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

1. **Are there any circumstances under which you would sentence a criminal defendant to death?**

Response: I understand the question to concern the imposition of the death penalty under federal law. If so, then yes.

a. **If yes, please explain when a sentence of death is appropriate or justifiable.**

Response: The Supreme Court has held that a sentence of death under federal law is appropriate for those offenses specifically listed in the Federal Death Penalty Act under 18 U.S.C. § 3591. *United States v. Tsarnaev*, 595 U.S. 302, 317 (2022). "[A]t the sentencing phase of a capital trial, 'information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor.'" *Id.* (quoting 18 U.S.C. § 3593(c)).

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

Response: Please see my responses to Questions 1 and 2.

3. **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: In *United States v. Booker*, 543 U.S. 220, 245 (2005), the Supreme Court struck down the provision of the Sentencing Guidelines that required a sentence within the guideline range at an initial sentencing hearing and ruled that the guidelines were "advisory." Accordingly, the sentencing judge is required to undertake a three-step process. First, the Court must calculate a defendant's sentence under the Sentencing Guidelines. *See United States v. Flores-Mejia*, 759 F.3d 253, 256 (3d Cir. 2014). Second, the Court is required to rule on any motions for departure from the sentence under the Sentencing Guidelines. *Id.* Third, the Court is required to consider the factors in 18 U.S.C. § 3553(a) and determine the appropriate sentence, "regardless of whether it varies from the sentence calculated under the [Sentencing] Guidelines." *Id.* (alternations and internal quotations marks omitted); *United States v. Grier*, 585 F.3d 138, 142 (3d Cir. 2009).

The Supreme Court has held that "[i]f the defendant has substantially assisted the Government 'in the investigation or prosecution of another person,' the Government may move under 18 U.S.C. § 3553(e) to allow the district court to 'impose a sentence below' the mandatory minimum 'so as to reflect [the] defendant's substantial assistance.'" *Koons v. United States*, 138 S. Ct. 1783, 1787 (2018) (alternation in original) (quoting 18 U.S.C. § 3553(e)).

Further, the "Safety Valve" under 18 U.S.C. § 3553(f) authorizes the imposition of a sentence below the mandatory minimum for certain drug related crimes if the defendant meets certain criteria under the statute.

4. Is the U.S. Supreme Court a legitimate institution?

Response: Yes. *See* U.S. Const. art. III, § 1 ("The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.").

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

Response: Yes.

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

Response: Yes. 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.

7. Please describe your judicial philosophy. Be as specific as possible.

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.

8. Is originalism a legitimate method of constitutional interpretation?

Response: Yes. 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, including with regard to the interpretation of statutory and constitutional provisions.

9. Is textualism a legitimate method of statutory interpretation?

Response: Yes. "[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 faithfully apply Supreme Court and Third Circuit precedent, including with regard to the interpretation of statutory and constitutional provisions.

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

Response: The Constitution is an enduring document which does not change unless amended through the procedures prescribed in Article V of the Constitution. "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. 2111, 2132 (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, including with regard to the interpretation of constitutional provisions.

11. 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: Please see my response to Question 9.

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

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 when construing the meaning of a statute. 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. 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. Additionally, I would only consider statements made by a president in interpreting the meaning of a statute if authorized by Supreme Court and Third Circuit precedent.

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

Response: The Supreme Court has held that private property, such as a shopping center, does not "lose its private character merely because the public is generally invited to use it for designated purposes." *Lloyd Corp., Ltd. v. Tanner*, 407 U.S. 551, 569 (1972); *see also Hudgens v. NLRB*, 424 U.S. 507, 521 (1976) (holding "the constitutional guarantee of free expression has no part to play" in a shopping center); *see also PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 83 (1980) (holding that a shopping center owner's property rights and First Amendment rights are not violated by a California constitutional provision granting individuals the right to exercise free speech and petition rights at a shopping center.)

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

Response: The Supreme Court has held that non-citizens who are unlawfully present in the United States "receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990); *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (holding that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent").

15. 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 has held that non-citizens who are unlawfully present in the United States "receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990). "[S]earches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border." *United States v. Ramsey*, 431 U.S. 606, 616 (1977). The Fourth Amendment, however, limits government action within the United States with respect to non-citizens who are unlawfully present. *See Yoc-Us v. Att'y Gen.*, 932 F.3d 98, 106 (3d Cir. 2019) (noting that "[e]ven though [p]etitioners are not United States citizens, the relevant Fourth … Amendment rights apply to them).

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

Response: As a Magistrate Judge and nominee for a District Judge position, I am prohibited from commenting on issues that may come before the Court. *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.

17. 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: I am unfamiliar with the suggestion by another federal district judge set forth above, and I am uncertain whether the suggestion was contained in an opinion. As a Magistrate Judge and nominee for a District Judge position, I am prohibited from commenting on issues that may come before the Court. *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.

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 the Supreme Court and the relevant circuit precedent. 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.

18. 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. District Judges must faithfully apply the Supreme Court's and the relevant Circuit Court's precedent.

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

Response: The Supreme Court, in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), upheld the constitutionality of a state law requiring voters to present identification when casting a ballot.

20. 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: 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)).

21. 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: The Supreme Court has identified the following factors to consider when determining whether to overrule a past decision: (1) "the quality of [the decision]'s reasoning," (2) "the workability of the rule it established," (3) "its consistency with other related decisions," (4) "developments since the decision was handed down," and (5) "reliance on the decision." *Janus v. AFSCME*, 138 S. Ct. 2448, 2478-79 (2018). The Supreme Court has not provided guidance as to how many factors are necessary to overturn its own precedent.

b. Is one factor alone ever sufficient?

Response: I am unaware of any Supreme Court precedent indicating whether one factor can be sufficient. In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Court weighed each of the five factors and found that the five factors weighed strongly in favor of overturning then-existing precedent. *See also Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1912 (2021) (Alito, J., joined by Thomas and Gorsuch, JJ., concurring) (weighing the five factors and finding that four of the five weighed strongly against then-existing precedent).

22. Please 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."

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

Response: The Constitution is an enduring document which does not change unless amended through the procedures prescribed in Article V of the Constitution. "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. 2111, 2132 (2022). If confirmed as a District Judge, and as I have done as a Magistrate Judge, I will faithfully follow Supreme Court and Third Circuit precedent, including with regard to the interpretation of constitutional provisions.

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

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." U.S. Const. amend. IX. I am unaware of any Supreme Court decisions establishing whether the Ninth Amendment protects individual rights or structural rights. The Supreme Court noted that the Ninth Amendment's terminology "unambiguously refer[s] to individual rights, not 'collective' rights, or rights that may be exercised only through participation in some corporate body." *District of Columbia v. Heller*, 554 U.S. 570, 579 (2008). In another case, Justice Thomas explained in his concurrence that "certain Bill of Rights provisions prevent federal interference in state affairs and are not readily construed as protecting rights that belong to individuals. The Ninth and Tenth Amendments are obvious examples." *McDonald v. City of Chicago*, 561 U.S. 742, 851 n.20 (2010) (Thomas, J., concurring).

25. 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: Yes. The Ninth Amendment refers to the enumeration of rights elsewhere in the Constitution. *See* U.S. Const. amend. IX.

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

Response: I am unaware of any Supreme Court precedent examining Founding-era history in interpreting the Ninth Amendment. The Supreme Court has relied upon Founding-era history when interpreting other sections of the Bill of Rights. *See New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (concluding that the original public meaning of the Second Amendment "protect[s] an individual right to armed self-defense"); *Kennedy v. Bremerton*, 142 S. Ct. 2407, 2428 (2022) (First Amendment); *Crawford v. Washington*, 541 U.S. 36, 47–50 (2004) (Sixth Amendment Confrontation Clause).

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

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

Response: In *United States v. Verdugo-Urquidez,* 494 U.S. 259, 265 (1990), the Supreme Court explained 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, are 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."

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

Response: Please see my response to Question 27(a).

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

Response: Please see my responses to Questions 15 and 27(a).

29. 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: The Constitution is an enduring document which does not change unless amended through the procedures prescribed in Article V of the Constitution. "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. 2111, 2132 (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, including with regard to the interpretation of constitutional provisions.

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

Response: The Supreme Court has noted that some Justices and scholars have "maintained that the Privileges or Immunities Clause is the provision of the Fourteenth Amendment that guarantees substantive rights." *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2248, n.22 (2022) (quoting *McDonald v. Chicago,* 561 U.S. 742, 813–850 (2010) (Thomas, J., concurring in part and concurring in judgment)). I am unaware of any Supreme Court precedent holding the Privileges or Immunities Clause of the Fourteenth Amendment to be a source of unenumerated rights. As a Magistrate Judge and nominee for a District Judge position, I am prohibited from expressing an opinion on matters that may come before the courts. *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 follow the precedent of the Supreme Court and Third Circuit.

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

Response: Please see my response to Question 30.

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

Response: In *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Supreme Court established a two-part test that courts apply when deciding how to treat an agency's interpretation of a statute. First, the court is to determine if the statute is unambiguous and the intent of Congress is clear. *Id.* at 842-43. If so, the court should apply the plain meaning of the statute. *Id*. If, however, "the statute is silent or ambiguous with respect to the specific issue, the court is to then determine whether the agency's answer is based on a permissible construction of the statute." *Id*. at 843.

With respect to how the *Chevron* doctrine has changed, in *West Virginia v. Environmental Protection Agency*, 142 S. Ct. 2587, 2605 (2022), the Supreme Court applied the Major Questions Doctrine to require Congress's clear statement that delegates authority to the administrative agency for regulation of a "fundamental sector of the economy." Rather than showing "something more than a merely plausible textual basis for the agency action," the agency "must point to 'clear congressional authorization' for the power it claims." *Id.* at 2609 (quoting *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014)); *see also Biden v. Nebraska*, 143 S. Ct. 2355 (2023) (holding that the Secretary of Education's program to forgive student loans under the Higher Education Relief Opportunities for Students Act of 2003 violated the Major Questions Doctrine because there was no clear delegation from Congress).

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

Response: The Supreme Court has stated that the Court "presume[s] that 'Congress intends to make major policy decisions itself, not leave those decisions to agencies.'" *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022) (quoting *United States Telecom Assn. v. FCC*, 855 F.3d 381, 419 (D.C. Cir. 2017) (Kavanaugh, J., dissenting from denial of rehearing *en banc*)). When assessing whether the agency action was authorized, the agency "must point to 'clear congressional authorization' for the power it claims." *Id*. (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)).

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

Response: The Constitution provides that "all legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. art. I. However, executive power is vested in the President and not Congress. U.S. Const. art. II. In addition, judicial power is vested in the courts and not in Congress. U.S. Const. art, III. Congress is specifically barred from passing ex post facto laws, U.S. Const. art. I, § 9, cl. 3, and the First Amendment bars Congress from restricting the freedom of exercising religion, speech, the press, peaceable assembly, and petition for redress of a grievance, U.S. Const. amend. I. The Constitution also limits Congressional power through the Tenth Amendment, which states that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.

35. Please describe the modern understanding and limits of 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).

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

Response: In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court struck down the federal Gun-Free School Zone Act of 1990 (Act). The Act made it a federal crime to possess a handgun within 1,000 feet of a school. The Supreme Court held that the Act was beyond Congress's authority under the Commerce Clause because the possession of a handgun within the school zone was not economic activity and did not have a substantial impact on interstate commerce.

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

Response: The Supreme Court has held that the same "shock the conscience" standard "typically is employed when determining whether governmental action violates due process rights under the Fifth and Fourteenth Amendments." *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1901 (2018). A governmental action shocks the conscience when "the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Id.* (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 847, n.8 (1998)). *See also Adarand Constructors, inc. v. Pena*, 515 U.S. 200, 217 (1995) ("Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment.")

38. 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: As a Magistrate Judge and nominee for a District Judge position, I am prohibited from commenting on issues that may come before the Court. *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.

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

Response: Under the Major Questions Doctrine, "a clear statement [is] necessary to conclude that Congress intended to delegate authority" of significant breadth that regulates a "fundamental sector of the economy." *West Virginia v. EPA*, 142 S. Ct. 2587, 2605 (2022) (quoting 84 Fed. Reg. 32529). Rather than show "something more than a merely plausible textual basis for the agency action," the agency "must point to 'clear congressional authorization' for the power it claims." *Id.* at 2609 (quoting *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014)); *see also Biden v. Nebraska*, 143 S. Ct. 2355 (2023) (holding that the Secretary of Education's program to forgive student loans under the Higher Education Relief Opportunities for Students Act of 2003 violated the Major Questions Doctrine because there was no clear delegation from Congress).

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

Response: The anti-commandeering doctrine prohibits federal government action that would compel a state to take an action it would otherwise not take. "Congress may not simply 'commandee[r] the legislative power of the States by directly compelling them to enact and enforce a federal regulatory program." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1477 (2018) (quoting *New York v. United States,* 505 U.S. 144, 161 (1992)).

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

Response: The Constitution is an enduring document which does not change unless amended through the procedures prescribed in Article V of the Constitution. "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. 2111, 2132 (2022). The application of the Eighth Amendment to "enforce the Constitution's protection of human dignity" must evolve to "standards of decency that mark the progress of a maturing society." *Moore v. Texas*, 581 U.S. 1, 12 (2017) (quoting *Hall v. Florida*, 572 U.S. 701, 708 (2014)).

42. Is the death penalty constitutional?

Response: The Supreme Court has held that the death penalty is constitutional. *Gregg v. Georgia*, 428 U.S. 153, 207 (1976).

43. 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.

Response: As a Magistrate Judge and nominee for a District Judge position, I am prohibited from commenting on issues that may come before the Court. *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. *See United States v. Nixon*, 418 U.S. 683, 693 (1974) ("the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case."); *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.")

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting on issues that may come before the Court. *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.

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

Response: Please see my response to Question 13.

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

Response: As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting on issues that may come before the Court. *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.

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

Response: The Supremacy Clause in Article VI, clause 2 of the Constitution provides that federal laws and treaties are "the supreme law" of the United States. Under the Adequate and Independent State grounds doctrine, the Supreme Court "will not review judgments of state courts that rest on adequate and independent state grounds." *Michigan v. Long*, 463 U.S. 1032, 1042 (1983). The Supremacy Clause interacts with the Adequate and Independent State grounds doctrine to prevent federal courts from addressing issues that can be resolved through independent state grounds, in deference to the rights of the states to resolve disputes under their laws and to avoid the issuance of advisory opinions by federal courts.

48. 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 unaware of any Supreme Court or Third Circuit precedent addressing the application of the Fifth Amendment's Due Process Clause to a requirement of notice and a hearing before placing a person on a no-fly list. As a Magistrate Judge and a nominee for a District Judge position, I am prohibited from commenting on issues that may come before the Court. *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.

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

Response: I am unaware of any reference to a textual source by the Supreme Court or Third Circuit in establishing standards of review for determining the constitutionality of state laws or regulations.

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

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. Additionally, in *Monsanto v. Geerton Seed Farms*, 561 U.S. 139, 165 (2010), the Supreme Court cautioned that "[a]n injunction is drastic and extraordinary remedy, which should not be granted as a matter of course." As a Magistrate Judge and nominee for a District Judge position, I am prohibited from commenting on issues that may come before the Court including commenting further on the basis for the issuance of a universal injunction. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

51. 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: In my 27 years of private practice, I was fortunate to appear before many extraordinary jurists. As a Magistrate Judge for over four years, I have been fortunate to work with an incredibly dedicated group of judges in the District of New Jersey. Rather than single out one judge, I highlight for the committee the following traits of many of the judges in our District that I hope to emulate: (1) fidelity to the law; (2) respect for all who appear before them; (3) hard work and dedication to ensure prompt resolutions of matters; and (4) humility.