

Senator Chuck Grassley, Ranking Member
Questions for the Record
Angel Kelley

Judicial Nominee to the U.S. District Court for the District of Massachusetts

1. **Several weeks ago, an editorial board member of *The New York Times* editorial board appeared on MSNBC and stated that she saw “dozens of American flags” on Long Island pickup trucks, which she described as “just disturbing.” Do you agree that flying the American flag is a way to honor the United States of America? Why or why not?**

Response: I am not familiar with the statement. Flying the American flag is one of many ways to demonstrate one’s pride and patriotism.

2. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

Response: The term is used in different ways by different people. Based on my understanding of the term super precedent, it refers to Supreme Court cases that become institutionalized in our society and are embedded in our lives and law. There is some debate about which cases have the status of super precedent. As a result, it is not appropriate for me to answer this question, as a sitting state court judge and federal judicial nominee. However, I can commit if confirmed, I will faithfully apply all binding precedent of the Supreme Court and First Circuit, regardless of whether any particular case might be described as “super precedent.”

3. **Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?**

Response: In *Terry v. Ohio*, the Supreme Court held that the Fourth Amendment requires the police to have reasonable suspicion that (1) the suspect is involved in the commission of a crime and (2) is armed and dangerous to justify a stop and frisk of the suspect. 392 U.S. 1 (1968).

4. **Is the federal judicial system systemically racist?**

Response: There are several studies that document the disparate impact on communities of color at various stages in the federal criminal legal process. The 100-to-1 powder cocaine to crack cocaine sentencing disparity is one example of how communities of color have been disadvantaged by the criminal legal system. Over the years, the federal government has engaged in significant work to address these sentencing disparities, through the U.S. Sentencing Commission’s revisions to the sentencing guidelines and legislation, such as Fair Sentencing Act and First Step Act. If confirmed as a U.S. District Court judge, I would apply the statutory sentencing factors and the laws passed by

Congress.

5. Is the Massachusetts Commonwealth judicial system systemically racist?

Response: Racial disparities exist in many systems. For example, in Massachusetts various studies on racial disparities have been conducted, including a recent study that was conducted by Harvard Law School, Criminal Justice Policy Program. Harvard Law School's research team issued a report on September 9, 2020, documenting racial disparities in the Massachusetts criminal system. Racial disparities in the Massachusetts criminal system (2020), <https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf>. As a sitting judge in the Commonwealth of Massachusetts, it is my responsibility to ensure every litigant that comes before me is treated fairly and impartially regardless of their race, socio-economic status, or any other characteristic. That would continue to be my responsibility if confirmed as a U.S. District Court judge.

6. Please describe the circumstances when it is appropriate for a judge not to credit the testimony of a law enforcement officer.

Response: The reasons why any fact-finder might choose not to credit the testimony of a particular witness, regardless of occupation, include but are not limited to the appearance that the witness' testimony is untruthful or if it conflicts with other evidence and reasonable inferences drawn from the evidence.

7. Do you believe that we should defund the police?

Response: There is significant public debate on this topic. As a sitting state court judge and federal judicial nominee, it is not appropriate for me to respond to this question.

8. Do you believe that local governments should reallocate funds away from police departments to other support services?

Response: Same answer as Question 7.

9. When is the last time you handled a firearm?

Response: Last week.

10. Should a defendant's personal characteristics influence the punishment he or she receives?

Response: Sentencing is an individualized process. If confirmed, I would follow 18 U.S.C. §3553 and rigorously calculate the sentencing guideline range and apply the

sentencing factors to impose a sentence “sufficient, but not greater than necessary.” In determining the proper sentence to impose, I would consider “the nature of the offense and the history and characteristics of the defendant,” as required by 18 U.S.C. §3553(a)(1).

11. Should violent illegal aliens be permitted to remain in the United States just because they married a United States citizen?

Response: As a sitting state court judge, I am not familiar with the specific immigration laws that apply to federal defendants convicted of violent crimes and who are also undocumented and married to U.S. citizens. If I am confirmed and a case came before me presenting these issues, I commit to apply federal law to the facts of these cases, just as if they were any other case.

12. What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, repeat gun offenders incarcerated or protecting convicts from the coronavirus?

Response: Public safety is always a significant consideration when making bail and sentencing decisions. Motions for release due to the coronavirus require case-by-case analysis and determination.

13. During your confirmation hearing to be an Associate Judge for the Superior Court, you noted that within the criminal context there are cases that you do not personally agree with. What types of cases earn your personal disapproval?

Response: I don't recall the context of the comment, but I suspect that any such comment was intended to convey that there are occasions when my personal views on legal issues differ from the ultimate legal determination in the case. If confirmed, I will continue to decide cases based on my legal analysis of the facts and the law, not my personal views. I am confident any such statement was not intended to convey that there are types of cases, where I would not follow the law or cases that I would be unwilling to handle. I have never refused to handle any type of cases that appeared on my docket and I have no intention to start such a practice.

14. Do you intend to let your personal disapproval of the aforementioned cases influence your opinions, if confirmed?

Response: See answer to Question 13.

15. In a case of first impression should the Constitution be interpreted according to how it was understood by the public at the time of enactment? If not, how do you think it should be interpreted?

Response: In my 12 years as a state court judge, I have not had the occasion to encounter this. If confirmed, I will follow the interpretative method dictated by direct or analogous precedent.

16. What role should empathy play in interpreting the law?

Response: Judges are required to adjudicate every case fairly and impartially. Empathy should not dictate the legal determination of any case. However, empathy may play a role in how a judge communicates with the parties in the case in open court, with the understanding that all communications should be delivered with respect and even-handedness, and in compliance with judicial code of conduct.

17. What is the purpose of criminal sentencing under the law?

Response: The purpose of sentencing is to hold a person accountable for unlawful conduct. Sentencing is an individualized process that achieves one or more sentencing goals of punishment, deterrence, public safety, and rehabilitation.

18. What is the purpose of criminal sentencing from a moral perspective?

Response: The purpose is the same: to hold a person accountable for unlawful conduct.

19. What, if anything, do you think is the relationship between morality and the law when it comes to punishing criminals?

Response: Please see answers to Questions 17 and 18.

20. What is the relationship between morality and the law generally?

Response: They are aligned in the sense that laws are based on the collective morality of a society.

21. Should law firms undertake the pro bono prosecution of crimes?

Response: Prosecutors enjoy the privilege of representing a state or the United States in the pursuit of justice in the prosecution of criminal matters. Prosecutors also carry the unique responsibilities and burdens of such a high honor. I am not aware if pro bono prosecution of crimes is a practice in some locations, but if it is, I would expect those burdens and responsibilities are well understood by anyone assuming the duties of a prosecutor.

22. Do you agree with Judge Ketanji Brown Jackson in 2013 when she said she did not believe in a “living constitution”?

Response: I am not familiar with Judge Ketanji Brown Jackson’s comment, nor the context. Additionally, as a sitting state court judge and federal judicial nominee, it is not appropriate for me to comment on Judge Ketanji Brown Jackson’s statement.

23. Is it possible for private parties—like law firms, retired prosecutors, or retired judges—to prosecute federal criminals in the absence of charges being actively pursued by federal authorities?

Response: I am not aware of any authority for such a process.

24. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. Would you hire a member of the Federalist Society to serve in your chambers as a law clerk?

Response: Membership in the Federalist Society would not bar a candidate from consideration for a clerkship position.

25. Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?

Response: Those decisions are best left to the law firms.

26. As a matter of legal ethics do you agree with the proposition that some civil clients don’t deserve representation on account of their identity?

Response: No.

27. Do you agree with the proposition that some clients do not deserve representation on account of their:

a. **Heinous Crime?**

Response: No.

b. **Political beliefs?**

Response: No.

c. **Religious beliefs?**

Response: No.

28. Should judicial decisions take into consideration principles of social “equity”?

Response: Judicial decision-making should be confined to deciding the legal claims in the case, based on the legal arguments of parties, the evidence presented or determined at an evidentiary hearing and with fidelity to the law.

29. Is climate change real?

Response: I understand there is scientific research and public debate on this topic. As a sitting state court judge and federal judicial nominee, it is not appropriate for me to answer this question.

30. You can answer the following questions yes or no:

- a. **Was *Brown v. Board of Education* correctly decided?**
- b. **Was *Loving v. Virginia* correctly decided?**
- c. **Was *Griswold v. Connecticut* correctly decided?**
- d. **Was *Roe v. Wade* correctly decided?**
- e. **Was *Planned Parenthood v. Casey* correctly decided?**
- f. **Was *Gonzales v. Carhart* correctly decided?**
- g. **Was *District of Columbia v. Heller* correctly decided?**
- h. **Was *McDonald v. City of Chicago* correctly decided?**
- i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
- j. **Was *Sturgeon v. Frost* correctly decided?**
- k. **Was *Gideon v. Wainwright* correctly decided?**
- l. **Was *Rust v. Sullivan* correctly decided?**

Response: As a sitting state court judge and federal judicial nominee, generally it is not appropriate for me to answer these questions. However, I will state *Brown* and *Loving* were correctly decided, because the issues presented in these cases are not likely to be re-litigated. If confirmed, I will follow Supreme Court precedent.

31. Is threatening Supreme Court Justices right or wrong?

Response: Threatening any person may constitute a crime. Likewise, threatening a Supreme Court Justice may constitute a crime.

32. Do you think the Supreme Court should be expanded?

Response: I understand there is much public debate on this topic. As a sitting state court judge and federal judicial nominee, it is not appropriate for me to answer this question.

33. Do the following qualify as public health emergencies? Please explain why or why not?

- a. **Racism?**
- b. **Gun violence?**
- c. **Drug addiction / abuse?**

Response: Racism, gun violence and substance use disorders are significant social challenges to be addressed by policymakers.

- 34. If the Justice Department determines that a prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.**

Response: As a sitting state court judge and federal judicial nominee, it is not appropriate for me to answer this question.

- 35. What is the legal basis for a nationwide injunction? What considerations would you consider as a district judge when deciding whether to grant one?**

Response: An injunction is an equitable remedy, governed by Federal Rule of Civil Procedure 65. A plaintiff seeking a preliminary injunction must establish: (1) likelihood of success on the merits; (2) likelihood to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). There has been a notable rise in the issuance of nationwide injunctions in the private and public law context. There is significant legal debate about the use of nationwide injunctions, particularly those that restrict the federal government from enforcing a statute or regulation. If confirmed, I would decide each case after careful consideration of the legal arguments and the facts presented, guided by Supreme Court and First Circuit precedent.

- 36. Does illegal immigration impose costs on border communities?**

Response: Whether illegal immigration imposes costs on border communities is an issue that should be addressed by policymakers.

- 37. When was the last time you visited the U.S.-Mexico border?**

Response: I visited Laredo, Texas in December 2019 and the U.S.-Mexico border was visible.

- 38. When was the last time you visited the U.S.-Mexico border outside of a port of entry?**

Response: I do not recall if I have been in the vicinity of U.S.-Mexico border outside of a port of entry.

39. Do Blaine Amendments violate the Constitution?

Response: The Blaine Amendments refer to regulations that restrict the use of public funds for religious schools. If confirmed, should I encounter a case involving Blaine Amendments and the Free Exercise Clause of the First Amendment, I will follow Supreme Court and First Circuit precedent, such as *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020).

40. 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: In 2017, I submitted my application to the bipartisan Advisory Committee on Massachusetts Judicial Nominations and interviewed with both U.S. Senators and then the White House in 2018. The White House took no action on my application. In 2019, new members were appointed to the bipartisan advisory committee. I applied again, interviewed with the bipartisan advisory committee and my application was advanced again to the senators. No action was taken on my application.

On January 1, 2021, Senators Elizabeth Warren and Edward Markey announced new committee members to the bipartisan Advisory Committee on Massachusetts Judicial Nominations to consider applications for federal judicial vacancies in the United States District Court for the District of Massachusetts. On January 18, 2021, I submitted my application for consideration. I interviewed with the advisory committee on February 4, 2021 and advanced through the due diligence process. I interviewed with Senators Warren and Markey on February 17, 2021. I interviewed with members of the White House Counsel's Office on February 23, 2021. On May 12, 2021, my nomination was submitted to the Senate.

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

Response: No.

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

Response: No.

- 43. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? 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.

- 44. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?**

Response: No.

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

Response: I interviewed with White House staff on February 23, 2021. Shortly thereafter, I was informed that my application was advanced to the vetting process. On or about May 12, 2021, I was informed of my nomination.

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

Response: Upon receipt of these questions, I carefully reviewed each question, drafted responses, conducted research when necessary and submitted them to the Department of Justice, Office of Legal Policy for review and transmittal to the Senate Judiciary Committee. The answers contained herein are my own.

**Nomination of Angel Kelley
to be United States District Judge for the District of Massachusetts
Questions for the Record
Submitted June 30, 2021**

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing ahate crime against any person?**

Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing aviolent crime against any person?**

Response: No.

3. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

Response: If confirmed, I will follow all binding Supreme Court precedent. My personal views are not relevant to the inquiry whether I would follow Supreme Court precedent. As a sitting state court judge and federal judicial nominee, it would be inappropriate for me to answer otherwise.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

Response: The *Heller* decisions informs us that the Second Amendment guarantees an individual's right to keep and bear arms.

5. **Please describe what you believe to be the Supreme Court's holding in *Greer v. United States*, 593 U.S. __ (2021).**

Response: In *Rehaif v. United States*, the Supreme Court held that in the prosecution of a felon-in-possession case, the prosecution must prove not only that the defendant knew he possessed a firearm, but also that he *knew he was a felon* when he possessed the firearm. 139 S. Ct. 2191 (2019). Relying on *Rehaif*, defendants in *Greer v. United States* challenged their convictions under 18 U.S.C. §922(g)(1) (the statute prohibiting felons from possessing firearms), because (1) the jury was not instructed of the *mens rea* requirement defined in *Rehaif*, and (2) the defendant was not informed during a plea colloquy that the prosecution was required to prove the element of *mens rea*. No. 19-8709, 2021 WL 2405146 (S. Ct. June 14, 2021). The Supreme Court held in *Greer*

that a *Rehaif* error shall not be the basis for vacating the conviction “unless the defendant makes a sufficient argument or representation on appeal that he would have presented evidence at trial that he did not know he was a felon” and there exists a “reasonable probability” that the outcome would have been different. *Id.*

6. Please describe what you believe to be the Supreme Court’s holding in *Terry v. United States*, 593 U.S.__(2021).

Response: In *Terry v. United States*, defendant sought reduction of his sentence under the First Step Act of 2018. The First Step Act adopted sentencing reforms that permitted the reduction of sentences for certain crack cocaine offenses. In *Terry*, the Supreme Court held that Section 2(a) of the Fair Sentencing Act modified the statutory penalties for only offenses that triggered a mandatory minimum sentence, not other crack cocaine offenses, such as the one defendant was convicted. No. 20-5904, 2021 WL 2405145 (S. Ct. June 14, 2021).

7. Please describe what you believe to be the Supreme Court’s holding in *Jones v. Mississippi*, 593 U.S.__(2021).

Response: In *Jones v. Mississippi*, the Supreme Court held that a sentencing judge is not required to make a “separate factual finding of permanent incorrigibility” when sentencing a defendant to life without parole, when the defendant is under the age of 18 and convicted of murder. 141 S. Ct. 1307 (2021).

8. Please describe what you believe to be the Supreme Court’s holding in *Tandon v. Newsom*, 593 U.S.__(2021).

Response: In *Tandon v. Newsom*, the Supreme Court held that plaintiffs were entitled to injunctive relief pending appeal in their challenge to California’s COVID-19 regulation restricting residential religious gatherings. The Supreme Court held that government regulations that “treat *any* comparable secular activity more favorably than religious exercise” are subject to strict scrutiny review under the Free Exercise Clause. 141 S. Ct. 1294 (2021).

9. Please describe what you believe to be the Supreme Court’s holding in *Sanchez v. Mayorkas*, 593 U.S.__(2021).

Response: In *Sanchez v. Mayorkas*, the Supreme Court held that a person who enters the country unlawfully and obtains Temporary Protected Status (TPS) is ineligible to become a lawful permanent resident, due to the unlawful entry. No. 20-315, 2021 WL 2301964 (S. Ct. June 7, 2021). Persons afforded TPS are deemed foreign nationals with nonimmigrant status, but it does not grant “admission,” here defined as a lawful entry.

10. What is your view of arbitration as a litigation alternative in civil cases?

Response: Arbitration is a widely used alternative in civil cases. I don't have a personal view of arbitration. I am confident many are pleased with this alternative, otherwise it would not be as popular as it is.

11. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.

Response: Upon receipt of these questions, I carefully reviewed each question, drafted responses, conducted research when necessary and submitted them to the Department of Justice, Office of Legal Policy for review and transmittal to the Senate Judiciary Committee. The answers contained herein are my own.

12. Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.

Response: No.

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

Questions for the Record for Angel Kelley, Nominee for the United States District Court for the District of Massachusetts

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

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

Response: As a sitting state court judge and federal judicial nominee, it is not appropriate for me to respond to this question.

- 2. Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.**

Response: As a state court judge, it is my responsibility to be fair and impartial. Over my 12 years as a state court judge I have made it my practice to treat everyone with respect and to give the parties an opportunity to be heard, when appropriate. This practice is an important feature of the judicial process. My decisions are guided by and confined to a careful consideration of the legal arguments, facts presented in the specific case, and application of the governing law. Fidelity to this process, independent of any outside or personal influences, preserves the integrity of the judicial decision-making process. This is my judicial philosophy. I have not studied sufficiently the judicial philosophies of U.S. Supreme Court Justices from the Warren, Burger, Rehnquist, and Roberts Courts to make a comparison.

- 3. Does the Constitution's meaning evolve and adapt to new circumstances even if the document is not formally amended? If so, when?**

Response: The Constitution is an enduring document. It has guided our nation through the most challenging periods of our history and brought us to our proudest moments. The U.S. Constitution is a model for other nations.

- 4. Please briefly describe the interpretative method known as originalism.**

Response: As I understand the term originalism, it refers to an interpretative methodology of the Constitution that requires giving constitutional text its original public meaning, as understood by an ordinary person at that time.

- 5. Please briefly describe the interpretive method often referred to as living constitutionalism.**

Response: As I understand the term living constitutionalism, it refers to an interpretative methodology that interprets the Constitution as adaptable, with the capacity to change its application and meaning over time.

- 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 my 12 years as a state court judge, I have not encountered such a situation. If confirmed, I will follow the interpretative method dictated by direct or analogous precedent of the Supreme Court or First Circuit.

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: In my 12 years as a state court judge, I have not had an occasion to apply different methodologies of interpretation of the Constitution. If confirmed, I will follow the interpretative method dictated by direct or analogous precedent of the Supreme Court or First Circuit.

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

Response: In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment confers an individual right to possess a firearm. 554 U.S. 570 (2008). The Supreme Court also held that the Second Amendment right to keep and bear arms is a fundamental right that applies to the states, as well as the federal government. *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

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

Response: See answer to Question 11. I am unaware of any Supreme Court precedent indicating that the right to bear arms receives less protection than other individual rights.

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

Response: Both are fundamental rights.

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

Response: Yes. If confirmed, I will follow Supreme Court precedent in all cases, including those involving religious liberties. See, e.g., *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014).

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

Response: Yes.

13. **In February of this year, in a video presentation with Voice of Reason Boston, you said that “there is systemic racism in almost all systems, particularly the court system.” Is the federal court system infected with systemic racism?**

Response: Racial disparities exist in many systems. For example, in Massachusetts various studies on racial disparities have been conducted, including a recent study that was conducted by Harvard Law School, Criminal Justice Policy Program. Harvard Law School’s research team issued a report on September 9, 2020, documenting racial disparities in the Massachusetts criminal system. Racial disparities in the Massachusetts criminal system (2020), <https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf>. As a sitting judge in the Commonwealth of Massachusetts, it is my responsibility to ensure every litigant that comes before me is treated fairly and impartially regardless of their race, socio-economic status, or any other characteristic. That would continue to be my responsibility, if confirmed as a U.S. District Court judge.

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

Response: If confirmed as a U.S. District Court judge and a case came before me with allegations of employment discrimination, I would apply binding Supreme Court and First Circuit precedent.

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

Response: Congress has authorized the death penalty as an appropriate punishment for certain crimes and the Supreme Court has held the death penalty is constitutional in certain circumstances. I am not aware of any authority for the President to unilaterally abolish the death penalty.

Senator Mike Lee
Questions for the Record
Angel Kelley, D. Mass.

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

Response: As a state court judge, it is my responsibility to be fair and impartial. Over my 12 years as a state court judge, I have made it my practice to treat everyone with respect and to give the parties an opportunity to be heard, when appropriate. This practice is an important feature of the judicial process. My decisions are guided by and confined to a careful consideration of the legal arguments, facts presented in the specific case and application of the governing law. Fidelity to this process, independent of any outside or personal influences, preserves the integrity of the judicial decision-making process. This is my judicial philosophy.

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

Response: First, I will consider the text of the statute, potentially referring to canons of statutory construction, if needed. I would review the arguments made by counsel and the cases cited by the parties and I would consult Supreme Court and First Circuit precedent in evaluating this statute and follow this binding precedent. If direct precedent does not exist, I would look for analogous precedent on related statutory provisions. If the case presented an issue of first impression in my circuit, I would look to other circuits for persuasive precedent. In the end, legislative history might be consulted, if necessary.

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

Response: In addition to reviewing the arguments made by counsel and cases cited by the parties, I would consult the Supreme Court or First Circuit precedent and follow this binding precedent. If the case presented an issue of first impression in my circuit, I would consult precedent from other circuits.

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

Response: If confirmed, I will be obligated to follow Supreme Court and First Circuit precedent to determine how text and original meaning apply in the interpretation of a constitutional provision.

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: If the meaning is plain on the face of the statute, then the interpretation process stops there.

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

Response: If confirmed, I will be obligated to follow Supreme Court and First Circuit precedent to determine the interpretative methodology employed in the interpretation of the statute or constitutional provision.

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

Response: A plaintiff must have suffered (1) an “injury in fact;” (2) causation of an injury that is “fairly traceable” to the conduct subject of the suit; (3) and a favorable result will likely redress the harm. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations and internal quotation marks omitted).

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

Response: Under Article I of the Constitution, Congress is granted the power “to make all Laws which shall be necessary and proper.” The Necessary and Proper Clause confers upon Congress implied powers, which are not explicitly enumerated in the Constitution. *McCullough v. Maryland*, 17 U.S. 316 (1819).

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

Response: In addition to reviewing the arguments made by counsel and cases cited by the parties, I would determine whether the Supreme Court or First Circuit had previously interpreted that law and follow this binding precedent.

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

Response: Yes. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965) (the Supreme Court established the right to marital privacy). Following *Griswold*, the Supreme Court recognized other unenumerated rights related to marriage, such as the right to marry. *See, Loving v. Virginia*, 388 U.S. 1 (1967) (interracial marriages); *Obergefell v. Hodges*, 576 U.S. 644 (2015) (same-sex marriages).

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

Response: In *Washington v. Glucksberg*, the Supreme Court held that the substantive-due-process analysis begins with the observation that “the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” 521 U.S. 702, 720-721 (1997). (citations and internal quotation marks omitted). Some rights protected under substantive due process are listed above in Question 9.

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

Response: Any personal beliefs I have regarding substantive due process rights versus economic rights are irrelevant to how I would decide cases as a judge. If confirmed, I would faithfully follow Supreme Court and First Circuit precedent.

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

Response: In *United States v. Lopez*, the Supreme Court held that Congress’s power under the Commerce Clause extended to three categories: (1) regulation of channels of commerce; (2) regulation of instrumentalities of commerce; and (3) regulation of economic activities that affect commerce. 514 U.S. 549, 558-59 (1995).

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

Response: In *City of Cleburne v. Cleburne Living Center*, the Supreme Court held that classifications based on race, alienage or national origin are “so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy” and warrant strict scrutiny review. 473 U.S. 432, 440 (1995).

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

Response: The concept of checks and balances is central to our democracy. The Constitution in Article I, II, and III, divides and defines the powers and limitations of the three branches of government as they relate to each other. As such, our system of checks and balances prevent the concentration of power in any one branch to preserve constitutional liberties.

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

Response: In addition to reviewing the arguments made by counsel and cases cited by the parties, I would determine whether the Supreme Court or First Circuit had previously addressed this scenario, if so then I would follow this binding precedent.

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

Response: Judges are required to adjudicate every case fairly and impartially. Empathy does not dictate the legal determination of any case. However, empathy may play a role in how a judge communicates with the parties in the case in open court, with the understanding that all communications should be delivered with respect and even-handedness.

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

Response: Both alternatives are unacceptable. Judges are obligated to uphold the Constitution and preserve the rule of law.

18. **From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?**

Response: I have not engaged in scholarly research on the occasions when the Supreme Court has declared federal statutes as unconstitutional to have an opinion on the topic. If confirmed, my responsibilities as a U.S. District Court Judge will be to follow Supreme Court precedent.

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

Response: Judiciary review was established in *Marbury v. Madison*, when the Supreme Court held that the federal courts have the power to declare statutes unconstitutional. 5 U.S. (1 Cranch) 137 (1803). As I understand the term, judicial supremacy refers to the Constitution as the supreme law of the land and the Supreme Court as the ultimate arbiter of its interpretation.

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

Response: As government officials, elected officials take an oath to support and defend the Constitution.

21. **In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that’s important to keep in mind when judging.**

Response: Federalist 78 as described here is a commentary on the role of the Legislative Branch to effectuate the will of the people and the power of the Executive Branch to enforce laws. The role of the courts is limited to judicial review.

22. **As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: As stated in the question, a district court judge is duty bound to follow Supreme Court and circuit court precedent (in my case it would be First Circuit precedent). It is not the duty of a district court judge to question the wisdom of any Supreme Court and circuit court precedent. It is the duty of the district court judge to be faithful to the rule of law. The question poses a scenario when the available precedent does not speak directly to the issue raised by the litigants. It is difficult to imagine a scenario when a case would present an issue without some direct precedent to follow. However, if presented with such a case, I would do my best to seek analogous precedent to guide my interpretation. Such scenarios would require case-by-case analysis. Careful review of the arguments made by counsel, the cases cited by the parties, along with a rigorous reading of the text and statutory context, along with application of the plain meaning of text would be necessary to resolve such matters.

23. **Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?**

Response: No. Federal courts were created to have limited jurisdiction.

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: If confirmed, I would follow 18 U.S.C. §3553 and rigorously calculate the sentencing guideline range and apply the sentencing factors to impose a sentence "sufficient, but not greater than necessary." In determining the proper sentence to impose, I shall consider "the nature of the offense and the history and characteristics of the defendant, as required by 18 U.S.C. §3553(a)(1). Race, gender, nationality, sexual orientation, or gender identity are not defined sentencing factors.

25. **Nan Aaron, the President for Alliance for Justice, praised President Biden's decision to nominate you (and others) due to "a demonstrated commitment to equal justice, a refreshing change from the litany of Trump judges with records of turning the clock back on our rights."**

- a. **Leaving aside what Nan Aaron might mean, how would you define "equal justice?"**

Response: The promise of equal justice is the bedrock of our judicial system and one of the ideals that our country was founded upon. Equal justice is when people come before the court and are treated with the same dignity and respect and are afforded the same protections of the law, regardless of race, gender, religion, national origin, sexual orientation, political affiliation, and socio-economic status. Equal justice ensures no person is above the law.

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

Response: Equality refers to two things being equal. Equity refers to the understanding that two things are not equal and are handled differently to create an equal result.

- c. **Do you believe a judge should use their position to advance equity, equality, or both?**

Response: Judges should afford every person equal justice, without fear or favor. In order to ensure all litigants receive due process, it may be necessary for judges

to take different procedural steps to ensure that the process is equal for different litigants. For example, if a non-English speaking person is before the court and the judge has the authority and capability to order an interpreter for the litigant, this would be an acceptable situation.

d. **Do you believe “Trump judges” have a record of “turning the clock back on our rights?”**

Response: I am not familiar with this statement and do not adopt it. If I was nominated and confirmed to be a U.S. District Court Judge in 2018, when I first interviewed with the White House Counsel’s office, I would have served proudly as a judge appointed by President Trump. The duties and responsibilities of an Article III judge are the same regardless of the President who makes the nomination.

26. **Does the 14th Amendment’s equal protection clause refer to “equity” or “equality?”**

Response: The 14th Amendment mandates that no state “deny any person within its jurisdiction the equal protection of the laws.” Premised in this amendment is the ideal of equal justice under law.

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

Response: I define “systemic racism” as an historical pattern of discriminatory beliefs and practices that originated centuries ago with the broad acceptance that one race is superior to others and how those beliefs and practices are embedded into many systems that continue to disadvantage other racial groups.

28. **You reportedly stated in a February 12, 2021 presentation that “there is systemic racism in almost all systems, particularly the court system.” Please explain how the court system (specifically, the federal court system) is systemically racist.**

Response: I defined systemic racism in response to Question 27. Racial disparities exist in many systems. For example, in Massachusetts various studies on racial disparities have been conducted, including a recent study that was conducted by Harvard Law School, Criminal Justice Policy Program. Harvard Law School’s research team issued a report on September 9, 2020, documenting racial disparities in the Massachusetts criminal system. Racial disparities in the Massachusetts criminal system (2020), <https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf>. As a sitting judge in the Commonwealth of Massachusetts, it is my responsibility to ensure every litigant that comes before me is treated fairly and impartially regardless of their race, socio-economic status, or any

other characteristic. That would continue to be my responsibility if I confirmed as a U.S. District Court judge.

29. **If the federal court system is systemically racist, would participating in that system make you responsible for systemic racism?**

Response: The Constitution guarantees to all the equal protection of the law. The judicial system is responsible for upholding the Constitution and ensuring equal justice. As a sitting judge in the Commonwealth of Massachusetts, it is my responsibility to ensure that every litigant is treated fairly and impartially, regardless of race, socio-economic status, or any other characteristic. That will continue to be my responsibility, if confirmed as a U.S. District Court Judge.

30. **If confirmed, how do you intend to eliminate systemic racism from the criminal justice system?**

Response: The role of a judicial officer is separate and distinct from that of a policymaker. As a state court judge for the last 12 years, I fully understand my duty to adjudicate individual claims, including legal claims based on race. When presented with cases involving legal claims of race discrimination, I handle them in the same way I handle every other case, with an open mind, neutrality, fair-mindedness, and with a faithful commitment to the law. My responsibility as a judge is to decide the case before me and to not provide an avenue of redress for broader systemic claims. I am very proud of the Massachusetts State Court System's deep commitment to building public trust and confidence in the judiciary and achieving equal justice for all court users.

31. **How do you define "critical race theory?"**

Response: My understanding of the term "critical race theory" is that it refers to a type of scholarship and philosophy that critically examines race and its intersectionality with social power. Courses and scholarship in critical race theory are far more common today than when I attended school.

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

Response: As indicated in responses to Questions 27 and 31, my understanding is that critical race theory is a type of scholarship and philosophy, while systemic racism is defined concept. Both focus on race but are not interchangeable.

33. **Do you believe members of the judiciary should be required to attend trainings on Critical Race Theory?**

Response: I have no opinion on whether members of the judiciary should be required to attend trainings on critical race theory. In general, I believe that judges are public servants, who serve diverse populations and are responsible for learning many areas of law.

34. **Do you believe members of the judiciary should be required to take implicit bias assessments or tests?**

Response: Through court-sponsored trainings on implicit bias, I have come to appreciate the value of these trainings. I have no opinion on whether members of the judiciary should be required to take implicit bias assessments or tests.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: “Nominations”
June 23, 2021

For all nominees:

- 1. Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

Response: No.

- 2. Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

Response: No.

For all judicial nominees:

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

Response: As a state court judge, it is my responsibility to be fair and impartial. Over my 12 years as a state court judge, I have made it my practice to treat everyone with respect and to give everyone an opportunity to be heard, when appropriate. This practice is an important feature of the judicial process. My decisions are guided by and confined to a careful consideration of the legal arguments and facts presented in the specific case and application of the governing law. Fidelity to this process, independent of any outside or personal influences, preserves the integrity of judicial decision-making process. This is my judicial philosophy.

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

Response: I have not adopted any label for my method of interpretation. If confirmed, I would be required to follow Supreme Court and First Circuit precedent and follow the interpretative method dictated by such precedent.

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

Response: I have not adopted any label for my method of interpretation. If confirmed, I would be required to follow Supreme Court and First Circuit precedent. I will follow the interpretative method dictated by such precedent.

4. Do you believe the Constitution is a “living” document? Why or why not?

Response: The Constitution is an enduring document. It is an enduring document, because it has guided our country through some of the most difficult periods of history and our proudest moments. The U.S. Constitution is a model for other nations.

5. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.

Response: I respect all Supreme Court Justices. I have not studied the jurisprudence of the Supreme Court Justices to identify one that I admire most.

- 6. Was *Marbury v. Madison* correctly decided?**
- 7. Was *Lochner v. New York* correctly decided?**
- 8. Was *Brown v. Board of Education* correctly decided?**
- 9. Was *Bolling v. Sharpe* correctly decided?**
- 10. Was *Cooper v. Aaron* correctly decided?**
- 11. Was *Mapp v. Ohio* correctly decided?**
- 12. Was *Gideon v. Wainwright* correctly decided?**
- 13. Was *Griswold v. Connecticut* correctly decided?**
- 14. Was *South Carolina v. Katzenbach* correctly decided?**
- 15. Was *Miranda v. Arizona* correctly decided?**
- 16. Was *Katzenbach v. Morgan* correctly decided?**
- 17. Was *Loving v. Virginia* correctly decided?**
- 18. Was *Katz v. United States* correctly decided?**
- 19. Was *Roe v. Wade* correctly decided?**
- 20. Was *Romer v. Evans* correctly decided?**
- 21. Was *United States v. Virginia* correctly decided?**
- 22. Was *Bush v. Gore* correctly decided?**
- 23. Was *District of Columbia v. Heller* correctly decided?**
- 24. Was *Crawford v. Marion County Election Board* correctly decided?**
- 25. Was *Boumediene v. Bush* correctly decided?**
- 26. Was *Citizens United v. Federal Election Commission* correctly decided?**
- 27. Was *Shelby County v. Holder* correctly decided?**
- 28. Was *United States v. Windsor* correctly decided?**
- 29. Was *Obergefell v. Hodges* correctly decided?**

Response: Questions 6-29 asks for my personal beliefs about Supreme Court decisions. If confirmed, I will follow all prevailing Supreme Court precedent. As a sitting state court judge and federal judicial nominee, it is generally not appropriate for me to respond to questions of this nature. However, I will state *Brown*, *Loving*, and *Marbury* were correctly decided, because the issues presented in these cases are not likely to be re-litigated.

30. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: In my 12 years as a state court judge, I have not had the occasion to study this issue. If confirmed as a U.S. District Court judge, I will not be required to address this issue.

31. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: In my 12 years as a state court judge, I have not had the occasion to study this issue. If confirmed as a U.S. District Court judge, I will not be required to address this issue.

32. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: The sentencing of a defendant is an individualized process defined in 18 U.S.C. §3553. It begins with the calculation of the sentencing guideline range and continues with an evaluation of the sentencing factors that lead to a sentence that is “sufficient but not greater than necessary” to meet the statutory goal of sentencing. 18 U.S.C. §3553(a). Generally, issues related to disparities are not a part of the individualized sentencing of a defendant. If confirmed as a U.S. District Court Judge, I would follow the factors defined by Congress, in 18 U.S.C. §3553(a).

Questions for Angel Kelley

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

Response: Yes.

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

Response: My understanding of the term judicial activism is when a judge decides a case based upon personal views or opinions. Judges take an oath to follow the rule of law, not their personal views. Therefore, judicial activism is not appropriate.

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

Response: Impartiality is an expectation and required under the code of judicial conduct.

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

Response: No.

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

Response: Faithfully interpreting the law is the desirable outcome. There is nothing to reconcile.

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

Response: No.

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

Response: I will faithfully follow Supreme Court and First Circuit precedent in all cases, including those involving 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).

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

Response: If confirmed and presented with a case such as the hypothetical described, I would begin with a careful consideration of the arguments of the parties, researching and reviewing all relevant case law and evaluating the facts as presented or determined at any evidentiary hearing. I would apply the law to the facts of this case, confined to the issues raised by the parties.

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

As a state court judge, I have not had the occasion to preside over a case involving qualified immunity. If confirmed, I would employ the same practice of carefully reviewing the arguments of the parties, researching and reviewing all relevant case law, and applying the law to the facts as presented or determined at an evidentiary hearing. Qualified immunity is a legal doctrine that shields government officials from liability when his/her conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). I will faithfully follow the law as defined by the Supreme Court and First Circuit.

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

Response: As a sitting state court judge and federal judicial nominee, it would be inappropriate for me to respond to this question. As a state court judge, I have not had the occasion to preside over a case involving qualified immunity. As a civil practitioner, while representing Port Authority of New York and New Jersey police officers, I handled several cases alleging police misconduct and asserted the qualified immunity defense on their behalf.

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

Response: Questions involving the relevant scope of qualified immunity protections are better left to policymakers to decide.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: In my 12 years as a state court judge and nearly 18 years as a trial attorney, I have not had the occasion to handle a patent case. If I am confirmed and presented with a patent case, I will employ the same decision-making process that I would employ with other cases, to carefully consider the arguments of the parties, research and review all relevant case

law and evaluate the facts as presented, then confine my decision to the legal claims in the case and with fidelity to the law. Additionally, I would carefully review all relevant Supreme Court precedent, including *Alice Corp. Pty. Ltd. V. CLS Bank Int'l*, 573 U.S. 208 (2014).

13. Do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: Please see my response to Question No. 12.