

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Aditya Bamzai

2. **Position**: State the position for which you have been nominated.

Member, Privacy and Civil Liberties Oversight Board

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

University of Virginia School of Law, 580 Massie Road, Charlottesville VA 22903

4. **Birthplace**: State date and place of birth.

4/21/1979. Mumbai (Bombay), India.

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

J.D. 2004, University of Chicago Law School. Attended 2001 to 2004.

B.A. 2000, Yale University. Attended 1996 to 2000.

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Where addresses or names of the employers for whom I worked have changed, I have updated to reflect the present name or address.

Job Description / Employer / Address

Date

Associate Professor of Law
University of Virginia School of Law
580 Massie Road
Charlottesville, VA 22903

8/2016 to present

Consulting attorney
Hogan Lovells US LLP
555 Thirteenth Street, NW

8/2016 to 8/2016

Washington, DC 20004

Appellate Attorney
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

5/2013 to 5/2016

Associate / Partner
Kirkland & Ellis LLP
655 Fifteenth Street, NW
Washington, DC 20005

11/2008 to 5/2013

Law clerk
Justice Antonin Scalia
U.S. Supreme Court
1 First Street, NE
Washington, DC 20543

7/2007 to 8/2008

Attorney-Adviser
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

12/2005 to 7/2007

Law clerk
Judge Jeffrey Sutton
U.S. Court of Appeals for the Sixth Circuit
10 W. Broad Street
Columbus, OH 43215

9/2004 to 9/2005

Summer Intern
Office of the Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

6/2004 to 8/2004

Summer Associate
Mayer Brown LLP (I worked in both the Chicago and DC offices)
71 S. Wacker Drive
Chicago, IL 60606
&
1999 K Street, NW
Washington, DC 20006

5/2003 to 8/2003

Summer Intern
Chicago Board of Education
1 N. Dearborn Street, #950
Chicago, IL 60602

6/2002 to 8/2002

Social Science Research Analyst

8/2000 to 5/2001

Social Security Administration
505 East Street, SW
Washington, DC 20024

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the U.S. Military. I have registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Assistant Attorney General's Award for Excellence, 2015

Assistant Attorney General's Award for Excellence, 2014

University of Chicago Law Review, 2002-2004; Editor-in-Chief, 2003-2004

Joseph Henry Beale Prize for excellence in legal writing, University of Chicago Law School

Bell, Boyd & Lloyd Prize for excellence in legal writing, University of Chicago Law School

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

None.

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

District of Columbia: 10/2009 to present. Active.

Virginia: 4/2007 to present. Active.

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

U.S. Supreme Court: 3/2013 to present.

U.S. Court of Appeals for the First Circuit: 5/2014 to present.

U.S. Court of Appeals for the Fifth Circuit: 11/2011 to present.

U.S. Court of Appeals for the Ninth Circuit: 9/2011 to present.

U.S. Court of Appeals for the D.C. Circuit: 1/2012 to present.

Courts in Virginia: 4/2007 to present.

Courts in the jurisdiction of Washington, D.C.: 10/2009 to present.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Board of Editors, Journal of National Security Law and Policy, 2017 to present.

Kashmiri Overseas Association: Intermittently attended cultural events and paid dues since Law School.

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of these organizations currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

To the best of my recollection, while I was the Editor-in-Chief of Volume 71 of the University of Chicago Law Review from 2003 to 2004, I edited much of the journal's published work. I cannot remember precisely which articles and comments I edited, as opposed to those edited by my colleagues. You may find an archive of the articles published by the University of Chicago Law Review, including the contents of Volume 71, at <https://lawreview.uchicago.edu/print-archive>.

The following is a list of my published written work:

Articles

Taft, Frankfurter, and the First Presidential For-Cause Removal, 52 U. Rich. L. Rev. 691 (2018)

The Attorney General and Early Appointments Clause Practice, 93 Notre Dame L. Rev. 1501 (2018)

The Origins of Judicial Deference to Executive Interpretation, 126 Yale L.J. 908 (2017)

Essays and Shorter Works

Justice Scalia and the Evolution of Chevron Deference, 21 Tex. Rev. L. & Pol. 295 (2017)

Marbury v. Madison and the Concept of Judicial Deference, 81 Mo. L. Rev. 1057 (2016)

A Trespass Framework for the Crime of Hacking, 84 G.W.U. L. Rev. 1477 (2016) (with Josh Goldfoot)

The Wasteful Duplication Thesis in Natural Monopoly Regulation, 71 U. Chi. L. Rev. 1525 (2004)

Counting the Hands on Borden Ranch, 34 Envir. L. Rptr. 10040 (2004) (with Timothy S. Bishop and Cristina Tilley)

Editorials and Popular Press

The Constitutional Law of “You’re Fired,” National Review Online (Jan. 24, 2017) (with Saikrishna Prakash)

The Somewhat Independent FBI Director, Los Angeles Times (Nov. 2, 2016) (with Saikrishna Prakash)

Antonin Scalia—A Justice in Full, National Review Online (Feb. 29, 2016) (contributor of remembrance on Justice Scalia’s death)

Blog Posts

The Takings Clause, the Tucker Act, and Knick v. Township of Scott, Yale J. on Reg.: Notice & Comment (Oct. 9, 2018) (with David N. Goldman)

Reflections on Ortiz and the Structural Separation of Powers, Lawfare (June 25, 2018)

The Constitutional Status of “Deputy” Officers, Yale J. on Reg.: Notice & Comment (Apr. 16, 2018)

Counterintelligence Investigations and the Special Counsel's Mandate (Part I & Part II), Lawfare (May 26 & June 1, 2017)

Is Barney Frank Right about the President's Power to Remove the CFPB Director?, Yale J. on Reg.: Notice & Comment (Jan. 10, 2017) (with John F. Duffy)

The President's Removal Power and the PHH Litigation, Yale J. on Reg.: Notice & Comment (Nov. 22, 2016)

Henry Hart's Brief, Frank Murphy's Draft, and the Seminole Rock Opinion, Yale J. on Reg.: Notice & Comment (Sept. 12, 2016)

In addition, when I was a student in college in 1997, I recall writing an article for a college newspaper on labor issues at Yale University. At approximately the same time, I recall writing a letter to the editor of a college newspaper in favor of gay rights. I have been unable to find copies of the article or the letter to the editor.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None to the best of my recollection.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Letter in support of Professor Neomi Rao's nomination to be Administrator of the Office of Information and Regulatory Affairs (June 2, 2017)

Letter in support of Rachel Kovner's nomination to the United States District Court for the Eastern District of New York (July 31, 2018)

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Here is a list of the talks that I have given:

Panelist, Agency Adjudication and Adjudicators, George Mason University School of Law (Sept. 26, 2018), recording available at <https://vimeo.com/292524686>

Panelist, The Year Ahead: Regulation in the Supreme Court and the Circuits, Hoover Institution in DC (Sept. 25, 2018), recording available at <https://www.hoover.org/events/regulation-courts-previewing-year-ahead-supreme-court-and-circuits>

Presenter, Constitutional Issues in Military Justice, Joint Appellate Advocacy Training for the Armed Forces, Joint Base Myer-Henderson Hall (Sept. 19, 2018)

Panelist, Book talk on *51 Imperfect Solutions: States and the Making of American Constitutional Law* by Judge Jeffrey Sutton, University of Virginia School of Law (Sept. 4, 2018)

Panelist, Military Courts and the Constitution, 2018 Constitutional Law Conference, Texas Office of the Attorney General (July 17, 2018)

Panelist, History and Origins of the Administrative State, Second Circuit Judicial Conference (June 14, 2018)

Panelist, The Administrative State Today: Principles and Practice, College of the Holy Cross conference on the administrative state (Apr. 13, 2018)

Moderator, Regulation Panel, Virginia Law & Business Review symposium, *Regulating the Sharing Economy* (Apr. 6, 2018)

Moderator, Surveillance vs. Privacy: NSA, DARPA, and more, Virginia Festival of the Book discussion of Russell Miller's *Privacy and Power* and Sharon Weinberger's *The Imagineers of War* (Mar. 23, 2018)

Presenter, Supreme Court Preview: What Does *Marbury* Mean for the CAAF?, Yale Law School Federalist Society (Mar. 20, 2018)

Panelist, Will *Chevron* Deference Survive? An Examination of the Viability of *Chevron* Deference, ABA Environmental & Energy, Mass Torts, and Products Liability Litigation Committees' Joint CLE Seminar (Jan. 26, 2018)

Panelist, The Executive Branch and the Regulatory State, Federalist Society National Lawyers Convention (Nov. 18, 2017), recording available at <https://www.youtube.com/watch?v=I9s0xKGfvrM&t=1s>

Presenter, Symposium on Administrative Lawmaking in the 21st Century, Notre Dame Law School (Nov. 10, 2017)

Presenter, *Taft, Frankfurter, and the First Presidential For-Cause Removal*, University of Richmond Law Review symposium on Defining the Constitution's President through Legal and Political Conflict (Oct. 27, 2017), recording available at <https://www.youtube.com/watch?v=8XuczdkMKkY>

Panelist, Book Discussion on *Scalia Speaks: Reflections on Law, Faith, and Life Well Lived*, University of Virginia Federalist Society and St. Thomas More Society (Oct. 17, 2017)

Panelist, The Year Ahead: Regulation in the Supreme Court and the Circuits, Hoover Institution in DC (Sept. 29, 2017), recording available at <https://www.youtube.com/watch?v=themlmyr4WA>

Presenter, The Separation of Powers and the Administrative State, Milwaukee Federalist Society Lawyers Chapter (Sept. 7, 2017)

Panelist, Law and the Administrative State: A D.C.- and Texas-Based Perspective, Texas Public Policy Foundation (July 20, 2017)

Panelist, The Past, Present, and Future of Judicial Deference to Federal Agencies, 2017 Constitutional Law Conference, Texas Office of the Attorney General (July 19, 2017)

Presenter, *The “Administrative Process” at the 1940s Court: A Study in Intellectual and Jurisprudential History*, Second Annual Administrative Law New Scholarship Roundtable (June 27, 2017), Hoover Conference on Regulation and the Rule of Law, D.C. (June 23, 2017) (recording available at <https://www.hoover.org/rrlc>), Mid-Atlantic Junior Faculty Forum (May 10, 2017), Columbia Legal Theory Workshop (Mar. 21, 2017), Hoover Conference on Regulation and the Rule of Law, Stanford (Mar. 10, 2017)

Presenter, *Marbury* and the Appellate Jurisdiction Clause, Ninth Annual Junior Faculty Federal Courts Workshop, Emory School of Law (Apr. 1, 2017)

Panelist, The Past and Future of Judicial Deference: A Scholarly Examination, ABA Administrative Law Conference (Dec. 9, 2016)

Presenter, *The Origins of Judicial Deference to Executive Interpretation*, Yale Law Journal Reading Group (Oct. 10, 2016)

Panelist, Justice Scalia and the Evolution of *Chevron* Deference, Federalist Society Texas Chapters Conference (Sept. 17, 2016), recording available at https://www.youtube.com/watch?v=-W_iWU7OPW8

Panelist, Revisiting Judicial Deference: History, Structure, and Accountability, George Mason University School of Law (June 2, 2016)

Panelist, Beyond *Chevron*, University of Missouri School of Law (Mar. 4, 2016), recording available at https://www.youtube.com/watch?v=tl_Gc9o5lPw

Panelist, Hacking into the Computer Fraud and Abuse Act: The CFAA at 30, George Washington University Law School (Nov. 6, 2015), recording available at <https://www.gwlr.org/symposia/symposium-2015-hacking-into-the-cfaa/>

Presenter, *The Origins of Judicial Deference to Executive Interpretation*, George Mason University School of Law Faculty Workshop (Sept. 29, 2015)

Panelist, Constitutional History and the Administrative State, Stanford Constitutional Law Center (Apr. 18, 2015), recording available at <https://www.youtube.com/watch?v=CAKHbjoVuAU&t=1s>

In addition to the talks listed above, I have on occasion spoken with students and other faculty at the University of Virginia School of Law at student group, student orientation, and faculty enrichment events. These informal talks did not involve substantive issues, but rather issues of faculty and student life. To my recollection, here is a list of such informal talks that I have given: I participated in (1) a discussion on social media usage by the law faculty (Sept. 12, 2018); (2) a panel for new student orientation, where I addressed what to expect in Civil Procedure (Aug. 17, 2018) (recording available at https://www.youtube.com/watch?v=EeU_pFhsy6I&t=4s); (3) two discussions on career paths with the University of Virginia School of Law chapter of the Federalist Society (Nov. 11, 2016 & Mar. 27, 2018); and (4) a panel on career paths for the South Asian Law Students Association (Oct. 19, 2016).

Finally, while I was an attorney at the Department of Justice, I recall participating on two panels on pending appellate matters for training sessions for other Department of Justice and national security attorneys. I do not currently have a record of my remarks at these internal trainings.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Based on research from the internet and my own files, I have compiled the following newspaper, magazine, and other publication articles in which I have been quoted. I have also included posts on blogs that reference my work. I have never been interviewed on radio or television.

Fokker Sanctions Deal is Within Feds' Rights, DC Cir. Told, Law360 (June 8, 2015)

DC Circ. Urged to Toss Appeal over Fokker Sanctions, Law360 (July 6, 2015)

Court Interfered with \$21M Fokker Settlement, DC Circ. Told, Law360 (July 21, 2015)

Corporate Prosecution Deals Headed for a Legal Test, Wall Street Journal (Sept. 7, 2015)

U.S. Aligns with Fokker against Judge Who Called Penalty Light, Bloomberg Business (Sept. 10, 2015)

Appeals Court Weighs Justice Deal to Settle Iran Charges, Washington Post (Sept. 11, 2015)

U.S. Pressed to Explain Why Judge Can't Reject Fokker Accord, Bloomberg Business (Sept. 11, 2015)

D.C. Circuit Weighs Judicial Role in Deferred Prosecution Pacts, Bloomberg BNA (Sept. 11, 2015)

U.S., Fokker Urge DC Circ. to Reinstate \$21M Sanctions Deal, Law360 (Sept. 11, 2015)

DOJ, Dutch Company Urge Court to Revive Settlement in Sanctions Case, Legal Times (Sept. 11, 2015)

U.S. Appeals Court Weighs Closely Watched Deferred Prosecution Deal, Reuters (Sept. 11, 2015)

Appeals Court Hears Arguments over Corporate Prosecution Deals, Wall Street Journal (Sept. 11, 2015)

D.C. Circ. May Sidestep Clarifying a Judge's Role in DPAs, Law360 (Sept. 14, 2015)

Sixth Circuit Affirms Ricin Cooker's Sentence, Courthouse News Service (Nov. 12, 2015)

Ohio Man Who Made Ricin Loses Appeal, Reuters (Nov. 12, 2015)

DC Circ. Hands Win to DOJ in Deferred Prosecution Appeal, Law360 (Apr. 5, 2016)

Former DOJ Attorney on National Security Beat to Join Faculty, UVA Law press release (June 8, 2016)

A Basic Issue Has Arisen in Akbar, Global Military Justice Reform blog (Aug. 4, 2016)

DOJ Tells High Court to Pass on Soldier's Death Penalty Case, Law360 (Aug. 15, 2016)

Is It Unconstitutional for the Supreme Court to Hear Court-Martial Appeals?, Just Security blog (Aug. 15, 2016)

National Security Attorney Leaves DOJ to Join UVA Law, UVA press release (Aug. 23, 2016)

Texas Chapters Conference panels rundown, Federalist Society blog (Sept. 28, 2016)

Donald Trump's Richard Cordray Problem, The National Law Journal (Nov. 28, 2016)

CFPB in Jeopardy under President-Elect, Washington Times (Nov. 29, 2016)

Breaking Bread with Bamzai, Virginia Law Weekly (Nov. 30, 2016)

How Does the PHH Case Impact Presidential Authority to Remove Director Cordray?, CFPB Monitor blog (Dec. 1, 2016)

Trump Versus Cordray: Can New President Fire CFPB Chief on Day One?, Wall Street Journal (Dec. 2, 2016)

CFPB on Collision Course with Trump's Justice Department, American Banker (Dec. 7, 2016)

Chevron Doctrine on the Ropes as Trump Era Looms, E&E News Greenwire (Dec. 9, 2016)

Director Cordray Reported to Have No Departure Plans, CFPB Monitor (Dec. 21, 2016)

CFPB Faces Challenges in Courts, Congress in 2017, Bloomberg BNA (Dec. 21, 2016)

Barney Frank's 2012 Argument for President's Ability to Fire CFPB Chief, Wall Street Journal Pro (Jan. 12, 2017)

Dodd-Frank Prohibits Purely Policy-Based Dismissals of the CFPB Director, Yale Journal on Regulation: Notice & Comment blog (Jan. 16, 2017)

Trump's Supreme Court Pick Goes to Republican Senate, Cavalier Daily (Feb. 3, 2017)

2 Ways for President Trump to Leave His CFPB Director, FinRegRag blog (Feb. 22, 2017)

Independent Agencies Must Follow the President's Interpretations of Law, Liberty Law blog (Feb. 26, 2017)

CFPB, Justice Department Poised to Square Off in Court, Wall Street Journal (Mar. 13, 2017)

U.S. Consumer Bureau Faces Fateful Test in U.S. Appeals Court, Reuters (May 18, 2017)

U.S.-PHH Tag Team Raises Stakes in Test of CFPB's Constitutionality, Bloomberg BNA (May 22, 2017)

Gorsuch Takes Swipe at Chevron Doctrine, E&E News (Oct. 16, 2017)

Supreme Court Jurisdiction over the Court of Appeals for the Armed Forces, Volokh Conspiracy blog (Nov. 14, 2017)

Who Will Be Running Consumer Agency on Monday? It's Unclear, N.Y. Times (Nov. 25, 2017)

Exciting Developments in Supreme Court Appellate Jurisdiction, Volokh Conspiracy blog (Jan. 9, 2018)

Argument Preview: Justices to Consider Role of Military Judges and the Dual-Officeholding Ban, Scotusblog (Jan. 9, 2018)

Professor Aditya Bamzai to Make Debut at Supreme Court, UVA Law press release (Jan. 9, 2018)

Amicus Anomaly: UVA Professor Gets Rare High Court Nod, Bloomberg BNA (Jan. 11, 2018)

UVA Law Professor Aditya Bamzai to Make Debut at U.S. Supreme Court Tuesday, UVA press release (Jan. 13, 2018)

Up Next at High Court: Betraying a Client, Appellate Rules, Law360 (Jan. 15, 2018)

Justices Hear Military Cases with Possible Gitmo Repercussions, Bloomberg Law (Jan. 16, 2018)

UVA Prof Nabs Rare Invite, Law.com (Jan. 16, 2018)

High Court Skeptical of Challenge to Terror Review Judges, Law360 (Jan. 16, 2018)

Argument Analysis: Justices Debate the Dual-Officeholding Ban and Jurisdiction over Military Courts, Scotusblog (Jan. 16, 2018)

How Wilmer's Seth Waxman Became Dean of SCOTUS Death Penalty Defense, Law.com (Jan. 17, 2018)

Summary: Briefs and Oral Argument in Dalmazzi v. U.S., Lawfare blog (Jan. 17, 2018)

"The Executive Power Shall Be Vested in a President," University of Richmond School of Law Alumni Magazine (Feb. 27, 2018)

What Do Justices Gorsuch and Breyer Have in Common?, Volokh Conspiracy blog (June 22, 2018)

High Court Says Gitmo Judgeships Are Constitutional, Law360 (June 22, 2018)

Kagan Gives UVA Prof Shoutout for Provoking 'Good and Hard Thinking,' National Law Journal (June 22, 2018)

Marbury and Appellate Jurisdiction, Prawfsblawg (June 22, 2018)

A "View" from the Courtroom: "Some Good and Hard Thinking on All Sides," Scotusblog (June 22, 2018)

Summary: The Supreme Court Rules in Ortiz v. United States, Lawfare blog (June 23, 2018)

13. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever

held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a membership in a political party or election committee, nor have I held political office or played any compensated political role. In 2008, I recall being placed on a list of lawyers who might perform work on a volunteer basis for the presidential campaign of Mitt Romney, though I never did perform any such work. Finally, as a college student at Yale University, I played a volunteer role — such as stuffing envelopes and similar duties — in a few political campaigns, including the gubernatorial campaigns of Mark Warner and Don Beyer in Virginia and various Connecticut campaigns.

14. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

Judge Jeffrey Sutton, U.S. Court of Appeals for the Sixth Circuit, 9/2004 to 9/2005

Justice Antonin Scalia, U.S. Supreme Court, 7/2007 to 7/2008

ii. whether you practiced alone, and if so, the addresses and dates;

I have never engaged in the practice of law representing clients alone. Since joining my current position in the academy, I have written and filed two *amicus* briefs on my own behalf before the U.S. Supreme Court.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Summer Intern, Office of the Solicitor General, U.S. Department of Justice, 6/2004 to 8/2004

950 Pennsylvania Avenue, NW
Washington, DC 20530

Attorney-Adviser, Office of Legal Counsel, U.S. Department of Justice, 12/2005 to 7/2007

950 Pennsylvania Avenue, NW
Washington, DC 20530

Associate / Partner, Kirkland & Ellis LLP, 11/2008 to 5/2013

655 Fifteenth Street, NW
Washington, DC 20005

Appellate Attorney, National Security Division, U.S. Department of Justice, 5/2013 to 5/2016

950 Pennsylvania Avenue, NW
Washington, DC 20530

Consulting attorney, Hogan Lovells US LLP, 8/2016 to 8/2016
555 Thirteenth Street, NW
Washington, DC 20004

Associate Professor, University of Virginia School of Law, 8/2016 to present
580 Massie Road
Charlottesville, VA 22903

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

Apart from two years clerking for federal judges, my legal career has had four distinct stages. First, from 2005 to 2007, I served as an Attorney-Adviser in the Office of Legal Counsel of the U.S. Department of Justice. In this capacity, I provided legal advice to government officials on a wide variety of separation-of-powers and statutory issues. Second, from 2008 to 2013, I was an attorney at the law firm of Kirkland & Ellis LLP, where I primarily handled a mix of civil and commercial litigation matters. Third, from 2013 to 2016, I was an appellate attorney at the National Security Division of the U.S. Department of Justice. In this capacity, I argued four appeals on behalf of the federal government, assisted in the briefing of other cases, and advised senior Department officials on national security matters. Fourth, since 2016, I have served as an Associate Professor at the University of Virginia School of Law. My primary responsibilities are teaching and research. My primary area of scholarship is the history of administrative law and the development of the federal courts. Since joining the academy, I have twice filed *amicus* briefs before the U.S. Supreme Court, including one case in which the Court invited me to argue an issue orally as an *amicus curiae*.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my years in private practice, my clients typically were private companies and individuals in commercial matters. I did not specialize in a particular subject matter. During my years at the Department of Justice, I worked primarily on separation-of-powers and national security matters. Within those areas, cases that I argued or briefed involved prosecutorial discretion and the separation of powers, the Biological and Chemical Weapons Conventions, and surveillance authorities.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

- i. Indicate the percentage of your practice in:
 1. federal courts;
 2. state courts of record;
 3. other courts;
 4. administrative agencies
- ii. Indicate the percentage of your practice in:
 1. civil proceedings;
 2. criminal proceedings.

From 2005 to 2007, while I was an attorney at the Office of Legal Counsel, I did not appear in court, though I occasionally counseled Department litigators on the arguments that the federal government was making in federal court. From 2008 to 2013, while I was an attorney in private practice, I handled matters almost exclusively in civil proceedings. I practiced primarily in federal court (including district courts, bankruptcy courts, courts of appeals, and the Supreme Court), but occasionally in state courts and before administrative agencies. During this time, I argued one case in federal district court on a jurisdictional question. From 2013 to 2016, while I was an appellate attorney at the U.S. Department of Justice, I practiced exclusively before federal courts. I argued appeals, primarily in criminal or criminal-related matters. I also occasionally advised on national-security matters arising in civil proceedings. Finally, since becoming a law professor, I have been involved in two criminal cases (arguing one) before the U.S. Supreme Court, both of which arose out of the Nation's military justice system.

In total, I have argued one case in federal district court; four cases in federal appellate courts; and one case in the U.S. Supreme Court.

Based on the foregoing, and to the best of my recollection, I would say that approximately 75 percent of my practice has been in litigation, whereas 25 percent has been in an advisory capacity. Of the percentage in litigation, I estimate that approximately 90 percent of my practice has been in federal court, 8 percent in state court, and 2 percent before administrative agencies. I would also say that approximately 50 percent of my practice has been in civil proceedings and 50 percent has been in criminal proceedings.

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
 - i. What percentage of these trials were:
 1. jury;
 2. non-jury.

I have never tried a case to verdict or judgment.

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have argued one case, *Ortiz v. United States*, as an *amicus curiae* by invitation of the Supreme Court. In addition, I have played a role in drafting merits briefs in two additional cases — for the United States in *Bond v. United States* and for the challengers in *Horne v. Department of Agriculture*. Finally, I have assisted in the writing of several petitions for certiorari, oppositions to petitions for certiorari, and *amicus* briefs.

The following is a list of my Supreme Court filings in reverse chronological order.

Since becoming an academic, I have filed the following two Supreme Court briefs.

Ortiz v. United States (Nos. 16-961, 16-1017, and 16-1423): *Amicus* brief on my own behalf.

Akbar v. United States (No. 15-1257): *Amicus* brief on my own behalf.

I also participated in a moot court for a colleague from the University of Virginia School of Law's Supreme Court Clinic in preparation for oral argument in *Epic Systems Corp. v. Lewis*, No. 16-285. (I did not assist in the briefing of this case.)

While at the U.S. Department of Justice, I performed substantial work on the following Supreme Court briefs.

Bond v. United States (No. 12-158): Response brief on the merits for the United States.

In re Electronic Privacy Information Center (No. 13-58): Brief for the United States in opposition to certiorari.

Abdo v. United States (No. 13-7981): Brief for the United States in opposition to certiorari.

Fries v. United States (No. 14-10447): Brief for the United States in opposition to certiorari.

Said v. United States (No. 15-7332): Brief for the United States in opposition to certiorari.

While in private practice, I performed substantial work on the following Supreme Court briefs.

Chamber of Commerce v. EPA (No. 12-1272): Petition for a writ of certiorari.

Horne v. Department of Agriculture (No. 12-123): Petition for a writ of certiorari and petitioners' briefs on the merits.

Elmbrook School District v. Doe (No. 12-755): Petition for a writ of certiorari.

American Trucking Associations v. City of Los Angeles (No. 11-798): *Amicus* brief for Chamber of Commerce of the United States at both the petition and the merits stages.

Decker v. Northwest Environmental Defense Center (Nos. 11-338, 11-347): *Amicus* brief for Chamber of Commerce of the United States at the merits stage.

Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC (No. 10-553): *Amicus* brief for religious organizations at the merits stage.

15. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- i. *Ortiz v. United States*, U.S. Supreme Court (Nos. 16-961, 16-1017, and 16-1423)
Citation of reported decision: 138 S. Ct. 2165 (2018)
Approximate dates of representation: 11/2017 to 6/2018

I filed an *amicus curiae* brief raising the question “[w]hether [the Supreme] Court has Article III jurisdiction to issue a writ of certiorari to the United States Court of Appeals for the Armed Forces.” The Supreme Court took the relatively unusual step of granting my motion to participate in oral argument. After oral argument, in a 7-2 decision, the Court rejected my argument, but identified it as “serious, and deserving of sustained consideration.” Two justices filed a dissent agreeing with my argument.

Co-counsel on my *amicus* brief:

Adam J. White
1399 New York Ave., NW
Suite 500
Washington, DC 20005
(202) 760-3213
ajwhite@stanford.edu

Counsel for petitioners:

Stephen I. Vladeck
727 East Dean Keeton St.
Austin, TX 78705
(512) 475-9198
svladeck@law.utexas.edu

Mary J. Bradley

Christopher D. Carrier
Defense Appellate Division
Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, VA 22060

Brian L. Mizer
Jonathan D. Legg
Lauren-Ann L. Shure
Appellate Defense Counsel
Air Force Legal Ops. Agency
1500 West Perimeter Road
Suite 1100
Joint Base Andrews, MD 20762

Eugene R. Fidell
127 Wall Street
New Haven, CT 06511

Counsel for the United States:

Noel J. Francisco
Dana J. Boente
Edwin S. Kneedler
Brian H. Fletcher
Joseph F. Palmer
Danielle S. Tarin
U.S. Department of Justice
Washington, DC 20530
SupremeCtBriefs@usdoj.gov
(202) 514-2217

- ii. *In re Certified Question of Law*, Foreign Intelligence Surveillance Court of Review (No. 16-01) (Judges Bryson, Cabranes, and Tallman)
Citation of reported decision: 858 F.3d 591 (2016)
Approximate dates of representation: 2/2016 to 4/2016

I represented the United States, and argued the third reported case, before the Foreign Intelligence Surveillance Court of Review. The case addressed the questions whether the government may obtain “post-cut-through digits” under the pen-register provision of the Foreign Intelligence Surveillance Act and, if so, whether the collection complied with the Fourth Amendment. In a *per curiam* opinion, the FISA Court of Review agreed with the United States’ argument that the collection was legal.

Co-counsel:

John P. Carlin
Stuart J. Evans
J. Bradford Wiegmann
Lisa M. Farabee

National Security Division
U.S. Department of Justice
Washington, DC 20530

Court-appointed *amicus curiae*:

Marc Zwillinger
Jacob A. Sommer
ZwillGen PLLC
1900 M Street, NW, Suite 250
Washington, DC 20036
(202) 296-3585
staff@zwillgen.com

- iii. *United States v. Fokker Services B.V.*, D.C. Circuit (Nos. 15-3016, 15-3017)
(Judges Srinivasan, Sentelle, and Silberman)
Citation of reported decision: 818 F.3d 733 (2016)
Approximate dates of representation: 5/2015 to 4/2016

I represented the United States, and argued before the D.C. Circuit, seeking a writ of mandamus directing the district court to exclude time under the Speedy Trial Act pursuant to a deferred prosecution agreement. In an opinion by Judge Srinivasan, the D.C. Circuit held that the district court lacked the authority to second-guess the Executive Branch's charging decisions in this context. The court therefore agreed with the United States and granted a writ of mandamus.

Co-counsel:

John P. Carlin
Mary B. McCord
J. Bradford Wiegmann
Steven M. Dunne
National Security Division
U.S. Department of Justice
Washington, DC 20530

Vincent H. Cohen, Jr.
Elizabeth Trosman
Elizabeth H. Danello
Maia L. Miller
555 4th St., NW
Washington, DC 20530

Counsel for Fokker Services:

Edward C. O'Callaghan
David D. DiBari
Rijie Ernie Gao
Clifford Chance US LLP
2001 K Street, NW
Washington, DC 20006

(202) 912-5000

Court-appointed *amicus curiae*:

Adam G. Unikowsky
David W. DeBruin
Julie Straus Harris
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
202-639-6000
aunikowsky@jenner.com

- iv. *United States v. Levenderis*, Sixth Circuit (No. 14-4004) (Judges Griffin, Daughtrey, and Merritt)
Citation of reported decision: 806 F.3d 390 (2015)
Approximate dates of representation: 4/2015 to 11/2015

I represented the United States, and argued before the Sixth Circuit, defending the defendant's conviction for producing ricin and, thereby, possessing a biological toxin for use as a weapon in violation of 18 U.S.C. § 175(a). Among other arguments, the defendant contended that the federal prohibition on biological weapons did not apply to his allegedly "purely local" conduct. In an opinion by Judge Griffin, the Sixth Circuit agreed with the United States' arguments and upheld the conviction.

Co-counsel:

John P. Carlin
Erin Creegan
National Security Division
U.S. Department of Justice
Washington, DC 20530

Steven M. Dettelbach
Matthew W. Shepherd
Om M. Kakani
United States Court House
801 West Superior Avenue
Cleveland, OH 44113

Counsel for Levenderis:

Amy R. Mohan
Ryan T. Harris
Sherrard & Roe, PLC
150 3rd Avenue South, Suite 1100
Nashville, TN 37201
(615) 742-4200
amohan@sherrardroe.com

- v. *Rossetti v. United States*, First Circuit (No. 12-1451) (Judges Kayatta, Dyk, Torruella)

Citation of reported decision: 773 F.3d 322 (2014)

Approximate dates of representation: 4/2014 to 12/2014

I represented the United States, and argued before the First Circuit, defending the district court's dismissal of a petition to vacate a sentence under 28 U.S.C.

§ 2255. In an opinion by Judge Kayatta, the court agreed with the United States' argument and held that the district court had correctly dismissed the petition.

Co-counsel:

Carmen M. Ortiz

John Joseph Moakley United States Federal Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210

Joseph F. Palmer

National Security Division
U.S. Department of Justice
Washington, DC 20530

Counsel for Rossetti:

Derege B. Demissie

Demissie & Church
929 Massachusetts Avenue, Suite 101
Cambridge, MA 02139
617-354-3944

- vi. *Bond v. United States*, U.S. Supreme Court (No. 12-158)

Citation of reported decision: 134 S. Ct. 2077 (2014)

Approximate dates of representation: 5/2013 to 6/2014

I assisted in drafting a merits brief for the United States arguing that the implementing statute for the Chemical Weapons Convention proscribed petitioner's conduct and that Congress had the power under the Constitution to prohibit petitioner's conduct by means of the statute. In a unanimous opinion for the Court, Chief Justice Roberts rejected the United States' argument and construed the statute not to reach petitioner's conduct.

Co-counsel:

Donald B. Verrilli, Jr.

John P. Carlin

Michael R. Dreeben

Joseph R. Palmore

Virginia M. Vander Jagt

U.S. Department of Justice

Washington, DC 20530

SupremeCtBriefs@usdoj.gov

(202) 514-2217

Counsel for Bond:

Paul D. Clement
Erin E. Murphy
Bancroft PLLC
1919 M Street, NW
Suite 470
Washington, DC 20036
(202) 234-0090
pclement@bancroftpllc.com

Ashley C. Parrish
Adam M. Conrad
King & Spalding LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006

Robert E. Goldman
Robert E. Goldman LLC
P.O. Box 239
Fountainville, PA 18923

- vii. *Horne v. United States*, U.S. Supreme Court (No. 12-123)
Citation of reported decision: 569 U.S. 513 (2013)
Approximate dates of representation: 7/2011 to 5/2013

I assisted in drafting a successful petition for certiorari and merits briefs for the petitioners arguing that their takings claim was “ripe” for adjudication. The case involved a federal regulation requiring the petitioners to turn over a portion of their raisin crop to the federal government for below market, or even no, compensation. In a unanimous opinion written by Justice Thomas, the Supreme Court agreed with our argument that petitioners’ takings claim was “ripe.”

Co-counsel:

Michael W. McConnell
Joseph Cascio
Aaron L. Nielson
Kirkland & Ellis LLP
655 Fifteenth Street, NW
Washington, DC 20005
(202) 879-5000
michael.mcconnell@kirkland.com

Brian C. Leighton
Attorney at Law
701 Pollasky Avenue
Clovis, CA 93612

Counsel for the United States:

Donald B. Verrilli, Jr.
Stuart F. Delery
Edwin S. Kneedler
Joseph R. Palmore
Michael S. Raab
Joshua Waldman
U.S. Department of Justice
Washington, DC 20530
SupremeCtBriefs@usdoj.gov
(202) 514-2217

Ramona E. Romero
Carrie F. Ricci
Leslie K. Lagomarcino
Department of Agriculture
Washington, DC 20250

- viii. *In re Electronic Privacy Information Center*, U.S. Supreme Court (No. 13-58)
Citation of reported decision: 571 U.S. 1023 (2013)
Approximate dates of representation: 7/2013 to 11/2013

I assisted in drafting an opposition to a petition for certiorari arguing that the Supreme Court lacked authority to issue a writ of mandamus, writ of prohibition, or a writ of certiorari to the Foreign Intelligence Surveillance Court under the circumstances of the case. The case arose out of orders by the Surveillance Court about bulk telephony metadata collection. The Supreme Court denied the petition without comment.

Co-counsel:

Donald B. Verrilli, Jr.
John P. Carlin
Jeffrey M. Smith
U.S. Department of Justice
Washington, DC 20530
SupremeCtBriefs@usdoj.gov
(202) 514-2217

Counsel for the Electronic Privacy Information Center:

Marc Rotenberg
Alan Butler
David Jacobs
David Brody
Electronic Privacy Information Center
1718 Connecticut Avenue, NW
Suite 200
Washington, DC 20009
(202) 483-1140

rotenberg@epic.org

- ix. *Rattana v. Offshore Cleaning Systems, Inc.*, U.S. District Court for the Western District of Louisiana (No. 12-1293) (Judge Haik)

Citation of reported decision: The Judge issued an oral decision, which is not reported, on July 19, 2012.

Approximate dates of representation: 6/2012 to 7/2012

I argued on behalf of BP America, Inc., that the district court had subject matter jurisdiction over certain claims stemming from clean-up operations after the Deepwater Horizon oil spill in the Gulf of Mexico. The district court agreed with my client's argument and denied the motion to remand the case to state court.

Co-counsel:

Richard C. Godfrey, P.C.
J. Andrew Langan, P.C.
Kirkland & Ellis LLP
300 N. LaSalle Drive
Chicago, IL 60654

Jeffrey Bossert Clark
Kirkland & Ellis LLP
655 Fifteenth Street, NW
Washington, DC 20005

Paul Matthew Jones
Brian W. Capell
Liskow & Lewis
822 Harding Street
Lafayette, LA 70503

Don K. Haycraft
Liskow & Lewis
701 Poydras Street, Suite 5000
New Orleans, LA 70139

Counsel for plaintiff:

Craig A. Davis
111 Mercury Street
Lafayette, LA 70503
337-231-5351

Counsel for Offshore Cleaning Systems:

Randall Theunissen
Allen & Gooch
2000 Kaliste Saloom Road
Suite 400
Lafayette, LA 70508

337-291-1000

- x. *Chamber of Commerce v. EPA*, U.S. Supreme Court (No. 12-1272)
Citation of reported decision: 134 S. Ct. 2427 (2014)
Approximate dates of representation: 3/2013 to 5/2013

I assisted in the drafting of a petition for certiorari on behalf of the Chamber of Commerce, the State of Alaska, and the American Farm Bureau Federation, which the Court granted and consolidated with cases that ultimately became the opinion in *Utility Air Regulatory Group v. EPA*. The case addressed the validity of rules under the Clean Air Act intended to regulate greenhouse gases. I left private practice before the merits briefing in this case.

Co-counsel:

Robert R. Gasaway
Jeffrey A. Rosen, P.C.
Jeffrey Bossert Clark
William H. Burgess
Kirkland & Ellis LLP
655 Fifteenth Street, NW
Washington, DC 20005

Rachel L. Brand
Sheldon Gilbert
National Chamber Litigation Center, Inc.
1615 H Street, NW
Washington, DC 20062

Michael C. Geraghty
Steven E. Mulder
State of Alaska
1031 W. 4th Avenue
Anchorage, AK 99501

Ellen Steen
Danielle Quist
American Farm Bureau Federation
600 Maryland Avenue, SW
Washington, DC 20024

Douglas A. Henderson
Troutman Sanders LLP
600 Peachtree Street, NE
Atlanta, GA 30308

Jesse K. Martin
Troutman Sanders LLP
401 Ninth Street, NW
Washington, DC 20001

Counsel for the United States:

Donald B. Verrilli, Jr.
Robert G. Dreher
Eric G. Hostetler
Jon M. Lipshultz
Angeline Purdy
Perry Rosen
U.S. Department of Justice
Washington, DC 20530
SupremeCtBriefs@usdoj.gov
(202) 514-2217

Brenda Mallory
Patricia Embrey
Brian Doster
John Hannon
James Havard
Howard J. Hoffman
Carol Holmes
David Orlin
Steven Silverman
Elliott Zenick
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Counsel for environmental organization respondents:

Sean H. Donahue
David T. Goldberg
Donahue & Goldberg LLP
2000 L Street, NW, Suite 808
Washington, DC 20036
(202) 277-7085
sean@donahuegoldberg.com

David D. Doniger
Gerald Goldman
Benjamin H. Longstreth
Natural Resources Defense Council
1152 15th Street, NW, Suite 300
Washington, DC 20005

Howard I. Fox
David S. Baron
Earthjustice
1625 Mass. Avenue, NW, Suite 702
Washington, DC 20036

Pamela A. Campos

Tomas Carbonell
Megan Ceronsky
Graham McCahan
Vickie L. Patton
Peter Zalzal
Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302

Ann Brewster Weeks
Clean Air Task Force
18 Tremont Street, Suite 530
Boston, MA 02108

Frank W. Rambo
Morgan Butler
Southern Environmental Law Center
201 West Main Street, Suite 14
Charlottesville, VA 22902

Joanne Spalding
Nathan Matthews
Sierra Club
85 Second Street, Second Floor
San Francisco, CA 94105

James G. Murphy
National Wildlife Federation
149 State Street
Montpelier, VT 05602

Counsel for state respondents:

Eric T. Schneiderman
Barbara D. Underwood
Steven C. Wu
Bethany A. Davis Noll
Monica Wagner
Michael J. Myers
Morgan A. Costello
120 Broadway, 25th Floor
New York, NY 10271
(212) 416-8020
barbara.underwood@ag.ny.gov

Kamala D. Harris
Attorney General of California
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

George Jepsen

Attorney General of Connecticut
55 Elm St.
Hartford, CT 06141

Joseph R. Biden, III
Attorney General of Delaware
820 N. French Street
Wilmington, DE 19801

Lisa Madigan
Attorney General of Illinois
100 W. Randolph St., 12th Floor
Chicago, IL 60601

Thomas J. Miller
Attorney General of Iowa
321 East 12th St.
Des Moines, IA 50319

Janet T. Mills
Attorney General of Maine
6 State House Station
Augusta, ME 04333

Douglas F. Gansler
Attorney General of Maryland
200 Saint Paul Pl., 20th Floor
Baltimore, MD 21202

Martha Coakley
Attorney General of Massachusetts
One Ashburton Pl., 18th Floor
Boston, MA 02108

Lori Swanson
Attorney General of Minnesota
445 Minnesota St., Suite 900
St. Paul, MN 55101

Joseph A. Foster
Attorney General of New Hampshire
33 Capitol St.
Concord, NH 03301

Gary King
Attorney General of New Mexico
P.O. Box 1508
Santa Fe, NM 87504

Roy Cooper
Attorney General of North Carolina

P.O. Box 629
Raleigh, NC 27602

Ellen F. Rosenblum
Attorney General of Oregon
1162 Court St. NE
Salem, OR 97301

Peter F. Kilmartin
Attorney General of Rhode Island
150 South Main St.
Providence, RI 02903

William H. Sorrell
Attorney General of Vermont
109 State St.
Montpelier, VT 05609

Robert W. Ferguson
Attorney General of Washington
1125 Washington St. SE
Olympia, WA 98504

Michael A. Cardozo
Corporation Counsel of the City of New York
100 Church St.
New York, NY 10007

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have listed my most significant litigation matters in response to the immediately preceding question. (See answer to question 15.) In addition to those matters, since 2016, my legal activities have focused on scholarship and teaching. My scholarship has addressed the history of administrative law and the creation of the federal courts. In addition, while I was an attorney at the Department of Justice, I spent a significant portion of time counseling other components of the government on their constitutional and statutory obligations.

Finally, while I was an attorney at Kirkland & Ellis, I spent a significant amount of time representing BP and its associated entities in litigation arising out of the Deepwater Horizon oil spill, as suggested by my response to question 15 above (see entry for *Rattana v. Offshore Cleaning Systems, Inc.*, listed as number ix). I filed dozens of briefs addressing questions of jurisdiction, as well as substantive issues, in the various consolidated cases. I departed private practice in 2013 before these cases were resolved.

I have never performed lobbying activities for any client or organization.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have taught the following three courses, each one at the University of Virginia School of Law. For each course, I have listed the course description from the Law School's course catalog.

Civil Procedure (Fall 2016, Fall 2017)

This course covers the procedures courts use in deciding lawsuits that do not involve criminal misconduct. Much of it is concerned with the process of litigation in trial courts, from the initial documents called pleadings, through the pre-trial process, especially the process of discovery in which parties obtain information from one another, to trial itself. Another important topic concerns the jurisdictional rules that determine in which court a lawsuit may be brought.

Computer Crime Law (Spring 2017, Spring 2018)

This course surveys the domestic legal framework governing computer crime and certain aspects of data privacy. Given modern capabilities, it is now possible for one person anywhere in the world to launch a sophisticated and potentially crippling attack on vital data networks. At the same time, it is possible for governments to collect information in bulk on a scale previously unimaginable. The course will explore the complex legal issues raised by these new capabilities and related technological advances. Topics will include the application of the Fourth Amendment to computers; the scope of criminal prohibitions on "hacking," such as the Computer Fraud and Abuse Act; and the scope of statutory provisions authorizing electronic surveillance, such as the Wiretap Act, the Pen/Trap statute, the Stored Communications Act, and the Foreign Intelligence Surveillance Act. The course will focus on the use of these laws in the criminal context, but some attention will also be given to their civil liability implications. Throughout the class, we will wrestle with the balance between privacy and law enforcement interests in this area. Although much of the course involves the application of legal principles to computer technology, no technical background or knowledge is required. A prior course in criminal procedure may be helpful, but is not required, and all Fourth Amendment concepts necessary for understanding the materials will be explained in class.

Administrative Law (Spring 2018)

This course covers the role of agencies in the constitutional structure and their operations. Topics include the nondelegation doctrine, executive appointment and removal power, the legislative veto as well as the Administrative Procedure Act (APA) and other sources of law that regulate and structure the authority of agencies to determine the rights and responsibilities of the public.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or

customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

See attached financial disclosure report.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

I anticipate continuing in the following position: Associate Professor of Law, University of Virginia School of Law.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached financial disclosure report.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached statement and schedules.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with this nomination process, I have consulted with the Office of Government Ethics and the Privacy and Civil Liberties Oversight Board's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Board's ethics official. I am not aware of any other potential conflicts of interest.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

My answer here is the same as my answer to question 22.a.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an

attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

While I was in private practice, I engaged in significant pro bono activities representing religious organizations of all faiths. On a pro bono basis, I filed an amicus brief on behalf of the Sikh Coalition before the Ninth Circuit Court of Appeals in *Intermountain Fair Housing Council v. Boise Rescue Mission Ministries*, 657 F.3d 988 (9th Cir. 2011). In addition, I filed an amicus brief on behalf of a coalition of religious organizations before the U.S. Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012). Finally, on a pro bono basis, I assisted in the drafting of a petition for certiorari on behalf of a School District in a case involving the Establishment Clause in *Elmbrook School District v. Doe* (No. 12-755). (The Supreme Court denied the petition.)

In addition (as noted in my response vii to question 15), I represented a group of small farmers in *Horne v. United States*, 569 U.S. 513 (2013). At least part of this representation was conducted on a pro bono basis.

All told, I estimate that I spent approximately 400 hours in a pro bono capacity on these matters.