Senator John Kennedy
Questions for the Record

Seth Aframe

1. **Are there any circumstances under which it is justifiable to sentence a criminal defendant to death?**

   Response: Yes. Whether capital punishment is appropriate in any given case is determined by a jury based on its determination of the existence of aggravating factors as defined by the legislature. *Ring v. Arizona*, 536 U.S. 584, 588-89 (2002).

2. **Except when a statutory maximum controls, when is it appropriate for a sentencing judge to impose a sentence below the range provided by the Sentencing Guidelines?**

   Response: A federal court may sentence a defendant below the sentencing guideline range if a departure under the sentencing guidelines applies or if the court determines that an application of the 18 U.S.C. § 3553(a) factors warrant a variant sentence below the guideline range. *Irizarry v. United States*, 553 U.S. 708 (2008) (describing departures and variances).

3. **Is the U.S. Supreme Court a legitimate institution?**

   Response: Yes.

4. **Is the current composition of the U.S. Supreme Court legitimate?**

   Response: Yes.

5. **Would you faithfully apply all precedents of the U.S. Supreme Court?**

   Response: Yes.

6. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: If confirmed as a circuit judge, my judicial philosophy would focus on fairness, fidelity, and clarity. By fairness, I mean the judge's responsibility to keep an open mind, study the briefs and record, listen and participate in oral argument, and consider the views of judicial colleagues. Fidelity refers to the judge's obligation to base the decision on a scrupulous adherence to the record and applicable precedent of the Supreme Court and the First Circuit. Clarity means the judge's obligation to explain the court's decision in opinions that are accessible to the litigants and are useful to the bar and district court judges as guidance for future cases.

7. **Is originalism a legitimate method of constitutional interpretation?**

   Response: Yes. The Supreme Court has adopted originalism as a method for constitutional interpretation in several areas. *E.g.*, *New York State Rifle & Pistol Assoc. v. Bruen,* 142 S. Ct. 2111 (2022) (Second Amendment); *Gamble v. United States*, 139 S. Ct. 1960 (2019) (Double Jeopardy Clause); *Crawford v. Washington*, 541 U.S. 36 (2004) (Confrontation Clause).

8. **Is textualism a legitimate method of statutory interpretation?**

   Response: Yes. The Supreme Court has instructed that statutory interpretation should begin with the text and if the text is unambiguous, the inquiry should conclude with the text. *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

9. **Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

   Response: The Supreme Court said long ago that the Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloh v. Maryland*, 17 U.S. 316 (1819). And last year the Court said that "although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2126, 2132 (2022).

10. **Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

    Response: The Supreme Court has said that "where . . . the words of a statute are unambiguous, the judicial inquiry is complete." *Babb v. Wilkie*, 140 S. Ct. 1168, 1177 (2020).

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

    Response: In construing a federal statute, I would first determine if there was Supreme Court or First Circuit precedent already construing the language at issue. If not, I would turn to the text of the statute. If that text is unambiguous, the inquiry would end. *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020). If the text is ambiguous, I would consider other sources that have been relied on by the Supreme Court and the First Circuit in construing statutes. These include statutory context (*Encino Motors v. Navarro*, 138 S. Ct. 1134 (2018)), clear statement rules (*Lac du Flambeaus Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382 (2023)), and canons of statutory construction (*Sandifer v. U.S. Steel Corp.*, 571 U.S. 220 (2014)). The First Circuit also permits examining legislative history when a statute is not plain and unambiguous. *In re Financial Oversight and Management Bd. for Puerto Rico*, 919 F.3d 121, 128 (1st Cir.

2019). However, using legislative history should be undertaken with caution because, as the Supreme Court has observed, legislative history "is itself often murky, ambiguous and contradictory" and reliance on it may place undue weight on the views of unrepresentative member of Congress. *Exxon Mobil Corp. v. Allapattah Servs. Inc.*, 545 U.S. 546, 568 (2005). There are varying views on the value, if any, that should be given to presidential statements as a source of legislative history. *Petitti v. New Eng. Telephone & Telegraph Co.*, 1992 WL 359642 at *4 n.6 (D. Mass. Nov. 16, 1992). I am not aware of any Supreme Court or First Circuit precedent on whether presidential statements are part of the legislative history for a congressional enactment.

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

Response: The First Amendment does not prevent the owner of a private shopping center from placing limits on the content of speech that occurs at the shopping center. *Hudgens v. NLRB*, 424 U.S. 507, 520 (1976). State law may, however, impose obligations on shopping center owners to permit free speech activity on their property. *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980).

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

Response: I am not aware of any Supreme Court or First Circuit precedent discussing whether non-citizens are entitled to a "right of privacy." The Supreme Court has, however, recognized that non-citizens are entitled to "certain constitutional rights." *Plyler v. Doe,* 457 U.S. 202, 211–212 (1982) (illegal aliens protected by Equal Protection Clause); *Kwong Hai Chew v. Colding,* 344 U.S. 590, 596 (1953) (resident alien is a "person" within the meaning of the Fifth Amendment); *Bridges v. Wixon,* 326 U.S. 135, 148 (1945) (resident aliens have First Amendment rights); *Russian Volunteer Fleet v. United States,* 282 U.S. 481 (1931) (Just Compensation Clause of Fifth Amendment); *Wong Wing v. United States,* 163 U.S. 228, 238 (1896) (resident aliens entitled to Fifth and Sixth Amendment rights); *Yick Wo v. Hopkins,* 118 U.S. 356, 369, (1886) (Fourteenth Amendment protects resident aliens). In this regard, the Supreme Court has said that "once an alien enters the county, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

14. Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?

Response: The Supreme Court differentiates between routine and non-routine border searches. *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985). Routine searches are not subject to any requirement of reasonable suspicion, probable cause, or warrant. Non-routine searches, by contrast, require reasonable suspicion. *United States v. Molina-Gomez*, 781 F.3d 13, 19 (1st Cir. 2015). I would apply Supreme Court and First Circuit precedent to any search taking place at or near the border.

15. At what point is a human life entitled to equal protection of the law under the Constitution?

Response: The Equal Protection Clause commands that no State shall "deny any person within its jurisdiction the equal protection of the laws." In *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2261 (2022), the Supreme Court stated that its "opinion [was] not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth." There is no Supreme Court or First Circuit precedent that I am aware of which determines whether "person" as used in the Equal Protection Clause extends prior to birth.

16. A federal district court judge in Washington, DC recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

a. Do you agree?

Response: If confirmed, I would apply *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2279 (2022) which held that "the authority to regulate abortion must be returned to the people and their elected representatives."

b. Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?

Response: Lower court judges must apply controlling precedent from the Supreme Court.

17. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?

Response: No. Our court system requires that lower court judges faithfully follow precedent, leaving the prerogative to the higher court to overrule its own decisions. *Agostini v. Felton*, 521 U.S. 203, 237 (1997).

18. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

Response: In *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008), the Supreme Court upheld the constitutionality of an Indiana state law requiring all voters who cast a ballot in person to present a photo identification issued by the United States or the State of Indiana. As a judicial nominee, the Code of Conduct for United States Judges and associated Canons precludes me from commenting on a hypothetical question about voter identification laws because cases involving such laws could arise. If confirmed, I would follow Supreme Court and First Circuit precedent when considering a challenge to a voter identification law.

19. Please describe the analysis you will use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

Response: In evaluating a Second Amendment claim, I would follow Supreme Court precedent. The Supreme Court set the standard for applying the Second Amendment in *Bruen*: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." 142 S. Ct. at 2129-30.

20. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.

a. How many factors are necessary to provide a special justification for overturning precedent?

Response: While *stare decisis* is "a vital rule of judicial self-government," it is not absolute. *Johnson v. United States*, 576 U.S. 591, 606 (2015). The Supreme Court has identified five factors to consider when deciding whether to overturn precedent. *Janus v. Am. Fed. f State and County and Mun. Employees*, 138 S. Ct. 2448, 2478-79 (2018). While the Supreme Court has considered five factors, I am not aware of precedent defining the number of factors that must exist before it is appropriate to overrule a precedent.

b. Is one factor alone ever sufficient?

Response: See response to question 20a, *supra.*

21. Please explain the difference between judicial review and judicial supremacy.

Response: According to Black's Law Dictionary (11th ed. 2019), judicial review refers to "the court's power to review the actions of other branches or levels of government, especially the court's power to invalidate legislative and executive action as being unconstitutional." The same source defines judicial supremacy as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, especially the U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states.

22. Do you believe the meaning of the Ninth Amendment is fixed or evolving?

Response: The Ninth Amendment provides that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." I am not aware of any Supreme Court case interpreting the Ninth Amendment as either a fixed or evolving method for securing individual rights. The First Circuit has said, the Ninth Amendment "does not create substantive rights beyond those conferred by governing law." *Martinez-Rivera v. Sanchez Ramos*, 498 F.3d 3, 9 (1st Cir. 2007). If confirmed, I will follow Supreme Court and First Circuit precedent involving the Ninth Amendment.

23. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?

Response: See response to question 22, *supra.*

24. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

Response: See response to question 22, *supra.*

25. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

Response: See response to question 22, *supra*.

26. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

a. Who is included within the meaning of "*the people*"?

Response: "[T]he people seems to have been a term of art employed in select parts of the Constitution .... [Its uses] sugges[t] that the people protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008) (quoting, *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990)).

b. Is the term's meaning consistent in each amendment?

Response: See response to question 26a, *supra*.

27. Does "the people" capture non-citizens or illegal immigrants within the meaning of any amendment?

Response: Whether a non-citizen or illegal immigrant fits within the term "the people" depends on the amendment at issue. *E.g.*, *United States v. Verdugo-Urquidez*, 494 U.S. 259, 270-271 (1990) (holding that the Fourth Amendment does not apply to the search and seizure by United States agents of property owned by a nonresident alien and located in a foreign country); *Plyler v. Doe*, 457 U.S. 202, 211-212 (1982) (finding that, though not citizens of the United States, immigrants unlawfully present in the United States, as well as their children, are "people" for purposes of the Equal Protection Clause); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953) ("From a constitutional point of view, [petitioner] is entitled to due process without regard to whether or not, for immigration purposes, he is to be treated as an entrant alien . . ."); *Bridges v. Wixon*, 326 U.S. 135, 148 (1945) ("Freedom of speech and of press is accorded aliens residing in this country."); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("conclud[ing] that all persons within the territory of the United States are entitled to the protection guaranteed by" the Fifth and Sixth Amendments); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (concluding that the Fourteenth Amendment extends to all persons within the territorial jurisdiction of the United States). In this regard, the Supreme Court has said that "once an alien enters the county, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

28. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?

Response: Under the Due Process Clause of the Fourteenth Amendment, a substantive right is protected only if the right, carefully described, "is deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty such that neither liberty nor justice would exist if [it was] sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997).

29. Could the Privileges or Immunities Clause within the Fourteenth Amendment be a source of unenumerated rights?

Response: In the *Slaughter-House Cases*, 83 U.S. 36, 37 (1872), in referring to the Privileges or Immunities Clause of the Fourteenth Amendment, the Supreme Court said that "[t]he privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the National government, the provisions of its

Constitution, or its laws and treaties made in pursuance thereof; and it is these which are placed under the protection of Congress by this clause of the fourteenth amendment."

30. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

Response: I am unaware of Supreme Court or First Circuit decisions resolving this question. If confirmed, I would apply all relevant Supreme Court and First Circuit precedent, including *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228 (2022).

31. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

Response: *Chevron* holds that judicial deference to an agency's construction of a statute is appropriate where the agency's construction was reasonable, so long as Congress had not spoken directly to the precise question. Later cases have made clear that for *Chevron* deference to apply, the agency's interpretation must be reasonable and reached through formal proceedings with the force of law, such as adjudication or notice and comment rulemaking. *E.g.*, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 220-21 (2016) ("A premise of Chevron is that when Congress grants an agency the authority to administer a statute by issuing regulations with the force of law, it presumes the agency will use that authority to resolve ambiguities in the statutory scheme. . . . When Congress authorizes an agency to proceed through notice-and-comment rulemaking, that relatively formal administrative procedure is a very good indicator that Congress intended the regulation to carry the force of law, so Chevron should apply. . . . But where a proper challenge is raised to the agency procedures, and those procedures are defective, a court should not accord Chevron deference to the agency interpretation.").

32. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?

Response: See response to question 31, *supra.* In addition, courts apply the Administrative Procedure Act which provides rules for agency actions and judicial standards for courts for reviewing such actions. Courts also employ certain clear statement rules such as the "major questions" doctrine to interpret the scope of authority that Congress delegated to an agency. *West Virginia v. EPA*, 142 S. Ct. 2587, 2608-09 (2022).

33. How does the Constitution limit the powers of Congress? Please provide examples.

Response: The Constitution limits Congress' power by enumerating certain powers in Article I, § 8, including the power to regulate commerce, coin money, lay and collect taxes, declare war, and raise and support armies. Article I, § 9 specifically sets forth certain actions that Congress may not take such as suspending habeas corpus unless in the case of rebellion or invasion, passing bills of attainder or ex post facto laws, or granting titles of nobility.

34. Please describe the modern understanding and limits of the Commerce Clause.

Response: Article I, § 8, cl. 3 of the Constitution provides that Congress shall have the power to regulate Commerce with foreign nations, among the States, and with Indian Tribes. The Supreme Court has identified three general categories in which Congress is authorized to engage under its commerce power: (1) Congress can regulate the channels of interstate commerce; (2) Congress may regulate and protect the instrumentalities of interstate commerce, and persons or things in interstate commerce; and (3) Congress may regulate activities that substantially affect interstate commerce. *Gonzalez v. Raich*, 545 U.S. 1, 16-17 (2005).

35. Please provide an example of activity Congress cannot regulate under the Commerce Clause.

Response: The Supreme Court held that the Congress could not use the Commerce Clause power to enact a law that prohibited the possession of a firearm "at a place that [an] individual knows, or has reasonable cause to believe, is a school zone." *United States v. Lopez*, 514 U.S. 549, 551 (1995).

36. Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.

Response: I am not aware of a Supreme Court decision that identifies a salient difference between the Fifth and Fourteenth Amendment Due Process Clauses. The First Circuit has described "a parallelism between the Due Process Clauses of the Fifth and Fourteenth Amendments . . . ." *Perrier-Bilbo v. United States*, 954 F.3d 413, 434 (1st Cir. 2020).

37. In *Gundy v. United States*, 139 S. Ct. 2116 (2019), justices in dissent indicated willingness to revisit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?

Response: In *Gundy*, a plurality of the Supreme Court held that a delegation of authority by Congress is sufficient "so long as Congress lays down by legislative act an intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform." The plurality applied this principle to uphold a delegation of authority to the Attorney General to promulgate certain regulations relevant to the enforcement of the Sex Offender Registration and Notification Act, a statute which includes criminal provisions.

38. Please describe how courts determine whether an agency's action violated the Major Questions Doctrine.

Response: Under the major questions doctrine, an agency must point "to clear congressional authorization" in situations where "history and the breadth of the authority that the agency has asserted, and the economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority." *West Virginia v. EPA*, 142 S. Ct. 2587, 2608-09 (2022).

39. Please describe your understanding and limits of the anti-commandeering doctrine.

Response: Under the anti-commandeering doctrine, "it is well established that the Tenth Amendment bars Congress from commanding the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." *Haaland v. Bracken*, 599 U.S. 255, 281 (2023). It also applies to an act of Congress that prevents a State from enacting a law. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1475 (2018). "The anti-commandeering doctrine does not apply when Congress evenhandedly regulates an activity in which both States and private actors engage." *Id.* at 1478 (2018).

40. Does the meaning of the Eighth Amendment change over time? Why or why not?

Response: In *Roper v. Simmons*, 543 U.S. 551, 560-61 (2005), the Supreme Court held that "[t]he prohibition against 'cruel and unusual punishments,' like other expansive language in the Constitution, must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design." The Court further stated that "[t]o implement this framework," it is necessary to refer to "the evolving standards of decency that mark the progress of a maturing society to determine which punishments are so disproportionate as to be cruel and unusual."

41. Is the death penalty constitutional?

Response: Yes. In *Gregg v. Georgia*, 428 U.S. 153, 178-87 (197), the Supreme Court held that imposition of the death penalty for murder is not, "under all circumstances, cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the Constitution."

42. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

Response: I am not aware that the Supreme Court or First Circuit has addressed the issue of whether Congress can require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress. As a judicial nominee, under the Conde of Conduct for United States Judges and associate Canons, I may not comment on this question, as cases involving criminal contempt charged by Congress or prosecutorial discretion could come before me as a judge. If confirmed, I would apply all relevant Supreme Court and First Circuit precedent.

43. **Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.**

Response: I am not aware that the Supreme Court or First Circuit has addressed the issue of which presidential aides, if any, are entitled to absolute immunity from congressional subpoena. I am aware of a district court decision rejecting absolute immunity from congressional process for a former White House counsel. *Committee on the Judiciary v. Miers*, 558 F. Supp. 2d 53, 100 (D.D.C. 2008). If confirmed, I would apply all relevant Supreme Court and First Circuit precedent on this issue.

44. **What restrictions on First Amendment activities can owners of a private shopping center put on their property?**

Response: See response to question 12, *supra.*

45. **Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?**

Response: I am not aware that the Supreme Court or the First Circuit has addressed the issue of whether private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment. As a judicial nominee, under the Code of Conduct for United States Judges and associated Canons, I may not comment on this question, as cases involving social media companies and free speech could come before me as a judge. If confirmed, I would apply all relevant Supreme Court and First Circuit precedent.

46. **How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?**

Response: The Supremacy Clause provides that the United States Constitution and federal law are the "supreme Law of the Land" and "Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding." U.S. Const., Art. VI. The adequate and independent state grounds doctrine provides that the Supreme Court will refuse to hear a case from a state court if the state court judgment is based on adequate and independent state-law grounds. *Michigan v. Long*, 463 U.S. 1032, 1041-42 (1983).

47. **Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.**

Response: I am not aware that the Supreme Court or the First Circuit has addressed the issue of whether there are due process requirements associated with being placed on the no-fly list. As a judicial nominee, under the Code of Conduct for United States Judges and associated Canons, it would be inappropriate for me to comment on this question as cases involving the procedural requirements, if any, to be placed on the no-fly list could come before me as a judge. If confirmed, I would apply all relevant Supreme Court and First Circuit precedent.

48. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

Response: Section One of the Fourteenth Amendment to the Constitution.

49. Please describe the legal basis that allows federal courts to issue universal injunctions.

Response: Courts issuing universal injunctions have done so citing their equitable powers under Federal Rule of Civil Procedure 65 or other statutory authority and under Article III of the Constitution. The Supreme Court has called an injunction "a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto v. Geerston Seed Farms*, 561 U.S. 139, 165 (2010). If confirmed, I will follow all applicable Supreme Court and First Circuit precedent on whether, and under what circumstances, a universal injunction may issue.

50. Please identify one federal judge or justice, current or former, whose service on the bench most inspires you and explain why you will seek to emulate it if confirmed.

Response: Beside Judge Howard, Judge Michael Boudin was one judge who I admired on the First Circuit when I was a clerk. I was always impressed by Judge Boudin's ability to get to the heart of a legal issue and to write opinions that were thoughtful and acknowledged when legal questions were difficult or close. I thought his opinions were particularly clear and therefore were helpful to the bench and bar. These are traits I would hope to emulate if confirmed as a judge.

51. How would you determine whether a rent control statute constitutes an unconstitutional taking?

Response: I would first study the features of the rent-control statute at issue. I would then apply the statute to the case law defining when a statute constitutes a physical taking and when a statute constitutes a regulatory taking. By applying the particulars of the statute to the case law defining these two types of takings, I would be able to determine whether the rent control statute at issue constituted a taking under the Constitution. *E.g., Yee v. City of Escondido*, 503 U.S. 519 (1992) (physical taking); *Penn Central Transportation Co v. City of New York*, 438 U.S. 104 (1978) (regulatory taking).