, 359 (2003)). "Whether the speaker is aware of, and intends to convey, the threatening aspect of the message is not part of what makes a statement a threat." *Id.* Rather, the existence of a threat depends on "'what the statement coveys' to the person on the other end.'" *Id.* (quoting *Elonis v. United States*, 575 U.S. 723, 73 (2015)).

17. Under Supreme Court and Third Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?

Response: The Supreme Court has stated that "the proper characterization of a question as one of fact or law is sometimes slippery" and often unclear. *Thompson v. Keohane*, 516 U.S. 99, 110-11 (1995). Factual issues have been classified as "questions extending beyond the determination of 'what happened'" and involve having "the trial court's appraisal of witness credibility and demeanor." *Id.* at 111. Meanwhile issues which have a "unique[] legal dimension," *id.* at 112 (quoting *Miller v. Fenton*, 47 U.S. 104, 116 (1985)), and "refer to the application of a legal standard to settled facts" are qualified as "questions of law," *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1068 (2020); *Washington v. Sobina*, 509 F.3d 613 (3d Cir. 2007).

18. Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?

Response: 18 U.S.C. § 3553(a)(2) sets forth retribution, deterrence, incapacitation, and rehabilitation as four factors to consider when imposing a sentence. Section 3553(a)(2) does not, however, direct the Court to assign any particular weight to each of the four factors. If confirmed, I will follow the Supreme Court and the Third Circuit precedents on the appropriate weight to apply to each factor under the particular facts of the case, after having given due consideration to the Probation Office's presentence report, the arguments of the government and defendant, and the Sentencing Guidelines.

19. Please identify a Supreme Court decision from the last 50 years that you think is particularly well-reasoned and explain why.

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting on whether a Supreme Court decision was "well-reasoned." *See* Code of Conduct for United States Judges, Canon 3(A)(6). I have faithfully applied Supreme Court precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

20. Please identify a Third Circuit judicial opinion from the last 50 years that you think is particularly well-reasoned and explain why.

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting on whether a Third Circuit decision was "well-reasoned." *See* Code of Conduct for United States Judges, Canon 3(A)(6). I have faithfully applied Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

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

Response: 18 U.S.C. § 1507 provides: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both. Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

22. Is 18 U.S.C. § 1507 constitutional?

Response: I am unaware of any Supreme Court decision addressing the constitutionality of 18 U.S.C. § 1507. However, in *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court upheld a state statute modeled after § 1507. I have faithfully applied Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

23. 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?**

Response: Yes. As a Magistrate Judge and a nominee for a District Judge position, I would normally be prohibited from commenting on my personal views of whether an opinion of the Supreme Court was "correctly decided." However, the holding in *Brown v. Board of Education* regarding *de jure* racial segregation in public schools is not likely to be relitigated. Consistent with the Code of Conduct for United States Judges, I believe *Brown v. Board of Education* was correctly decided.

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

Response: Yes. As a Magistrate Judge and a nominee for a District Judge position, I would normally be prohibited from commenting on my personal views of whether an opinion of the Supreme Court was "correctly decided." However, the holding in *Loving v. Virginia* regarding inter-racial marriage is not likely to be relitigated. Consistent with the Code of Conduct for United States Judges, I believe *Loving v. Virginia* was correctly decided.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Griswold v. Connecticut* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United

States Judges, Canon 3(A)(6). The Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2246 (2022). The decision in *Dobbs* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The Supreme Court overturned *Roe v. Wade* and its progeny, including *Planned Parenthood v. Casey*, in *Dobbs v. Jackson Women's Health Organization*. The decision in *Dobbs* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Gonzales v. Carhart* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *District of Columbia v. Heller* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *McDonald v. City of Chicago* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *New York State Rifle & Pistol Association v. Bruen* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Dobbs v. Jackson Women's Health* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

l. **Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?**

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* are binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

m. **Was *303 Creative LLC v. Elenis* correctly decided?**

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *303 Creative LLC v. Elenis* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

24. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?

Response: The Supreme Court has held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022) (quoting *Konigsberg v. State Bar of Cal*., 366 U.S. 36, 50, n.10 (1961)).

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

a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

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

a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the Alliance for Justice? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

Response: No.

27. Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."

a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

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

Response: I am unaware of anyone associated with Arabella's known subsidiaries.

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

Response: No.

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

Response: No.

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

a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

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

Response: No.

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

Response: No.

29. Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."

a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with Fix the Court? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with Fix the Court? If so, who?**

Response: No.

30. 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: I was invited to apply to Senator Cory Booker's Advisory Panel in 2020 and on October 19, 2020, I submitted an application. I interviewed with the Advisory Panel on November 19, 2020. In November 2022, I contacted Senator Booker's office and expressed

my interest in a District Judge appointment. On November 8, 2022, I submitted application materials to Senator Booker's staff. On June 23, 2023, I interviewed with Senator Booker and members of his staff. I then met with Senator Robert Menendez and his staff on July 24, 2023. On July 27, 2023, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On October 4, 2023, the President announced his intention to nominate me.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

36. Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?

Response: No.

a. **If yes,**

i. Who?

Response: Not applicable.

ii. What advice did they give?

Response: Not applicable.

iii. Did they suggest that you omit or include any particular case or type of case in your questionnaire?

Response: Not applicable.

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

Response: On July 27, 2023, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have had numerous communications, mostly through emails, on many dates with officials from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office.

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

Response: I received these questions from the Department of Justice, Office of Legal Policy (OLP) on November 8, 2023. Upon receipt of these questions, I drafted responses to the questions and forwarded them to the OLP. I then made limited edits, finalized the responses, and forwarded the final responses to the OLP.

Senator Amy Klobuchar
Questions for the Record
Judge Edward Sunyol Kiel
Nominee to be United States District Judge, District of New Jersey

1. **As a magistrate judge in the District of New Jersey, you have helped lead the court's Pretrial Opportunity Program, which allows some criminal defendants with substance abuse disorders to obtain treatment and rehabilitation under the supervision of a judge. For years, I have led bipartisan legislation to increase funding for drug treatment courts which help non-violent offenders receive treatment.**

   How has your experience with the drug court system shaped your perspective on how our justice system treats drug addiction?

Response: I have seen, first-hand, that pretrial diversionary programs that treat substance abuse through intensive supervision work. Serving as one of the judges in the District of New Jersey's Pretrial Opportunity Program (Program) has been one of the most rewarding experiences I have had as a Magistrate Judge. The Program brings together all stakeholders in the criminal justice system to provide an opportunity to those defendants who have shown a genuine commitment to substance abuse treatment and a desire to maintain their sobriety to participate in the Program. The Program is selective and rigorous, and the United States Attorney's Office must approve each defendant's entry into the Program. Upon completion of the Program, a defendant is eligible for a reduced or non-custodial sentence.

I have been a Magistrate Judge for over four years and a judge, along with District Judge Esther Salas, for the Program since January 2020. In that time, I have witnessed the incredible transformation of many of the Program's participants from leading lives controlled by substance abuse and involvement with the criminal justice system, to sober and productive lives. Pretrial diversionary programs for non-violent offenders whose criminal behavior is driven largely by their addiction, in my experience, works. However, all stakeholders in the criminal justice system must buy into the goals of the Program and work cooperatively to give each participant the best chance for success.

Pretrial diversionary programs that focus on treating substance abuse that played a major role in the defendant's criminal activity are important for several reasons. First, these programs treat the source of the criminal activity, which significantly reduces recidivism. Second, these programs divert criminal defendants from prisons where the opportunity for intensive supervision and treatment options is often not available or limited. Third, these programs benefit society in that successful participants have made significant changes to their lives, are not incarcerated, and are active and contributing members of their community. As a judge in the Program, I have seen many of our participants make amazing transformations in their lives. They often reconnect with family members, have gainful and satisfying employment, and have learned the life-skills necessary for sober lives.

Senator Mike Lee
Questions for the Record
Judge Edward Sunyol Kiel
Nominee to be United States District Judge, District of New Jersey

1. How would you describe your judicial philosophy?

Response: As a Magistrate Judge for over four years, I have strived to treat all litigants and counsel who appear before me with respect and dignity. I have case managed over 1,500 civil cases and have presided over hundreds of initial appearances and bail hearings in criminal matters. In all matters before me, I carefully consider the arguments of counsel, I have been prepared for hearings, and I faithfully apply the law to the facts. I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

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

Response: The Supreme Court and Third Circuit have instructed lower courts how to interpret statutes. "[T]he starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). "When words are not defined within the statute," the words are to be construed "in accordance with [their] ordinary or natural meaning." *Bonkowski v. Oberg Indus., Inc.*, 787 F.3d 190, 199 (3d Cir. 2015) (quoting *FDIC v. Meyer,* 510 U.S. 471, 476 (1994)). However, "[i]nterpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis." *Id.* (quoting *United States v. Husmann,* 765 F.3d 169, 173 (3d Cir. 2014)). If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will look to the text of the federal statute and to any binding precedent from the Supreme Court and Third Circuit when interpreting the text of a federal statute.

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

Response: If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will look to the text of the federal statute and to any binding precedent from the Supreme Court and Third Circuit when interpreting the text of a constitutional provision. *See District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (noting that "*the public understanding* of a legal text in the period after its enactment or ratification …. is a critical tool of constitutional interpretation").

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

Response: The Supreme Court has applied the original meaning of the text in its analysis when interpreting constitutional provisions in various contexts. *See, e.g.*, *New York State*

Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004). I have faithfully applied Supreme Court and Third Circuit precedent interpretation and application of constitutional provisions in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

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.

6. 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: Please see my responses to Questions 2 and 3.

7. What are the constitutional requirements for standing?

Response: To establish standing under Article III of the Constitution, a plaintiff must demonstrate: (1) an "injury in fact" which is concrete and particularized, not speculative or hypothetical; (2) a causal nexus between the alleged injury and the alleged conduct; and (3) that the injury will likely be redressable through the judicial process. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

8. 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 the Constitution grants Congress implied powers necessary to implement its enumerated powers. *McCulloch v. Maryland*, 17 U.S. 316 (1819); U.S. Const. Art. I, § 8, cl. 18 (vesting in Congress the power to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers").

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

Response: The Supreme Court has held that the constitutionality of an action taken by Congress is not dependent on explicit recitals of the power which it undertakes to exercise. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

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

Response: Unenumerated rights, which are rights "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," are protected. *Washington v.*

Glucksberg, 521 U.S. 702, 721 (1997); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022).

11. What rights are protected under substantive due process?

Response: Examples of fundamental rights protected under substantive due process are the rights to: (1) travel, *Paul v. Virginia*, 75 U.S. 168 (1868); (2) direct the upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); (3) marital privacy to buy and use contraceptives, *Griswold v. Connecticut*, 381 U.S. 479 (1965); (4) marry a person of a different race, *Loving v. Virginia*, 388 U.S. 1 (1967); and (5) marry a person of the same sex, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, 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: While the right to contraceptives for married couples is protected under substantive due process, *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court has held that the economic rights at stake in *Lochner* are subject to the restraints of due process. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) (overruling *Lochner v. New York*, 198 U.S. 45 (1905)). I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

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

Response: Congress has the power to regulate: (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and (3) "those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

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

Response: "[A] suspect class is one 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.'" *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976) (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973)). Race, alienage, national origin, and religion are suspect classes that would trigger strict scrutiny. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

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

Response: "[T]he 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).

16. 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 as I have done as a Magistrate Judge, I will faithfully apply precedent from the Supreme Court and Third Circuit concerning the applicable framework for determining the limits on a branch of government's power. *See* Y*oungstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (establishing a tripartite framework for evaluating executive action). I would review the text in conjunction with Supreme Court and Third Circuit precedent addressing situations where a branch of the government assumed authority not granted by the text of the Constitution.

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

Response: Judges are required to put aside their personal views and apply the law set by the legislature or precedent.

18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Both are undesirable and should be avoided.

19. 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 am unfamiliar with any study concluding that there has been an increase in the frequency of Supreme Court decisions striking down federal statutes. I have faithfully applied the Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

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

Response: "Judicial review" is the judiciary's role "to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). "Judicial supremacy" is defined in Black's Law Dictionary (11th ed. 2019) as the "doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review … are binding on the coordinate branches of the federal government and the states."

21. 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: All officials take an oath to defend the Constitution and are bound by the Supreme Court's interpretation of the Constitution. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). The Constitution is an enduring document which does not change unless amended through the procedures prescribed in Article V of the Constitution. *See Dred Scott v. Sandford*, 60 U.S. 393 (1857), *superseded by constitutional amendment*, U.S. Const. amend. XIV; *Chisholm v. Georgia*, 2 U.S. 419 (1793), *superseded by constitutional amendment*, U.S. Const. amend. XI. As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting further on how elected officials should balance competing interests they may have.

22. 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: I understand Federalist 78 to emphasize the limited role of the judiciary. While the executive and legislative branches have the power to make and enforce the law, the judiciary branch may only interpret the law. A judge's role is limited to applying the law to the facts of the case before the court, without reference to any impermissible or extraneous considerations.

23. 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: I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge. Indeed, I am duty bound to apply Supreme Court and Third Circuit precedent. Only the Supreme Court has the power to overturn its prior rulings. The Supreme Court or the Third Circuit sitting *en banc* can overturn Third Circuit precedent.

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

Response: None.

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

Response: I am neither familiar with this statement from the Biden Administration nor the context in which the statement was issued. However, Black's Law Dictionary (11th ed. 2019) defines "equity" as "[f]airness; impartiality; evenhanded dealing," or "the body of principles constituting what is fair and right." I am unfamiliar with the specific definition of equity set forth in the question.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "equality" as "[t]he quality, state, or condition of being equal" or "likeness in power or political status." Please see my response to Question 25 for the definition of "equity."

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

Response: The Fourteenth Amendment provides that "[n]o State shall … deny to any person within its jurisdiction the equal protection of the laws." I am unaware of any Supreme Court or Third Circuit precedent addressing whether the Equal Protection clause guarantees "equity" as defined by the Biden Administration.

28. How do you define "systemic racism?"

Response: I have not used the phrase and do not have an independent definition of the phrase. However, Merriam-Webster's Dictionary (11th ed. 2023) defines "systematic racism" as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems."

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

Response: I have not used the phrase and do not have an independent definition of the phrase. However, Black's Law Dictionary (11th ed. 2019) 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."

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

Response: Please see my responses to Questions 28 and 29.

31. You worked with the Asian American Legal Defense and Education Fund ("AALDF"), including hosting a fundraiser for that organization in 2010. AALDF's advocates for, among other things, "educational equity" and "housing and environmental justice." AALDF's X account frequently posts radical progressive views, including retweeting groups like the Southern Poverty Law Center and the Arab Resource and Organizing Center.

On October 13, 2023—six days after Hamas terrorists launched an unprecedented attack on Israeli civilians killing 1,400 and capturing more than 200 hostages—AALDF tweeted:

> **We are concerned with reports of hate violence and harassment against Muslim Americans across New York City and in other parts of the Country. People should be free from state-sponsored violence and terrorism, especially those who have faced a history of oppression and religious profiling. We call for an end to the Islamophobia that threatens our families, our communities, and our democracy."**

Do you condemn the violent terrorist acts perpetrated by Hamas against Israel on October 7th, 2023? Do you continue to support the mission, messages, and methods employed by AALDF?

Response: Yes. I condemn the violent terrorist acts perpetrated by Hamas against Israel on October 7, 2023.

My involvement with AALDEF was limited to representing, pro bono, workers who were not paid overtime and minimum wages. I believe the last *pro bono* matter I handled at the request of AALDEF involved claims on behalf of workers at a Korean restaurant who were not paid overtime and minimum wages. That matter was filed in 2012. I have neither been involved nor affiliated with AALDEF since then lack knowledge with respect to the organization's current mission, message, and methods employed as to Hamas or any other issue.

As for fundraising for AALDEF, it appears that in 2010, I was a member of a committee of the Asian Pacific American Lawyers Association of New Jersey (APALA-NJ) that organized a golf outing. A portion of the proceeds from the golf outing were to be donated to AALDEF. My role in the committee was to be a point of contact for any inquiries regarding registering golfers and coordinating with the venue. I have no recollection of being involved in any decision about how the funds from the golf outing would be allocated. I do not recall hosting a separate fundraiser for AALDEF.

32. When Senator Hawley asked if you condemn those who are calling for the elimination of the State of Israel and the killing of Jews in the Middle East, you responded by saying, "I know that it is a very complicated situation, a tragic situation. I haven't studied the situation. I don't know how I can answer that." Do you condemn calls for the killing of Jews in the Middle East and throughout the world?

Response: Yes. I condemn calls for the killing of all innocent lives.

33. You recently wrote an article addressing "diversity fatigue," stating that "there are decades of work left to do to shift the work of diversity and inclusion from committees, strategies, and workshops" to eventually change the culture of the legal profession. You added that "judges need to play a part too." Should federal district court judges promote political or ideological causes from the bench? How would you separate your activism from your judicial responsibilities?

Response: I believe the references cited above were in a speech before the Bergen County Bar Association. As to the phrase "diversity fatigue," I was referring to a term used in an article in the American Lawyer concerning diversity in the legal profession. Judges are prohibited from promoting political or ideological causes from the bench. I do not consider my personal views in my role as a judge. Rather, I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

Senator Ted Cruz
Questions for the Record
Judge Edward Sunyol Kiel
Nominee to be United States District Judge, District of New Jersey

1. Is racial discrimination wrong?

Response: Yes. Racial discrimination is unlawful pursuant to multiple statutes and the United States Constitution. *See, e.g.*, Title VII of the Civil Rights of 1964, 78 Stat. 253, as amended, 42 U.S.C. § 2000e *et seq*.; Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing an opinion regarding matters that may come before the courts. *See* Code of Conduct for United States Judges, Canon 3(A)(6). Unenumerated rights, which are rights "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," are protected. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022). If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will. faithfully apply Supreme Court and Third Circuit precedent.

3. How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.

Response: As a Magistrate Judge for over four years, I have strived to treat all litigants and counsel who appear before me with respect and dignity. I have case managed over 1,500 civil cases and have presided over hundreds of initial appearances and bail hearings in criminal matters. In all matters before me, I carefully consider the arguments of counsel, I have been prepared for hearings, and I faithfully apply the law to the facts. I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge. I do not identify with the judicial philosophy of any particular Justice.

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

Response: I do not subscribe to a particular ideology or legal philosophy. Black's Law Dictionary (11th ed. 2019) defines "originalism," as a "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." The Supreme Court has applied originalism to decide both statutory and constitutional issues. *See, e.g.*, *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2136-37 (2022); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004). If

confirmed as a District Judge, and as I have done as a Magistrate Judge, I will faithfully apply Supreme Court and Third Circuit precedent.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "living constitutionalism," as a doctrine in which "the Constitution should be interpreted and applied in accordance with the changing circumstances and, in particular, with changing social values." I do not subscribe to a particular ideology or legal philosophy. If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will faithfully apply Supreme Court and Third Circuit precedent concerning the interpretation of statutory and constitutional provisions.

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

Response: In the rare instance that there is no applicable precedent, lower courts must adhere to the methods of interpretation prescribed by the Supreme Court. If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will look to the text of the federal statute and to any binding precedent from the Supreme Court and Third Circuit interpreting the relevant text. *See District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (noting that "*the public understanding* of a legal text in the period after its enactment or ratification …. is a critical tool of constitutional interpretation").

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

Response: The Supreme Court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). Supreme Court precedent has also, at times, required consideration of the current understanding of the Constitution or of a statute. *See Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 574-75 (2002). If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will faithfully apply precedent from the Supreme Court and Third Circuit relating to specific statutory and constitutional provisions, including as to the appropriate interpretive method.

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

Response: The Constitution is an enduring document which does not change unless amended through the procedures prescribed in Article V of the Constitution.

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

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Dobbs v. Jackson Women's Health* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *New York State Rifle & Pistol Association v. Bruen* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

11. Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a Magistrate Judge and a nominee for a District Judge position, I would normally be prohibited from commenting on my personal views of whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, the holding in *Brown v. Board of Education* regarding de jure racial discrimination in public schools is not likely to be relitigated. Consistent with the Code of Conduct for United States Judges, I believe *Brown v. Board of Education* was correctly decided.

12. Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* are binding precedent and, if confirmed as a District Judge, I will apply the decisions fully and faithfully.

13. Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?

Response: Yes. It is binding precedent.

a. Was it correctly decided?

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision in *Gibbons v. Ogden* is binding precedent and, if confirmed as a District Judge, I will apply the decision fully and faithfully.

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

Response: 18 U.S.C. § 3142 provides a rebuttable presumption of pretrial detention for certain crimes including: (1) crimes of violence; (2) narcotics offenses with a term of imprisonment of ten years or more; (3) offenses with a maximum punishment of life imprisonment or death; (4) crimes involving human trafficking or slavery; (5) certain offenses involving minor victims; and (6) crimes that involve the possession or use of a firearm or other destructive device. *See* 18 U.S.C. § 3142(e)(2), (3).

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

Response: I am unaware of any Supreme Court or Third Circuit precedent that addresses Congress's rationale for imposing a rebuttable presumption of pretrial detention for certain offenses. However, under 18 U.S.C. § 3142(e)(1), a judge is to consider the safety of the community and the risk of flight in determining whether pretrial detention is appropriate. Accordingly, it appears that Congress determined that defendants charged with certain offenses are more likely to pose a danger to the community and present a greater risk of flight.

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

Response: Yes.

With respect to constitutional limits, the Free Exercise Clause of the First Amendment acts as one of these limitations by restricting the government from treating "*any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). In such a situation, and where the record reveals animus or hostility toward religious belief, strict scrutiny is applied. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018).

An example of a statutory limitation is the Religious Freedom Restoration Act of 1993, which prohibits the federal government from "substantially burden[ing] a person's exercise of religion even if that burden results from a rule of general applicability" unless the application of the burden "(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling government interest." 42 U.S.C § 2000bb–1(a), (b); *see also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

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

Response: Under the Free Exercise Clause of the First Amendment, enhanced protections are provided to religious freedom. As a result, government actions which burden an individual or organization's religious freedom will be subject to strict scrutiny. *See, e.g.*, *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2310 (2023); *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022); *Carson v. Makin,* 142 S. Ct. 1987 (2022); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021); *Espinosa v. Montana Dept. of Revenue*, 140 S. Ct. 2246, 2257 (2020); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). Where, however, a law is neutral, generally applicable, and only incidentally burdens religious freedom, strict scrutiny does not apply. *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 531.

Moreover, the Religious Freedom Restoration Act of 1993 prohibits the federal government from "substantially burden[ing] a person's exercise of religion even if that burden results from a rule of general applicability" unless the application of the burden "(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling government interest." 42 U.S.C § 2000bb–1(a), (b).

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

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), a church and two synagogues (Applicants) sought relief from an Executive Order issued by the Governor of New York in response to COVID-19, which imposed restrictions on the number of persons allowed to attend each religious service. The Supreme Court held that the Applicants were entitled to a preliminary injunction pending appellate review on the grounds that "their First Amendment claims [we]re likely to prevail, that denying them relief would lead to irreparable injury, and that granting relief would not harm the public interest." *Id*. at 66. The Supreme Court explained that there was a likelihood of success on the merits because the Applicants had made a strong showing that the challenged restrictions violated "'the minimum requirement of neutrality' to religion." *Id*. (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (1993)).

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court granted an application for injunctive relief that enjoined California from enforcing COVID-19-related restrictions on at-home religious gatherings. The Supreme Court explained that strict scrutiny under the Free Exercise Clause applied to California's restrictions because "government regulations are not neutral and generally applicable . . . whenever they treat *any* comparable secular activity more favorably than religious exercise." *Id*. at 1296 (citing *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67-68 (2020)). The Supreme Court held that the applicants were entitled to an injunction pending appeal because they were likely to succeed on the merits of their claim, they were irreparably harmed by the loss of their free exercise rights, and California had "not shown that 'public health would be imperiled' by employing less restrictive measures." *Id.* at 1297 (quoting *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. at 68).

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

Response: Yes.

20. 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 Comm'n*, 138 S. Ct. 1719 (2018), a Colorado baker declined to bake a cake for a same-sex couple's wedding because of the baker's religious beliefs. The same-sex couple filed a charge with the Colorado Civil Rights Commission, which ruled in favor of the same-sex couple, required the baker to make the cake, and rejected the baker's First Amendment claims. The Supreme Court held that the Colorado Civil Rights Commission violated the Free Exercise Clause of the First Amendment by treating the baker's case with "clear and impermissible hostility toward the sincere religious beliefs that motivated his" refusal to bake the cake for the same-sex couple. *Id*. at 1729.

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

Response: Yes, if an individual's religious beliefs are "sincerely held," such beliefs will be protected under the First Amendment. *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 832-35 (1989); *see also Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 714 (1981) (holding that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection"); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021).

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

Response: The Supreme Court held that federal courts' "narrow function" is to "determine whether the line drawn reflects an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (quoting *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 715 (1981)).

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

Response: Please see my responses to Questions 21 and 21(a).

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

Response: I am unaware of the Catholic Church's official position regarding whether abortion is acceptable and morally righteous.

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

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that the "ministerial exception," adopted by the Court in *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, 565 U.S. 171 (2012), applied to preclude adjudication of two Catholic school teachers' employment-discrimination claims. The Supreme Court explained that in evaluating whether the ministerial exception applies it is more important to look at "what an employee does" rather than simply looking for the title of "minister." *Id*. at 2064. Examining the roles of the teachers in this case, the Supreme Court applied the ministerial exception because the employees' roles included "educating young people in their faith, inculcating its teachings, and training them to live their faith," which purposes "lie at the very core of the mission of a private religious school." *Id*. As a result, the Court held that "judicial intervention in disputes between the school and the

teacher threatens the school's independence in a way that the First Amendment does not allow." *Id*. at 2069.

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

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the Supreme Court held that the City of Philadelphia's refusal to work with a Catholic organization in its foster care program violated the Free Exercise Clause of the First Amendment. *Id.* at 1874-75. The City stopped working with the Catholic organization upon discovering that the organization would not place foster children with same-sex couples. *Id*. at 1874. The Supreme Court found that the City's action was subject to strict scrutiny because the City's foster care contractual non-discrimination requirement was not "generally applicable," instead it incorporated "a system of individual exemptions." *Id*. at 1878. Analyzing the case under strict scrutiny, the Supreme Court held that the City offered "no compelling reason why it has a particular interest in denying an exception to [the religious entity] while making them available to others." *Id.* at 1882.

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

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the Supreme Court held that Maine's tuition assistance program for private secondary schools violated the Free Exercise Clause of the First Amendment because the program's "nonsectarian" requirement created a carve-out for religious schools. The Supreme Court explained that by paying for tuition for certain students at private schools "so long as the schools are not religious," Maine was "discriminat[ing] against religion." *Id*. at 1998. Applying strict scrutiny, the Court held that Maine's program did not survive because a "State's anti-establishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit." *Id.*

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

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that a school district's discipline of a coach for engaging in a quiet prayer of thanks at midfield after football games was unconstitutional. The Supreme Court determined that the coach's prayer was unattributable to his duties as a coach and were protected by both the Free Exercise and Free Speech Clauses of the First Amendment, which protect the right of an individual to engage in religious observance without reprisal from the government. *Id*. at 2433.

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

Response: In *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), a case seeking relief under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Supreme Court vacated a state court judgment and remanded the case for further consideration in light of the recent decision in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). The state court required an Amish community to abide by a Fillmore County ordinance requiring homes to have a modern septic system for the disposal of gray water despite the Amish's request for an exception based on their sincerely held religious beliefs. *Id.* at 2431. In his concurrence, Justice Gorsuch stated that "*Fulton* makes clear that the County and courts below misapprehended RLUIPA's demands," which Justice Gorsuch explained "requires application of 'strict scrutiny.'" *Id*. at 2432. Justice Gorsuch elaborated on the standard, stating that courts cannot rely on "broadly formulated" government interests, but instead must "scrutinize [] the asserted harm of granting specific exemptions to particular religious claimants." *Id*. (alternation in original) (quoting *Fulton*, 141 S. Ct. at 1881).

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing an opinion regarding matters that may come before the courts, including the constitutionality of federal statutes. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will faithfully apply Supreme Court and Third Circuit precedent concerning the interpretation of 18 U.S.C. § 1507.

28. 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;

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

29. 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.

30. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?

Response: Yes.

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

Response: Political appointments are governed by the Appointments Clause of the Constitution, which vests the appointing power with the President of the United States upon advice and consent of the Senate. As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing an opinion on what the President and Senate should consider in exercising their constitutional duties. If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will faithfully apply Supreme Court and Third Circuit precedent.

32. If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?

Response: The Supreme Court has explained that disparate impact "may be relevant evidence of . . . discrimination." *Coleman v. Ct. of Appeals of Maryland*, 566 U.S. 30, 42 (2012) (alteration in original) (quoting *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 372-73 (2001)); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1915 (2020) ("Possible evidence [of animus] includes disparate impact on a particular group."). However, such evidence alone is insufficient to conclude there was a racially discriminatory purpose. *Id*.

33. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: The question of whether the number of Supreme Court Justices should be increased or decreased is a policy issue for policymakers to consider. As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing an opinion. If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will

faithfully apply Supreme Court and Third Circuit precedent.

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

Response: No.

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

Response: In *New York Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court concluded that the original public meaning of the Second Amendment "protect[s] an individual right to armed self-defense." *See also District of Columbia v. Heller*, 554 U.S. 570, 592 (2008) (holding the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation").

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

Response: The Supreme Court has held that firearm restrictions will not be justified if the government is unable to demonstrate that the "regulation is consistent with this Nation's historical tradition of firearm regulation." *New York State Rifle and Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022) (building upon *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010)).

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

Response: Yes. *See District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: The Supreme Court has explained that the constitutional right to bear arms "in public for self-defense is not a 'second-class right.'" *New York State Rifle and Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022) (quoting *McDonald v. Chicago*, 561 U.S. 742, 780 (2010)). I am unaware of any Supreme Court or Third Circuit precedent holding or suggesting that the right to own a firearm receives less constitutional protection than other individual rights specifically enumerated in the Constitution.

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

Response: The Supreme Court has explained that the constitutional right to bear arms "in public for self-defense is not a 'second-class right . . . .'" *New York State Rifle and Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022) (quoting *McDonald v. Chicago*, 561 U.S.

742, 780 (2010)). I am unaware of any Supreme Court or Third Circuit precedent holding or suggesting that the right to own a firearm receives less constitutional protection than the right to vote under the Constitution.

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

Response: Pursuant to Article II, Section 3 of the Constitution, the executive "shall take Care that the Laws be faithfully executed." The Supreme Court has held that 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). As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing an opinion or commenting regarding how this discretion should be applied. If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will faithfully apply Supreme Court and Third Circuit precedent.

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

Response: Generally, prosecutorial discretion refers to the power of a prosecutor to decide how to proceed with a case in terms of whom to charge, what charges to bring, and whether to engage in plea bargaining. A substantive administrative rule change would be governed by the Administrative Procedure Act, which establishes the procedures for such rule changes. 5 U.S.C. §§ 551-559.

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

Response: No.

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

Response: In *Alabama Association of Realtors v. Department of Health and Human Services*, 141 S. Ct. 2485 (2021), the Supreme Court vacated a nationwide eviction moratorium that was imposed by the Centers for Disease Control and Prevention (CDC) in response to the COVID-19 pandemic. *Id.* at 2940. The Supreme Court determined that petitioners had a substantial likelihood in success on the merits regarding their claim that the CDC exceeded its statutory authority by imposing the moratorium. *Id.* at 2489-90. Taking into account the applicable factors relevant to determining whether to continue the stay, the Supreme Court held, "It is up to Congress, not the CDC, to decide whether the public interest merits further action here." *Id*. at 2490.

44. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing an opinion on the propriety of prosecutorial announcements. I am well aware of the requirements of due process under the law. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will faithfully apply Supreme Court and Third Circuit precedent.

45. You provided legal services and did fundraising for the Asian American Legal Defense and Education Fund (AALDEF). On October 17, 2023, the Fund retweeted a post by the Arab Resource & Organizing Center Bay Area that called for "an end to the genocide in Gaza" and shared a national student walkout for Gaza toolkit, which provides "resources, talking points, and chants" for students planning to join a school walkout to "end genocide in Gaza." Since then, AALDEF has repeatedly called for a ceasefire, which will only benefit Hamas.

a. Do you denounce AALDEF's support of Hamas?

Response: I am unaware of the comment and retweet that are referenced in the question, and unaware of whether AALDEF supports Hamas. That said, I personally condemn Hamas's terroristic acts against Israel on October 7, 2023.

My involvement with AALDEF was limited to representing, pro bono, workers who were not paid overtime and minimum wages. I believe the last *pro bono* matter I handled at the request of AALDEF involved claims on behalf of workers at a Korean restaurant who were not paid overtime and minimum wages. That matter was filed in 2012. I have neither been involved nor affiliated with AALDEF since then.

As for fundraising for AALDEF, it appears that in 2010, I was a member of a committee of the Asian Pacific American Lawyers Association of New Jersey (APALA-NJ) that organized a golf outing. A portion of the proceeds from the golf outing were to be donated to AALDEF. My role in the committee was to be a point of contact for any inquiries regarding registering golfers and coordinating with the venue. I have no recollection of being involved in any decision about how the funds from the golf outing would be allocated. I do not recall hosting a separate fundraiser for AALDEF

b. Is Hamas a terrorist organization?

Response: Yes.

c. Did Hamas kill innocent civilians, including women and children, as part of its attack on Israel on October 7, 2023?

Response: Yes.

d. Was Hamas the aggressor in the October 7, 2023 attack on Israel?

Response: Yes.

46. On October 13, 2023, AALDEF tweeted that they were concerned with "the dangerous trend of Islamophobia that occurred after 9/11 and persist today. People should be free from state-sponsored violence and terrorism, especially those who have faced a history of oppression and religious profiling. We call for an end to the Islamophobia that threatens our families, our communities, and our democracy."

a. Do you believe that America is Islamophobic? If not, do you condemn those, including AALDEF, that would contend that it is?

Response: I do not believe America is Islamaphobic. I am unaware of the comment that is referenced in the question, and unaware whether AALDEF believes America is Islamophobic.

b. Are Muslims in America subject to state-sponsored violence or terrorism?

Response: I am unaware of state-sponsored violence or terrorism against Muslims in America

c. Have Muslims in America been historically oppressed?

Response: Whether Muslims in America have been historically oppressed is a policy issue for policymakers to consider. As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing an opinion as this issue may come before me as a judge. *See* Code of Conduct for United States Judges, Canon 3(A)(6). From my personal experience as a Magistrate Judge for over four years, I have not experienced, encountered, or seen any form of oppression or racism against Muslims in our District Court, and if I were confirmed as a District Judge, I would treat all parties and counsel with dignity and respect.

47. Do you plan to continue your association with AALDEF?

Response: Please see my response to Question 45(a). As a Magistrate Judge I am prohibited from providing *pro bono* representation at the request of AALDEF. I do not presently have any association with AALDEF.

48. You stated in an American Lawyer article that "judges need to play a part too" in encouraging DEI principles in the workplace. Please explain how, if confirmed, diversity will factor in to your judicial decision-making.

Response: I believe the reference cited above was in a speech before the Bergen County Bar Association. Judges are prohibited from promoting political or ideological causes from the bench. I do not consider my personal views in my role as a judge. Rather, I have faithfully

applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

49. Would you require law clerks or interns to take implicit bias or DEI training?

Response: No.

Senator Josh Hawley
Questions for the Record
Judge Edward Sunyol Kiel
Nominee to be United States District Judge, District of New Jersey

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

Response: No.

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: Not applicable.

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

Response: The Supreme Court has applied the original meaning of the text in its analysis when interpreting constitutional provisions in various contexts. *See, e.g.*, *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004). I have faithfully applied Supreme Court and Third Circuit precedent interpretation and application of constitutional provisions in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

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

Response: If confirmed as a District Judge, I would look to the text of the federal statute and to any binding precedent from the Supreme Court and Third Circuit. If the text of the statute is clear and unambiguous, I would apply the plain meaning of the statute. If the text of the statute is ambiguous and there is no binding precedent from the Supreme Court or Third Circuit, I would then look to other methods of statutory interpretation including the decisions of other Circuit and District Courts and the canons of construction. If these additional resources do not provide sufficient guidance, I would look to legislative history, to the extent such analysis is permitted under applicable precedent from the Supreme Court and Third Circuit.

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: As directed by the Supreme Court, I would consider committee reports that have been drafted contemporaneously with the passage of legislation to be more probative than other sources such as debates occurring on the Congressional floor. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In 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 'represen[t] the considered and

collective understanding of those Congressmen involved in drafting and studying proposed legislation.'").

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

Response: If confirmed as a District Judge, it is my intention to refrain from consulting the laws of foreign nations when engaging in the interpretation of the Constitution, unless Supreme Court and Third Circuit precedent direct otherwise.

4. 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: I am unaware of any Third Circuit precedent addressing this issue. However, the Supreme Court has ruled that a defendant's Eighth Amendment claim challenging a method of execution is to be addressed as follows: (1) the defendant is required to demonstrate that the state's method of execution to be used in this instance presents a substantial risk of serious harm that will cause "severe pain over and above death itself"; and (2) the defendant must identify the existence of an alternative method that is feasible, readily implemented, and in fact significantly reduces the risk of harm involved. *Nance v. Ward*, 597 U.S. 159, 164 (2022).

5. 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: Yes. *See* 576 U.S. 863, 880 (2015) (holding "the Eighth Amendment requires a prisoner to plead and prove a known and available alternative").

6. 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: No. The Supreme Court and Third Circuit have both held to the contrary. *See Reed v. Goertz*, 598 U.S. 230, 235 (2023); *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 72–74 (2009)); *Grier v. Klem*, 591 F.3d 672, 678 (3d Cir. 2010).

7. 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.

8. 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: A plaintiff challenging state governmental action as placing a substantial burden on the free exercise of religion must initially demonstrate that such action has burdened a sincere religious practice pursuant to a policy that is neither "neutral" nor "generally applicable," *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421–22 (2022), such as when a law prohibits particular religious activity while simultaneously permitting or treating more favorably comparable secular activity. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). In addition, facially neutral state action is not actually neutral if it encompasses hostility concerning or targets a religion. *See Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). Once a plaintiff's initial burden is met, the government action is subject to strict scrutiny review to determine whether the government action "was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Kennedy*, 142 S. Ct. at 2422; *see Fulton v City of Philadelphia*, 141 S. Ct. 1868, 1881 (2021).

9. 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 8.

10. 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 Third Circuit has ruled that to determine whether beliefs are "sincerely held" and thus "religious," a court is to address whether the beliefs in issue address fundamental and ultimate questions having to do with deep and imponderable matters, are comprehensive in nature, and are accompanied by certain formal and external signs." *Fallon v. Mercy Catholic Med. Ctr. of Se. Pa.*, 877 F.3d 487, 490–91 (3d Cir. 2017). As to whether the beliefs are sincere, the court must consider whether a belief reflects "an honest conviction." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014).

11. 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: *District of Columbia v. Heller*, 554 U.S. 570 (2008) holds that the Second Amendment ensures the right of an American citizen to keep and bear arms at home for the purposes of self-defense.

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

Response: No.

12. **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: In the *Lochner* dissent, Justice Holmes appears to be stating that the Constitution is not meant to embody a particular economic theory. Justice Holmes appears to further state that laws meant to "regulate life" and thus offer some level of protection to American citizens, such as laws mandating that children attend school in order to attain some level of education, are constitutionally permissible even if they "interfere with the liberty to contract." As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether I agree with a statement by a Supreme Court Justice. *See* Code of Conduct for United States Judges, Canon 3(A)(6). I have faithfully applied Supreme Court and Third Circuit precedent interpreting and applying constitutional provisions in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal beliefs or commenting on whether an opinion of the Supreme Court was "correctly decided." The Supreme Court essentially overturned *Lochner v. New York* in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) and *Ferguson v. Skrupa*, 372 U.S. 726 (1963).

13. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: The meaning of that phrase has been provided by the Supreme Court itself, in "mak[ing] express what is already obvious: *Korematsu* was gravely wrong the day it was decided," and in holding that *Korematsu* "has no place in law under the Constitution."

Trump v Hawaii, 138 S. Ct. 2392, 2423 (2018); *see Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141, 2162 n. 3 (2023) ("We have since overruled *Korematsu*, recognizing that it was 'gravely wrong the day it was decided.'").

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

Response: Yes.

a. If so, what are they?

Response: *Dred Scott v. Sandford*, 60 U.S. 393 (1857). The *Dred Scott* decision was abrogated by the Thirteenth and Fourteenth Amendments, as opposed to being overruled by the Supreme Court. In addition, *Korematsu v. United States*, 323 U.S. 214 (1944), as discussed in my response to Question 13.

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

Response: Yes.

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

a. Do you agree with Judge Learned Hand?

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing my personal opinion here. I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

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

Response: Please see my response to Question 15(a).

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: Based on a review of relevant precedent, 80% to 95% of a market share "with no readily available substitutes" is sufficient to constitute a monopoly. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 481 (1992). In addition, a market share larger than 55% is required to show prima facie market power. *United States v. Dentsply Int'l, Inc.*, 399 F.3d 181, 187 (3d Cir. 2005).

16. Please describe your understanding of the "federal common law."

Response: According to the explicit holding in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938), "[t]here is no federal general common law." *See also Matrix Distributors, Inc. v. Nat'l Ass'n of Boards of Pharmacy*, 34 F.4th 190, 197 (3d Cir. 2022) (holding it is "well established" that there is no federal general common law); *see also* Black's Law Dictionary (11th ed. 2019) (stating "there is no longer a *general* federal common law applicable to all disputes heard in federal court").

17. 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: If confirmed as a District Judge, as I have done in my role as a Magistrate Judge, I will follow the guidance set forth in *Wainwright v. Goode*, 464 U.S. 78, 84 (1983), wherein the Supreme Court explicitly held that "the views of the state's highest court with respect to state law are binding on the federal courts." Thus, I will refer to the relevant opinion of the highest court of the state.

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

Response: Please see my response to Question 17.

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

Response: If confirmed as a District Judge, and as I have done in my role as a Magistrate Judge, I will follow the explicit holding of the Supreme Court on this issue. *See Florida v. Powell*, 559 U.S. 50, 59 (2010) (holding that a party's argument that "state courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution" was "right in this regard").

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

Response: Yes. As a Magistrate Judge and a nominee for a District Judge position, I would normally be prohibited from commenting on my personal views of whether an opinion of the Supreme Court was "correctly decided." However, the holding in *Brown v. Board of Education* regarding *de jure* racial discrimination in public schools is not likely to be relitigated.. Consistent with the Code of Conduct for United States Judges, I believe *Brown v. Board of Education* was correctly decided.

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

Response: Although the Supreme Court has reviewed nationwide or universal injunctions, *see Trump v. Hawaii*, 138 S. Ct. 2392 (2018), the Supreme Court has not issued any precedential opinions that specifically address whether such an injunction is generally permissible. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 500–01 (2009) (in resolving one particular issue, holding that "[w]e likewise do not reach the question whether … a nationwide injunction would be appropriate").

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

Response: The Supreme Court has not ruled on this issue. However, Federal Rule of Civil Procedure 65 would be the starting point for addressing whether the authority exists to issue a nationwide injunction. Please also see my response to Question 19.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from expressing any speculation in response to this question because the Code of Conduct for United States Judges, Canon 3(A)(6) prohibits me from prejudging any issue that may come before me as a judge. I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

20. 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 19(b).

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

Response: The Supreme Court has held that "[f]ederalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect." *Arizona v. United States*, 567 U.S. 387, 398 (2012). As a result, federalism gives rise to "a healthy balance of power between the States and the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (The federalist structure "assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry").

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

Response: Based on my experience practicing in federal court and in my over four years as a Magistrate Judge, I am familiar with the following abstention doctrines as applied by the Third Circuit:

The *Rooker-Feldman* doctrine, *see Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), as clarified by *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005). Under this doctrine, a District Court is barred from reviewing a dispute if: (1) the losing party in state court (2) has filed suit in federal court after the state proceeding has ended (3) complaining of an injury caused by the resulting state judgment (4) and is seeking federal review and rejection of that judgment. *See Merritts v. Richards*, 62 F.4th 764 (3d Cir. 2023).

Younger abstention, *see Younger v. Harris*, 401 U.S. 37 (1971) and *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982), as clarified by *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69 (2013). Under this doctrine, federal courts must refrain from deciding disputes initiated in federal court if: (1) the case in federal court concerns a state criminal proceeding, a state civil enforcement proceeding, or a state civil proceeding involving certain orders that are uniquely in furtherance of a state court's ability to perform its judicial function; (2) the state proceeding is ongoing; (3) the state proceeding implicates important state interests; and (4) the parties will have an opportunity in the state proceeding to raise constitutional challenges and defenses. *See Gonzalez v. Waterfront Comm'n of N.Y. Harbor*, 755 F.3d 176 (3d Cir. 2014).

Brillhart abstention, *see Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491 (1942), as clarified by *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995). Under this doctrine, a federal court has the discretion to abstain from adjudicating a case wherein a party seeks the issuance of a declaratory judgment that might interfere with the adjudication of an ongoing state case. The eight factors to consider when deciding whether to apply *Brillhart* abstention are: (1) whether a federal declaration will resolve the uncertainty giving rise to the controversy; (2) the convenience of the parties; (3) the public interest in settling the uncertainty; (4) the availability and relative convenience of other remedies; (5) a general policy of restraint when the same issues are pending in a state court; (6) avoidance of duplicative litigation; (7) prevention of the use of the declaratory federal action as a method of procedural fencing or to facilitate a race for res judicata; and (8) in the insurance context, an inherent conflict of interest between an insurer's duty to defend in a state court and its attempt to characterize that suit in federal court as falling within the scope of a policy exclusion. *See Reifer v. Westport Ins. Corp.*, 751 F.3d 129 (3d Cir. 2014).

Burford abstention, *see Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), as clarified by *New Orleans Public Service Inc. v. Council of New Orleans*, 491 U.S. 350, 362, (1989). This type of abstention may be applied when state regulations are at issue in a case. After determining that timely and adequate state court review is available, a federal court considers whether: (1) the case implicates a regulatory scheme that involves a matter of substantial public concern or public policy; (2) the regulations at issue are complex and technical; and (3) federal

review of a claim will interfere with a state's efforts to establish and maintain a coherent regulatory policy. *See Chiropractic America v. Lavecchia*, 180 F.3d 99, 105 (3d Cir. 1999).

Pullman abstention, *see Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941). This type of abstention may be applied if a federal court determines that an interpretation of state law by a state court will moot a federal constitutional claim. A federal court would be likely to exercise Pullman abstention if: (1) there are uncertain issues of state law underlying the federal constitutional claim; (2) there is a state law issue that is amenable to a state court interpretation that would obviate the need for, or substantially narrow, the scope of the adjudication of the constitutional claim; and (3) a federal court's erroneous construction of state law would disrupt important state policies. *See Chez Sez III Corp. v. Twp. Of Union*, 945 F.2d 628 (3d 1991).

Colorado River abstention, *see Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976). This type of abstention becomes pertinent when there are parallel federal and state civil cases raising substantially identical claims and issues, and thus a federal court considers: (1) which case was filed first, and favors abstention if the state case was filed before the federal case; (2) whether the federal forum is convenient for the parties; (3) whether there is in rem jurisdiction, and which court first assumed jurisdiction over any property at issue; (4) whether federal or state law controls; (5) whether the state court will adequately protect the parties' interests; and (6) whether there is a risk of piecemeal or duplicative litigation. *See Yang v. Tsui*, 416 F.3d 199 (3d Cir. 2005).

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

Response: Whether the issuance of an injunction or an award of damages is an appropriate result in a case is specific to the facts of that case. However, an injunction should be issued only when money damages will not resolve a harm that will be irreparable. *See Northeastern Pa. Freethought Soc'y v. County of Lackawanna Transit Sys.*, 938 F.3d 424, 442 (3d Cir. 2019).

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

Response: As recently held in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2246 (2022), certain substantive rights, though not specifically enumerated in the Constitution, are entitled to due process protection where those rights are deeply rooted in our history and tradition and are essential to the scheme of ordered liberty. *See also Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). For instance, the Supreme Court has recognized the right, among others, to marry a person of a different race. *See Loving v. Virginia*, 388 U.S. 1 (1967).

25. **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 response to Question 8.

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 recently answered this question in the affirmative, holding that the First Amendment "protects religious exercises, whether communicative or not," and "does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022).

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: Please see my response to Question 8.

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 10.

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

Response: The Religious Freedom Restoration Act, on its face, "applies to all Federal law, and the implementation of that law, whether statutory or otherwise." 42 U.S.C. § 2000bb-3. In addition, the statute provides that it shall not be "construed to authorize any government to burden any religious belief." *Id.*

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

26. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your

understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: My understanding would be that of the Third Circuit's holding "that the 'beyond a reasonable doubt' standard does not require 100% probability (or greater than 99% probability) of guilt in order to sustain a conviction," and "caution[ing] against attempting to attach any specific percentage of probability as meeting the beyond a reasonable doubt standard." *United States v. Hannigan*, 27 F.3d 890, 893 n.3 (3d Cir. 1994).

27. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?
b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?
c. If you disagree with either of these statements, please explain why and provide examples.

Response: As a Magistrate Judge who frequently handles criminal matters and a nominee for a District Judge position, I am prohibited from responding to this question and each subpart. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will faithfully apply *Harrington*, other Supreme Court precedent, and Third Circuit precedent addressing the writ of habeas corpus under 28 U.S.C. § 2254(d).

28. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

Response: Opinions designated with "unpublished," "not for publication," "nonprecedential," or "not precedent," are permitted by Federal Rule of Appellate Procedure 32.1.

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

Response: Please see my response to Question 28(a).

c. If confirmed, would you treat unpublished decisions as precedential?

Response: No. *See Porter v. Pa. Dep't of Corrections*, 974 F.3d 431, 450–51 (3d Cir. 2020) (holding an unpublished Third Circuit opinion to have "not precedential status … which renders it useless as precedent"); *Sharrieff v. Cathel*, 574 F.3d 225, 229 n.5 (3d Cir. 2009) (noting that its decision therein was contrary to an earlier-issued opinion, but that the earlier-issued opinion "was an unpublished and not precedential opinion"); *see also* 3d Cir. I.O.P. 5.7 (providing that "not precedential opinions … are not regarded as precedents").

d. If not, how is this consistent with the rule of law?

Response: Please see my response to Question 28(c).

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

Response: Yes, as I would be bound to do so. *See* Fed.R.App.P. 32.1 (providing that "[a] court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been … designated as 'unpublished,' 'not for publication,' 'nonprecedential,' 'not precedent,' or the like").

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

Response: No.

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: No.

29. In your legal career:

a. How many cases have you tried as first chair?

Response: To the best of my recollection, 19.

b. How many have you tried as second chair?

Response: To the best of my recollection, four.

c. How many depositions have you taken?

Response: There is no way for me to determine the number of depositions I have taken during my 27 years in private practice. However, I can confidently state that I have taken hundreds of depositions and likely over 500.

d. How many depositions have you defended?

Response. There is no way for me determine the number of depositions I have defended in my 27 years of private practice. However, I can confidently state that I have defended hundreds of depositions and likely over 500.

e. How many cases have you argued before a federal appellate court?

Response: I have not argued before a federal appellate court.

f. How many cases have you argued before a state appellate court?

Response: I can confidently state that the number is more than 20.

g. How many times have you appeared before a federal agency, and in what capacity?

Response: I have not appeared before a federal agency.

h. How many dispositive motions have you argued before trial courts?

Response: There is no way for me to determine the number of dispositive motions that I have argued before trial courts in my 27 years of private practice. However, I can confidently state that the number is more than 100.

i. How many evidentiary motions have you argued before trial courts?

Response: There is no way for me to determine the number of evidentiary motions that I have argued before trial courts in my 27 years of private practice. However, I can confidently state that the number is more than 50.

30. If any of your previous jobs required you to track billable hours:

a. What is the maximum number of hours that you billed in a single year?

Response: I do not recall the exact number of billable hours that was the maximum that I billed in a single year, however, to the best of my recollection the number of hours was more than 1,800 but less than 2,000.

b. What portion of these were dedicated to pro bono work?

Response: There is no way for me to determine the number of hours of pro bono work I performed in a particular year, however, I billed hundreds of hours of pro bono work during my 27 years of private practice.

31. 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 quote to mean that a Judge should weigh the facts and the law for each case in an objective manner without regard to his or her personal opinions.

32. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

Response: I understand this quote to mean that Judges are to abide by precedent, statutes, and relevant pre-existing rules when arriving at decisions.

b. Do you agree or disagree with this statement?

Response: I agree with the statement.

33. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

Response: I am unfamiliar with what Justice Holmes is said to have stated here. Assuming that he did so, similar to my response to Question 32(a), I understand this quote to mean that Judges are to abide by precedent, statutes, and relevant pre-existing rules when arriving at decisions.

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: I agree that Judges are to abide by precedent, statutes, and relevant pre-existing rules when arriving at decisions.

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

Response: No.

a. If yes, please provide appropriate citations.

35. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your

social media? If so, please produce copies of the originals.

Response: No.

36. What were the last three books you read?

Response: (1) *Where the Forest Meets the Stars* by Glendy Vanderah; (2) *American Born Chinese* by Gene Luen Yang; and (3) *What Happened to You* by Bruce D. Perry and Oprah Winfrey.

37. Do you believe America is a systemically racist country?

Response: No.

38. What case or legal representation are you most proud of?

Response: Although I am proud of many representations, I am particularly proud of my representation of a family in its fight to receive just compensation for the taking of their business's leasehold rights through a municipality's condemnation of their lease. The town attempted to condemn all leasehold rights to a large property so that the owner of the property, who was also the designated redeveloper, would clear out all tenants in order to redevelop the property for big-box stores. The matter was litigated before the trial court, the New Jersey Appellate Division, and the New Jersey Supreme Court. In the end, the New Jersey Supreme Court ruled that my clients were entitled to just compensation for the taking of their leasehold right. The New Jersey Supreme Court decision is at *Town of Kearney v. Discount City of Old Bridge, Inc.*, 205 N.J. 386 (2011).

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

Response: Not to my recollection.

a. How did you handle the situation?

Response: Not applicable.

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

Response: Yes.

40. What three law professors' works do you read most often?

Response: I do not regularly read works by law professors.

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

Response: I am unable to state whether one particular Federalist Paper shaped my views of the law.

42. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: I cannot recall a judicial opinion, law review article, or other legal opinion that changed my mind.

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

Response: As a Magistrate Judge and a District Judge nominee, I am prohibited from responding to this question because the question presents an issue that may come before me as a judge. *See* Code of Conduct for United States Judges, Canon 3(A)(6). I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

44. 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: To the best of my recollection, I have testified at two depositions. In *ADP, Inc. v. PMJ Enterprises,* I was deposed in a proceeding relating to plaintiff's motion to disqualify my law firm from representing defendant in the matter. The transcript of my deposition in this matter was sealed pursuant to court order. The motion to disqualify was denied. *ADP, Inc. v. PMJ Enterprises, LLC*, No. 06-2042, 2007 WL 836658 (D.N.J. Mar. 14, 2007). In *McKiernan v. Wightman*, I was deposed in a proceeding relating to plaintiff's motion to enforce a settlement between the parties. Because I was the attorney that negotiated the settlement for plaintiff, I was deposed pursuant to the Court's order to proceed with discovery relating to the settlement discussions. I do not have a copy of the transcript. The parties, thereafter, settled the matter and the motion was rendered moot. The matter is *McKiernan v. Wightman*, docket number SOM-L-1730-06 before the Superior Court of New Jersey, Somerset County, Law Division.

45. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:
a. *Roe v. Wade,* 410 U.S. 113 (1973)?

Response: No.

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

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

46. Do you currently hold any shares in the following companies:
a. Apple?

Response: No.

b. Amazon?

Response: No.

c. Google?

Response: No.

d. Facebook?

Response: No.

e. Twitter?

Response: No.

47. Have you ever authored or edited a brief that was filed in court without your name on the brief?
a. If so, please identify those cases with appropriate citation.

Response: In my 27 years of private practice, I worked on many matters with other attorneys in my law firm. At times, I was asked to review a brief before submission to a Court for grammatical and stylistic edits. I do not have any way to identify these briefs. My name always appeared on briefs for which I made substantive contributions.

48. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

Response: Not applicable.

49. 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: I must respond to all questions with honesty, candor, and to the best of my ability.

Senator Thom Tillis
Questions for the Record
Judge Edward Sunyol Kiel
Nominee to be United States District Judge, District of New Jersey

1. Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?

Response: A judge's personal views are irrelevant in interpreting and applying the law.

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

Response: Impartiality is an expectation. *See* 28 U.S.C. §§ 453, 455; Code of Conduct for United States Judges, Canon 2(A).

3. What is judicial activism? Do you consider judicial activism appropriate?

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions … with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." I do not believe judicial activism is appropriate.

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

Response: No. *See Bowsher v. Synar*, 478 U.S. 714, 721 (1986) (noting that "[t]he declared purpose of separating and dividing the powers of government … [is] to 'diffus[e] power the better to secure liberty'" (fourth alternation in original) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952))).

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

Response: Judges are required to put aside their personal views and apply the law set by the legislature or precedent. This will result in a correct and desirable outcome. *See* Code of Conduct for United States Judges, Canon 2.

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

Response: I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge and confronted with a case implicating the Second Amendment. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

7. 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: "Qualified immunity shields federal and state officials from money damages unless a plaintiff" proves "(1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "A Government official's conduct violates clearly established law when, at the time of the challenged conduct, '[t]he contours of [a] right [are] sufficiently clear' that every 'reasonable official would [have understood] that what he is doing violates that right.'" *Id.* at 741 (quoting *Anderson v. Creighton,* 483 U.S. 635, 640 (1987)). I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.

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

Response: Whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers is a policy consideration for the legislature. I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge. *See Plumhoff v. Rickard*, 572 U.S. 765, 778-79 (2014) (holding that an officer does not violate a "clearly established right" unless "the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it").

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

Response: Please see my response to Question 8.

10. What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?

Response: I have faithfully applied Supreme Court and Third Circuit precedent in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge and confronted with a case implicating intellectual property rights. *See Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.*, 566 U.S. 66 (2012); *Bilski v. Kappos*, 561 U.S. 593 (2010).

11. In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who

will hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"

Response: I have not had experience with a litigant in a patent matter engaging in forum or judge shopping. I note that the District of New Jersey currently has 15 active District Judges and seven senior District Judges sitting in three vicinages. Cases are randomly assigned to a District Judge and a Magistrate Judge by the Clerk's Office.

12. 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 shambles. What are your thoughts regarding the Supreme Court's patent eligibility jurisprudence?

Response: As a Magistrate Judge for over four years, I have case managed a number of patent cases. Given the debate concerning the current patent eligibility jurisprudence, I am prohibited from expressing my personal belief here. I have faithfully applied Supreme Court and Third Circuit precedent concerning patent eligibility in my role as a Magistrate Judge, and I will continue to do so if I am confirmed as a District Judge.