

Senator Dick Durbin  
Chair, Senate Judiciary Committee  
Written Questions for Myrna Perez  
Nominee to the Court of Appeals for the Second Circuit  
July 21, 2021

1. **At your hearing, you were asked about unenumerated rights, and specifically how judges identify rights that are not explicitly named in the Constitution.**

a. **According to the Supreme Court, in what circumstances are unenumerated rights protected?**

Response: Unenumerated rights are most commonly protected under the doctrine known as substantive due process. For example, in *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), the Supreme Court said that substantive due process protects “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.”

b. **Does the Fourteenth Amendment protect against infringement of unenumerated rights?**

Response: Yes. The Supreme Court has held that it does.

c. **Do you agree with Justice Kagan’s view that, while unenumerated rights are protected in certain circumstances, courts should “make sure [they are] not interfering inappropriately with the decisions that really ought to belong to the American people?”**

Response: Yes. There are co-equal branches of government, including two branches that are ultimately accountable to the people. If I were confirmed as a Circuit Judge, I would be bound by Supreme Court precedent on unenumerated rights, including *Washington v. Glucksberg*, 521 U.S. 702 (1997). The executive and legislative branches are ultimately accountable to people, which courts must always be mindful of.

Senator Chuck Grassley, Ranking Member

Questions for the Record

Myrna Pérez

Nominee to be United States Circuit Judge for the Second Circuit Court of Appeals

**1. In his introduction for you before your testimony before the Judiciary Committee, Senator Schumer praised “the righteousness of the causes [you] will follow” if confirmed to the bench.**

**a. Do you know what Senator Schumer meant by this?**

Response: No.

**b. Did you discuss any such causes with Senator Schumer?**

Response: No.

**c. Which causes will you “follow” if confirmed?**

Response: If confirmed, I will uphold the Constitution and the rule of law.

**d. Are those causes any different, or more righteous, than other judicial nominees that have come before you?**

Response: I am hopeful that all judicial nominees do their best to uphold the Constitution and the rule of law.

**2. Your nomination has been celebrated as historic because of your career advocating for voting rights. Yet, during your hearing, you consistently said your career as an advocate will have no effect on how you will rule if confirmed as a judge. It seems to me either my colleagues and outside activist groups are wrong about what kind of judge you will be, or you are hiding the true nature of how you will view your role as a judge. What can you say to assure me that your testimony was true, and that you will not seek to impose your views on issues you advocated on when they come before you?**

Response: I have spent the better part of the last two decades protecting a constitutionally-designed framework that has different people playing different roles. One role is that of an advocate, another role is that of a judge. The framework I have worked so hard to defend does not work if people do not perform their respective roles.

**3. Senator Durbin stated that your article titled “The GOP Campaign to Make Elections Less Free” was submitted in May, before you were a nominee.**

**a. Is this true?**

Response: Yes.

- b. Did you have any contact with editors or anyone associated with Sojourners after you submitted your article in May?**

Response: Yes, but not in connection with this article until the evening I learned it was published.

- 4. When exactly did you submit this article to Sojourners?**

Response: It was initially submitted May 13, 2021, and was signed off with edits on May 28, 2021.

- 5. Senator Durbin said he read your article and that he agreed with it and would happily deliver it as a speech on the Floor of the Senate. That's troubling to me, as Senator Durbin is a politician and a Democrat, and you are a nominee to be an apolitical federal judge.**

- a. What is the difference between the role of a Senator and a federal judge?**

Response: As a policy advocate, I have engaged with policymakers. Senators work in the legislative branch as lawmakers. Judges, however, adjudicate cases and controversies—they do not make laws.

- b. Do you think it's a good thing for litigants who will come before you that have different views than you that a partisan politician said that agrees with your views completely?**

Response: If confirmed, I will cease playing the part of advocate in our legal system. By accepting this nomination, I am pledging that if confirmed, I will impartially and objectively follow the law irrespective of any personal views I hold. If confirmed, litigants who come before me will know that I have taken an oath to provide equal justice under the law.

- 6. When did you go into vet with the Office of Legal Policy and when did you begin your background investigation with the FBI?**

Response: I began the vetting process with the Office of Legal Policy on or around March 30, 2021 and began my paperwork for the FBI vet a few days after that.

- 7. Regardless of when you officially went into vet, according to your SJQ you were in talks for this seat starting in early March. You have been in regular communication with the administration since the end of March. Regardless of when you submitted your Sojourners article, you engaged in the following public advocacy during your vetting process:**

- *CT needs to restore voting rights to formerly incarcerated people*, CTPost, June 6, 2021.
  - *New York Still Needs More Reform*, N.Y.L.J., Apr. 22, 2021.
  - *Texas Republicans Move Swiftly on Voter Suppression Bills*, Brennan Center, Mar. 30, 2021.
  - June 3, 2021: Panelist, “Advocating for the Rule of Law: Free and Fair Elections Panel,” New York State Bar Association (Virtual).
  - May 27, 2021: Panelist, “Voting Rights in America: Ensuring Fair and Full Voting for All,” League of Women Voters of Ridgefield (Virtual).
  - May 26, 2021: Panelist, “The For the People Act: A Bold Step Forward for Voting Reform,” Lawyers Committee for Civil Rights Under Law (Virtual).
  - May 25, 2021: Panelist, “Can Business Help Strengthen Democracy? What solutions move the needle?,” Stanford Graduate School of Business (Virtual).
  - May 25, 2021: Panelist, “Game of Votes: Will the States Enthroned the Vote, or Flush It Down the Other ‘Throne,’” NEO Philanthropy (Virtual).
  - May 20, 2021: Panelist, Fireside Chat & “Breaking the Glass Ceiling” Award Ceremony, The Leadership Institute for Women of Color Attorneys (Virtual).
  - May 13, 2021: Panelist, “The Right on which All Others Rest: Defending the Sacred Human Right to Vote,” Justice Revival (Virtual).
  - May 6, 2021: Speaker, City of Berkeley Redistricting Commission Training, Redistricting Partners (Virtual).
  - May 2, 2021: Panelist, Voting Rights Discussion, Girl Scouts Troop 12912 (Virtual).
  - April 29, 2021: Panelist, “Community Empowerment: Voting Rights,” (Virtual, on the platform Clubhouse).
  - April 22, 2021: Panelist, “Free the Ballot,” Women Donor’s Network (Virtual).
  - April 21, 2021: Moderator, “A Conversation on Democracy and Belonging,” Othering and Belonging Conference (Virtual).
  - April 13, 2021: Speaker, “State Legislation and What Corporations Can Do,” Committee for Economic Development: Committee Sustaining Democratic Institutions (Virtual).
- a. **Why did you engage in these politically charged activities while under active consideration for a seat on the Second Circuit?**

Response: The bulk of my legal career has focused on nonpartisan voter protection and engagement. My practice has required that I work with people and organizations from various backgrounds—including those with various political affiliations.

- b. Did you stop to consider what message that would send about your perceived impartiality when you were nominated weeks later?**

Response: The bulk of my legal career has focused on nonpartisan voter protection and engagement. My practice has required that I work with people and organizations from various backgrounds—including those with various political affiliations.

- 8. During your hearing you refused to commit to recusing yourself from cases concerning legislation that you have advocated for the passage of and have called “necessary.” You also said during your hearing you needed litigants before you to feel like you hadn’t pre-judged their case. How could a litigant coming before you challenging legislation that you already have a position on feel like she will get a fair hearing before you?**

Response: If confirmed, I commit that I will scrupulously review 28 U.S.C. § 455 and confer with the relevant ethics officers regarding appropriate issues for recusal.

- 9. During your hearing, you said you loved the Constitution, and how it gave everyone a right to “life, liberty, and the pursuit of happiness.”**

- a. At what stage of life does the constitutional right to life apply and why?**

Response: As a judicial nominee, it would be inappropriate for me to comment on this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments.

- b. How do judges go about enforcing the rights to life, liberty, and the pursuit of happiness?**

Response: Judges interpret laws. I believe that our representative democracy and the checks and balances in our three-branch system help promote and protect all rights.

- c. Joseph Lochner was a German immigrant seeking a better life for his family through hard work and freedom of contract. Was *Lochner v. New York* a vindication of his rights to life, liberty, and the pursuit of happiness? If not, why not?**

Response: If confirmed to the Second Circuit, I would be duty-bound to follow all Supreme Court and Second Circuit precedent. As I testified, *Lochner* was largely overturned in *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

- 10. How many states engage in voter suppression?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments.

**11. Is all gerrymandering bad? If not, why not?**

Response: If confirmed, I would be bound to follow all Supreme Court and Second Circuit precedent on questions related to gerrymandering, including *Rucho v. Common Cause*, 588 U.S. \_\_ (2019), and others.

**12. Does Florida gerrymander?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. If confirmed, I would be bound to follow all Supreme Court and Second Circuit precedent on questions related to gerrymandering, including *Rucho v. Common Cause*, 588 U.S. \_\_ (2019), and others.

**13. Does Texas gerrymander?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. If confirmed, I would be bound to follow all Supreme Court and Second Circuit precedent on questions related to gerrymandering, including *Rucho v. Common Cause*, 588 U.S. \_\_ (2019), and others.

**14. Does Illinois gerrymander?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. If confirmed, I would be bound to follow all Supreme Court and Second Circuit precedent on questions related to gerrymandering, including *Rucho v. Common Cause*, 588 U.S. \_\_ (2019), and others.

**15. Does New York gerrymander?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. If confirmed, I would be bound to follow all Supreme Court and Second Circuit precedent on questions related to gerrymandering, including *Rucho v. Common Cause*, 588 U.S. \_\_ (2019), and others.

**16. Does Maryland gerrymander?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. If confirmed, I would be bound to follow all Supreme Court and Second Circuit precedent on questions related to gerrymandering, including *Rucho v. Common Cause*, 588 U.S. \_\_ (2019), and others.

**17. Recently, some people who had previously called Voter ID requirements a form of “voter suppression” have expressed willingness to include Voter ID requirements in upcoming election reform legislation.**

- a. Do you think these changes in position are because of an underlying change in views of the legitimacy of ID requirements, or do you think they reflect a reaction to public polling data?**

Response: I am unaware of which people you are referencing and do not have any knowledge as to why, if any, positions on voter ID have changed.

- b. Are Voter ID requirements voter suppression?**

Response: The Supreme Court held in *Crawford v. Marion County*, 553 U.S. 181 (2008), that photo ID laws for voting were not per se unconstitutional. If confirmed, I’d follow all binding Supreme Court and Second Circuit precedent, including *Crawford*.

**18. Do you agree with Vice President Harris that rural voters may not be able to comply with Voter ID requirements because they don’t have access to “Xerox” machines?**

Response: As an advocate, I identified instances and individuals who may not be able to comply with a state’s photo identification requirements. I have no awareness or knowledge of the statement the question attributes to the Vice President.

**19. What is your understanding of originalism?**

Response: “The theory that the U.S. Constitution should be interpreted according to the intent of those who drafted and adopted it.” *Black’s Law Dictionary* 1126 (7th ed. 1999).

**20. What is your understanding of how an originalist views the Bill of Rights and subsequent Constitutional Amendments?**

Response: I have not studied this issue and do not have an understanding to offer.

**21. Do you know any originalists who ignore the Bill of Rights?**

Response: I have not studied this issue.

**22. Do you know any originalists who believe black Americans should be counted as 3/5 of a vote?**

Response: I have not studied this issue.

**23. Do you know any originalists who believe women should not be able to vote?**

Response: I have not studied this issue.

**24. Which areas of constitutional law has the Supreme Court instructed lower courts to interpret using original public meaning?**

Response: The Supreme Court has stated that “the public understanding of a legal text in the period after its enactment or ratification...is a critical tool of constitutional interpretation.” *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008).

**25. Which areas of constitutional law has the Supreme Court instructed lower courts to interpret using the living constitution?**

Response: I am not aware of an instruction like that being issued by the Supreme Court to lower courts.

**26. If confirmed, are you willing to interpret the Constitutional according to its original public meaning when the Supreme Court has mandated you do so?**

Response: If confirmed, I would interpret the Constitution consistent with the precedent set out by the Supreme Court and the Second Circuit.

**27. Have you read *A Matter of Interpretation* by Antonin Scalia?**

Response: No.

**28. Justice Scalia once said at Villanova Law School, “There is no such thing as a ‘Catholic judge. The bottom line is that the Catholic faith seems to me to have little effect on my work as a judge . . . . Just as there is no ‘Catholic’ way to cook a hamburger, I am hard pressed to tell you of a single opinion of mine that would have come out differently if I were not Catholic.” Do you agree with Justice Scalia? What do you view as the role of religion for a federal judge?**

Response: I am unfamiliar with this quotation attributed by the question to Justice Scalia, but I do agree that judges are duty bound to resolve cases and controversies by applying the relevant law and precedent to the record and the facts before the court.



**29. You wrote movingly about Chuck Colson following his death. Mr. Colson was a great man and a great Christian and I appreciate the work you have done with his excellent organization, Prison Fellowship. But Mr. Colson, of course, had a Christian faith that compelled him to fight for human rights beyond those of prisoners including, very notably, the unborn. Mr. Colson said in 1996 of the baptism of former abortionist Bernard Nathanson:**

**This is the way the abortion war will ultimately be won: through Jesus Christ changing hearts, one by one. No amount of political force, no government, no laws, no army of Planned Parenthood workers, can ever stop that. It is the one thing absolutely invincible. That simple baptism, held without fanfare in the basement of a great cathedral, is a reminder that a holy Baby, born in a stable 20 centuries ago, defies the wisdom of man. He cannot be defeated.**

**Do you agree with Chuck Colson?**

Response: In my personal capacity, I am on record as agreeing with a belief that the sacrament of baptism is a reminder that a holy baby, born in a stable 20 centuries ago, defies the wisdom of man and cannot be defeated. I am unfamiliar with the statement in the question attributed to Chuck Colson.

**30. You have spoken many times in admiration for Justice Brennan. Brennan famously would tell his law clerks that the most important thing about the court was “how to count to five.” That is with five votes you get a majority to change the law. In the wake of the *Fulton v. Philadelphia* opinion there are now five Justices who have said publicly that *Employment Division v. Smith* was wrongly decided.**

**a. In hearing a religious exemption claim, should lower courts apply *Smith* even though five Justices have said that it was wrongly decided?**

Response: Lower courts are bound by vertical stare decisis and should apply existing Supreme Court precedent.

**b. If not, what does this say about Justice Brennan’s legal realist approach about “the number five”?**

Response: Lower courts are bound by vertical stare decisis and should apply existing Supreme Court precedent.

**31. You have said that “no responsible person in my area will say that voter fraud never happens because that’s not true. It’s extraordinarily rare, it is in vanishingly small numbers.”<sup>1</sup> Yet you have also criticized some states’ response to voter fraud, saying**

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<sup>1</sup> Speaker, “Speakers on the Square: Politics and Social Media,” New York University, Dec. 2, 2020. Available at <https://www.nyu.edu/alumni/events-programs/past-virtual-events/speakers-on-the-square.html>

**those responses are not proportional to the size of the problem. What is an acceptable amount of voter fraud that states should accept, in your view?**

Response: In my role as a policy advocate, I would make comments directed at the public or elected officials who have responsibility for enacting laws. The question posed is best answered by legislatures. The role of a judge is to adjudicate cases and controversies, not to make law.

**32. When discussing voter integrity laws being proposed and passed in state legislatures, you have said that politicians were seeing “the writing on the wall, and rather than compete for votes they are trying to manipulate and change the rules of the game so that people who will not vote for them have a hard time voting.”<sup>2</sup>**

**a. Do you believe reforming, or getting rid of the Electoral College, qualifies as changing the rules of the game?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments.

**b. Do you support abolishing or reforming the Electoral College?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments.

**c. Do you believe that abolishing or reforming the filibuster qualifies as changing the rules of the game?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments.

**d. Do you support abolishing or reforming the filibuster?**

Response: As a judicial nominee, it would be inappropriate for me to respond to this question because a case or controversy implicating these matters may come before me and I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments.

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<sup>2</sup> Speaker, “The State of Race,” WGBH, March 23, 2021. Available at [https://www.youtube.com/watch?v=QZS610\\_ndOA&ab\\_channel=GBH](https://www.youtube.com/watch?v=QZS610_ndOA&ab_channel=GBH)

**33. You have also said that some of these voter integrity laws are a reaction to politicians’ anxiety over the “Browning of America.”**

**a. Are you aware that black and Hispanic voters voted for President Trump in higher numbers in 2020 than they did in 2016?**

Response: I have seen news reports indicating that Black and Latino voters voted for President Trump in higher numbers in 2020 than they did in 2016.

**b. How do you reconcile that with your theory of anxiety over the “Browning of America?”**

Response: If confirmed, I would consider each case based on the facts and record before me, carefully applying relevant precedent. I would put aside personal theories or explanations for phenomena and look to the facts and the record put before me.

**34. In June 2020 testimony before the House Committee on the Judiciary, you mentioned the problem of “cyber suppression content—social media posts with disinformation or deceptive practices that could cause a voter to be disenfranchised.”<sup>3</sup> Do you believe that social media companies censoring people and viewpoints from one political ideology is cyber suppression?**

Response: It is the province of the legislature to set the policies regulating social media companies.

**35. Do you believe property damage caused during rioting should be prosecuted to the fullest extent of the law?**

Response: If confirmed, and a case before me involved someone convicted of property damage, I would adjudicate the matter fairly and impartially. Decisions about what charges should be brought in a criminal context is the province of prosecutors.

**36. Under the Supreme Court’s First Amendment jurisprudence, can someone shout “fire” in a crowded theater?**

Response: The Supreme Court has held that “the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

**37. How many criminal trials have you participated in to full disposition?**

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<sup>3</sup> *Hearing on State COVID-19 Voting Procedures Before the H. Comm. On Judiciary*, 116<sup>th</sup> Cong., June 3, 2020 (testimony of Myrna Pérez) (SJQ Attachments Part 1 12c at 912).

Response: None. My practice has been complex civil litigation.

**38. How many criminal appeals have you argued?**

Response: None. My practice has been complex civil litigation.

**39. How many securities-law matters have you participated in?**

Response: None. My practice has been complex civil litigation.

**40. How many complex commercial litigation matters have you participated in?**

Response: None. My practice has been complex civil litigation.

**41. How many insurance litigation matters have you participated in?**

Response: None. My practice has been complex civil litigation.

**42. How many mass-tort litigation matters have you participated in?**

Response: As a summer associate at O'Melveny and Myers, I researched a matter for a mass tort litigation, but I was not an attorney at the time nor do I remember the specifics of the matter.

**43. How many employment-discrimination matters have you participated in?**

Response: As a litigation fellow at Relman Colfax (then, Relman and Dane), I performed legal research and worked on discovery on at least one employment discrimination matter that I later heard settled.

**44. How many immigration matters have you participated in?**

Response: None. My practice has been complex civil litigation.

**45. What standard should courts apply in allowing discovery in Administrative Procedure Act litigation?**

Response: If confirmed, I would be bound by existing Supreme Court and Second Circuit precedent on this topic, including *Dep't of Commerce v. New York*, 139 S. Ct. 2551 (2019), and *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971), and others.

**46. 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: If confirmed, I would be bound by any controlling Supreme Court and Second Circuit precedent as to the interpretative method to be used for evaluating the constitutional provision at issue.

**47. What role should empathy play in interpreting the law?**

Response: A judge is duty bound to apply the law to the case in question regardless of personal feelings. If confirmed, I would faithfully discharge that duty.

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

Response: Judicial decisions should take into consideration only those factors relevant to applicable law in the case and controversy before the Court.

**49. Are legal doctrine and practice best understood as an objective and defensible scheme of human association? Or are they better understood as of instrumental use for political ends?**

Response: I have not studied this issue and am not aware of how legal doctrine and practice is best understood.

**50. How do you define formalism?**

Response: “Legal formalism” is defined by Black’s Law Dictionary as “The theory that law is a set of rules and principles independent of other political and social institutions.” *Black’s Law Dictionary* 904 (7th ed. 1999).

**51. Do you consider yourself a formalist?**

Response: I have never used the term “formalist” to describe myself. If confirmed, I would objectively and impartially review the arguments of the parties, the record before me, and all relevant statute and precedent and apply the law to the facts and record before me.

**52. Can the Supreme Court mandate formalism on lower courts?**

Response: I am not aware of the Supreme Court mandating academic theories upon lower courts, but where the Supreme Court has created binding precedent that a constitutional provision should be evaluated according to particular interpretive guidelines, I will faithfully apply that precedent.

**53. Can an appeals court mandate formalism on trial courts?**

Response: I am not aware of the appellate courts mandating academic theories upon lower courts, but where the Second Circuit has created binding precedent that a

constitutional provision should be evaluated according to particular interpretive guidelines, I will faithfully apply that precedent.

**54. Is the complexity of precedent and its multiplicity a feature or a bug of the law?**

Response: The Supreme Court has noted that the doctrine of stare decisis “permits society to presume that bedrock principles are founded in the law, rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact.” *Vasquez v. Hillery*, 474 U.S. 254, 265-266 (1986).

**55. How do you define legal realism?**

Response: “Legal realism” is defined by Black’s Law Dictionary as “The theory that the law is based not on formal rules or principles, but instead on judicial decisions that should derive from social interests and public policy.” *Black’s Law Dictionary* 907 (7th ed. 1999).

**56. Do you consider yourself a legal realist?**

Response: I have never used the term “legal realist” to describe myself. If confirmed, I would objectively and impartially review the arguments of the parties, the record before me, and all relevant statute and precedent. I would apply the law to the facts and record before me.

**57. Do you agree that all lawyers are, at some level, legal realists?**

Response: I agree that all lawyers should not ask courts to do something outside of what they can do.

**58. The Second Circuit is in many ways a commercial court. Are you familiar with the Law and Economics movement?**

Response: Black’s Law Dictionary defines “law and economics” as “a discipline advocating the economic analysis of the law, whereby legal rules are subject to a cost-benefit analysis to determine whether a change from one legal rule to another will increase or decrease allocative efficiency and social wealth.” *Black’s Law Dictionary* 890 (7th ed. 1999). I have not studied it formally, but have a high-level awareness of it as an academic discipline and am familiar with cost-benefit analytical methods.

**59. What value, if any, do you see in Law and Economics?**

Response: Insights from law and economics have been incorporated into many fields of law, including anti-trust law. If confirmed, I would apply all binding Supreme Court and Second Circuit precedent, including those that incorporated insight from law and economics theories.

**60. Is the practice of judicial review defensible absent the existence of neutral legal principles?**

Response: There are numerous established standards of judicial review.

**61. What is the purpose of criminal sentencing under the law?**

Response: The purposes of criminal sentencing as outlined in 18 U.S.C. 3353(a)(2) are:  
(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;  
(B) to afford adequate deterrence to criminal conduct;  
(C) to protect the public from further crimes of the defendant; and  
(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

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

Response: The purposes of criminal sentencing as outlined in 18 U.S.C. 3353(a)(2) are:  
(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;  
(B) to afford adequate deterrence to criminal conduct;  
(C) to protect the public from further crimes of the defendant; and  
(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

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

Response: In sentencing, a defendant is entitled to equal justice under the law. Discrimination in sentencing based on a person's background like ethnicity, race, or religion would violate the law and morality.

**64. What is the relationship between morality and the law generally?**

Response: If confirmed, I would objectively and impartially review the arguments of the parties, the record before me, and all relevant statutes and precedent and apply the law to the facts and record before me. My personal views would be set aside.

**65. What is your understanding of the original meaning of the Cruel and Unusual Punishment Clause?**

Response: I have not studied the original meaning nor the legislative history of the Cruel and Unusual Punishment Clause. If confirmed, I would objectively and impartially apply all relevant precedent to the law to the facts and record before me.

**66. Do you think law firms should allow paying clients to influence which pro bono clients they take?**

Response: Decisions about what clients a private law firm should accept and under what terms, conditions, or circumstances are decisions for the law firm to make.

**67. Do you think law-firm clients should use their financial position to influence which pro bono clients their attorneys take?**

Response: Decisions about what clients a private law firm should accept and under what terms, conditions, or circumstances are decisions for the law firm to make.

**68. 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: Decisions about what clients a private law firm should accept and under what terms, conditions, or circumstances are decisions for the law firm to make.

**69. 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: I do not agree with the proposition that some civil clients do not deserve representation on account of their identity.

**70. Do you agree with the Supreme Court that the principle of church autonomy goes beyond a religious organization's right to hire and fire ministers? Please describe your view on whether and/or how the Supreme Court has placed limits on church autonomy.**

Response: If confirmed, I would apply all relevant Supreme Court and Second Circuit precedent as to questions of church autonomy, including *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 565 U.S. 171 (2012), and *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020).

**71. What level of scrutiny applies to a Second Amendment challenge in the Second Circuit?**

Response: The Second Circuit is bound by relevant Supreme Court precedent as to the scrutiny level of Second Amendment cases, including *Heller*. There is a Second Circuit Second Amendment case, *New York State Rifle & Pistol Association v. Corlett*, that has been granted cert by the Supreme Court. If confirmed, I would follow faithfully all binding Supreme Court and Second Circuit precedent without reservation.

**72. One of the federal courts' important functions is reading statutes and regulations, determining what they mean, and determining how they apply to the facts at hand.**



**a. How would you determine whether statutory or regulatory text was ambiguous?**

Response: I would first look to the text of the statute, and consider the arguments of the parties.

**b. Would you apply different standards to determining whether statutory text and regulatory text were ambiguous? If so, how would the ambiguity standards differ?**

Response: I would first look to the text of the statute or regulation and any relevant precedent, including *Kisor v. Willkie*, 588 U.S. \_\_ (2019) and *Auer v. Robbins*, 519 U.S. 452 (1997). I would carefully consider the arguments of the parties, and scrupulously apply the law to the facts and record of the case before me.

**c. When interpreting ambiguous text, what tools would you use to resolve the ambiguity?**

Response: I would examine any relevant precedent for interpreting the text, review the context of the text, apply the relevant canons of construction, and consult any legislative or other history as necessary.

**d. When interpreting ambiguous text, how would you handle two competing and contradictory canons of statutory interpretation?**

Response: I would examine any relevant precedent for interpreting the text, review the context of the text, apply the relevant canons of construction, and consult any legislative or other history as necessary.

**73. Is climate change real?**

Response: If confirmed, and if a case came before me that required me to evaluate claims regarding the existence of climate change, I would scrupulously review the facts and record of the case and apply any binding Supreme Court and Second Circuit precedents.

**74. Do people have implicit racial bias?**

Response: I believe that humans have implicit biases, and if I were confirmed, I would strive to ensure that all persons receive equal justice under the law.

**75. Does human life begin at conception?**

Response: If confirmed, and if a case came before me that required me to evaluate when human life begins, I would scrupulously review the facts and record of the case and apply all Supreme Court and Second Circuit precedents.

**76. 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: I would hire law clerks based upon work ethic, ability, and temperament. I would welcome applicants with diverse experiences and personal and professional backgrounds.

**77. The Blackstone Legal Fellowship “prepares Christian law students for careers marked by integrity, excellence, and leadership.” Blackstone “is a program of Alliance Defending Freedom. ADF is the world’s largest legal organization committed to protecting religious freedom, free speech, and the sanctity of life.” Would you hire a Blackstone Fellow to serve in your chambers as a law clerk?**

Response: I would hire law clerks based upon work ethic, ability, and temperament. I would welcome applicants with diverse experiences and personal and professional backgrounds.

**78. Please explain, with detail, the process by which you became a circuit-court nominee.**

Response: In late February 2021, a member of Senator Schumer's staff reached out to provide me a link to the Senator's judicial application, which I completed. In early March 2021, I had multiple conversations with a member of Senator Schumer's screening committee. On March 12, 2021, I spoke with a member of Senator Schumer's staff. On March 13, 2021, I met with Senator Schumer. On March 29, 2021, I was contacted by an official from the White House Counsel's Office to set up an interview with attorneys from that office, which took place the following day. Since March 30, 2021, I have been in contact with officials at the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On June 14, 2021, I spoke with White House Counsel Dana Remus. On June 15, 2021, my nomination was submitted to the Senate.

**79. Have you had any conversations with individuals associated with the group Demand Justice—including, but not limited to, Brian Fallon or Chris Kang—in connection with this or any other potential judicial nomination? If so, please explain the nature of the conversations.**

Response: I spoke with Chris Kang on a few occasions to get his advice on the judicial nomination process.

**a. To your knowledge, has anyone had such conversations on your behalf?**

Response: Generally speaking, I am not aware of the content of conversations I was not in. As I stated above, I spoke with Chris Kang myself to better understand the judicial nomination process.

**80. Have you had any conversations with individuals associated with the American Constitution Society—including, but not limited, to Russ Feingold—in connection with this or any other potential judicial nomination? If so, please explain the nature of the conversations.**

Response: No.

**a. To your knowledge, has anyone had such conversations on your behalf?**

Response: Generally speaking, I am not aware of the content of conversations I was not in.

**81. Please explain with particularity the process by which you answered these questions.**

Response: These questions were provided to me by the Office of Legal Policy at the Department of Justice. I reviewed the questions, researched any relevant case law as needed, and drafted answers. I provided my answers to attorneys from the Office of Legal Policy who reviewed my answers and provided me with feedback. The final answers are my own.

**82. Do these answers reflect your true and personal views?**

Response: Yes.

Nomination of Myrna Pérez  
to be United States Circuit Judge for the Second Circuit Questions for the Record  
Submitted July 21, 2021  
Questions from Senator Cotton

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

Response: No.

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

Response: No.

3. **You've repeatedly said that elections should be "free, fair, and accessible." Should elections also be secure?**

Response: Yes. As part of the materials I submitted with my Senate Judiciary questionnaire, I included a report I authored on suggestions as to how to make elections more secure.

4. **You've repeatedly said that elections should be "free, fair, and accessible." Should foreign citizens be allowed to vote in our elections?**

Response: Existing law precludes foreign nationals from voting in federal elections.

5. **You've repeatedly said that elections should be "free, fair, and accessible." Should people who are underage be allowed to vote in our elections?**

Response: Eligibility for elections is set by state and federal law (and sometimes, local law in local elections). The 26th Amendment says: "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of race." If a case came before me that required me to evaluate claims regarding whether people who are underage should be allowed to vote in our elections, I would scrupulously review the facts and record of the case and apply Supreme Court and Second Circuit precedents.

6. **You've repeatedly said that elections should be "free, fair, and accessible." Should illegal aliens be allowed to vote in our elections?**

Response: Existing law precludes foreign nationals from voting in federal elections.

7. **You’ve repeatedly said that elections should be “free, fair, and accessible.” Are there any people who should not have “free and fair” access to vote in our elections?**

Response: Persons who do not meet the lawful eligibility requirements should not be voting in elections.

8. **You said during your hearing that *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) was rightly decided. What do you believe to be the Supreme Court’s holding in *Brown*?**

Response: *Brown* held that de jure racial segregation of public schoolchildren violated the 14th Amendment’s Equal Protection Clause.

9. **You refused during your hearing to say whether *Brnovich v. Democratic National Committee*, 594 U.S. \_\_\_\_ (2021) was rightly decided. What do you believe to be the Supreme Court’s holding in *Brnovich*?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed. *Brnovich* held that Arizona’s out-of-precinct ballot rejection policy and H.B. 2023 do not violate Section 2 of the Voting Rights; the Court also held that Arizona did not enact H.B. 2023 with a racially discriminatory purpose.

10. **You refused during your hearing to say whether *Shelby County v. Holder*, 570 U.S. 529 (2013) was rightly decided. However, you have openly criticized the case, and wrote in 2018 that *Shelby County v. Holder* is a “violation of the promise that our country makes,” and you also called it “unprincipled.” What did you mean when you said that *Shelby County v. Holder* is a “violation of the promise that our country makes”?**

Response: I stated during my hearing, that if confirmed, I would faithfully and without reservation apply the law and precedent relevant to the case before me—including *Shelby County v. Holder*—irrespective of any personal beliefs I may have. It is true that as an advocate, I have frequently commented that the Constitution promises Americans that when they step into the ballot box, they will be free from racial discrimination, and a strong Voting Rights Act is one of the ways in which we as a country make good on that promise. As I stated during my hearing, I am fully capable of separating my role as an advocate with my role as a judge if confirmed.

11. **You refused during your hearing to say whether *Shelby County v. Holder*, 570 U.S. 529 (2013) was rightly decided. However, you have openly criticized the case, and wrote in 2018 that *Shelby County v. Holder* a “violation of the promise that our country makes,” and you also called it “unprincipled.” What do you believe to be the Supreme Court’s holding in *Shelby County*?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court and Second Circuit precedent, including *Shelby County*, if confirmed. *Shelby County* held that the coverage formula for preclearance contained in Section 4(b) of the Voting Rights Act of 1965 was not constitutionally permissible given the record before Congress.

**12. You refused during your hearing to say whether *Roe v. Wade*, 410 U.S. 113 (1973) was rightly decided. What do you believe to be the Supreme Court’s holding in *Roe*?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court and Second Circuit precedent, including *Roe*, if confirmed. *Roe* held that the 14th Amendment Due Process clause provided privacy rights that protected a woman’s ability to choose to have an abortion.

**13. When asked why you refuse to say whether some Supreme Court cases were rightly decided while being willing to comment on other cases, you said that you are comfortable commenting on cases like *Brown v. Board of Education* because “it will not happen that a case of the permissibility of *de jure* segregation in schools would make its way before [you if confirmed,] and as such [you are] comfortable that [you] would not be violating [your] code of ethics by commenting on it.” What do you believe “*de jure* segregation” means?**

Response: “De jure segregation” means “Segregation that is permitted by law.” *Black’s Law Dictionary* 1362 (7th ed. 1999).

**14. Does the Constitution ever allow the government to segregate Americans in schools— even for a short time—based on their race?**

Response: As a judicial nominee, it would be inappropriate for me to comment on this question because I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. I would apply all binding precedent of the Supreme Court and the Second Circuit, including *Brown v. Board of Education*.

**15. Does the Constitution ever allow the government to segregate Americans in any context based on their race?**

Response: As a judicial nominee, it would be inappropriate for me to comment on this question because I do not want prospective litigants to incorrectly assume that I will not give a fair and impartial hearing to their arguments. I would apply all binding precedent of the Supreme Court and the Second Circuit, including the appropriate standard of

scrutiny laid out by the Supreme Court. The Supreme Court has held that all race-based classifications are subject to strict scrutiny. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

16. **During your confirmation hearing, you said that it is important “to ensure that any prospective litigant before me knows that they are getting an impartial and fair hearing where they will not be prejudged and where they will be given the opportunity to present their case.” You have spent your career as an activist, and even less than 24 hours before your confirmation hearing, you published an article entitled, “The GOP Campaign to Make Elections Less Free.” If you are confirmed as a judge and any challenge to an election policy supported by Republicans comes before you, how are those litigants supposed to feel “that they are getting an impartial and fair hearing where they will not be prejudged”?**

Response: If confirmed, I would take an oath to administer the law in an impartial manner, without regard to a litigant’s background. In every case, I would scrupulously review the facts and record of the case and apply Supreme Court and Second Circuit precedents.

17. **Less than 24 hours before your confirmation hearing, you published an article entitled, “The GOP Campaign to Make Elections Less Free.” You wrote to the Committee that you “did not see or approve the title of the article before it was published.” I asked you whether you agree with that title, or whether you believe that the GOP is campaigning to make elections “less free,” but you responded only that your article “does not mention any political party and that is because [you are] an advocate for the right to vote and [you] would criticize any politician who would impede that right, irrespective of their political party.” Do you believe that the Republican Party is currently waging a “campaign to make elections less free”?**

Response: As an advocate, I am on record as having said that certain politicians are pursuing policies that would make it harder for some Americans to vote. If confirmed, I would take an oath to administer the law in an impartial manner, without regard to a litigant’s background. In every case, I would scrupulously review the facts and record of the case and apply Supreme Court and Second Circuit precedents.

18. **Less than 24 hours before your confirmation hearing, you published an article entitled, “The GOP Campaign to Make Elections Less Free.” You wrote to the Committee that you “did not see or approve the title of the article before it was published.” I asked you whether you agree with that title, or whether you believe that the GOP is campaigning to make elections “less free,” but you responded only that your article “does not mention any political party and that is because [you are] an advocate for the right to vote and**

**[you] would criticize any politician who would impede that right, irrespective of their political party.” Did you suggest a particular title when you submitted the piece for publication? If so, what title did you suggest?**

Response: I thought the article would be entitled, “Voters Want to Vote: Unprecedented state-level legislation aims to disenfranchise Americans.” My records do not refresh my recollection as to who suggested that title.

- 19. Less than 24 hours before your confirmation hearing, you published an article entitled, “The GOP Campaign to Make Elections Less Free.” You wrote to the Committee that you “did not see or approve the title of the article before it was published.” I asked you whether you agree with that title, or whether you believe that the GOP is campaigning to make elections “less free,” but you responded only that your article “does not mention any political party and that is because [you are] an advocate for the right to vote and [you] would criticize any politician who would impede that right, irrespective of their political party.” After the article was published, did you object to the use of that title?**

Response: As was discussed at the hearing, publications routinely assign titles to articles without involvement of the author, which occurred here. In the evening before my hearing, I learned of the publication of this article. I attempted to gather certain facts regarding the publication’s circumstances since I believed the title of the article would be “Voters Want to Vote: Unprecedented state-level legislation aims to disenfranchise Americans,” however, I was unable to do so given the lateness of the hour. Thereafter, I promptly notified the Committee of the article’s publication.

- 20. Less than 24 hours before your confirmation hearing, you published an article entitled, “The GOP Campaign to Make Elections Less Free.” You wrote to the Committee that you “submitted [the article] for publication before [you were] a nominee for the Second Circuit Court of Appeals.” On what date did you submit the article for publication?**

Response: It was initially submitted May 13, 2021, and was signed off with edits on May 28, 2021.

- 21. On what date did you first speak with representatives of the Biden administration about the potential that you might be nominated for the Second Circuit Court of Appeals?**

Response: I understand that I was beginning the vetting process for potential consideration as a nominee to the Second Circuit on March 29, 2021.

- 22. On what date did the Biden administration inform you that President Biden would nominate you for a position on the Second Circuit Court of Appeals?**



Response: June 14, 2021.

**23. Do you currently have any other articles or writings pending publication?**

Response: Not that I can recall.

**24. Under what circumstances is it appropriate for a federal district court to issue a nationwide injunction that applies to more than the parties before the court?**

Response: If confirmed, and if confronted with a question about the appropriateness of nationwide injunctions, I would scrupulously review and apply Supreme Court and Second Circuit precedents as to nationwide injunctions, including *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020).

**25. During your confirmation hearing, when I asked you whether a murderer can fairly be called a “murderer” because they have been convicted of murder, you responded, “Irrespective of what their label was, sir, I would be on record as an advocate as trying to advocate for their right to vote if the criminal justice system had deemed them to be fit to be living amongst us.” Do you believe that violent felons who are serving a portion of their prison sentence on home confinement or in a halfway house should be allowed to vote?**

Response: The Brennan Center’s institutional position is that individuals who the criminal justice system has indicated are safe enough to be living and working in the community should have their voting rights restored, and that has been the policy I have advocated for while employed by the Brennan Center. If confirmed, and if a case came before me that required me to evaluate claims regarding whether an individual with a criminal record has the right to vote, I would scrupulously review the facts and record of the case and apply Supreme Court and Second Circuit precedents.

**26. During your confirmation hearing, when I asked you whether a murderer can fairly be called a “murderer” because they have been convicted of murder, you responded, “Irrespective of what their label was, sir, I would be on record as an advocate as trying to advocate for their right to vote if the criminal justice system had deemed them to be fit to be living amongst us.” Do you believe that there are any categories of crimes that should make a person ineligible to vote after completing their prison term?**

Response: The Brennan Center’s institutional position is that individuals who the criminal justice system has indicated are safe enough to be living and working in the community should have their voting rights restored, and that has been the policy I have advocated for while employed by the Brennan Center. If confirmed, and if a case came before me that required me to evaluate claims regarding whether an individual with a

criminal record has the right to vote, I would scrupulously review the facts and record of the case and apply Supreme Court and Second Circuit precedents.

27. **During your confirmation hearing, when I asked you whether a murderer can fairly be called a “murderer” because they have been convicted of murder, you responded, “Irrespective of what their label was, sir, I would be on record as an advocate as trying to advocate for their right to vote if the criminal justice system had deemed them to be fit to be living amongst us.” Should violent criminals be allowed to vote while they are in prison?**

Response: The Brennan Center’s institutional position is that individuals who the criminal justice system has indicated are safe enough to be living and working in the community should have their voting rights restored, and that has been the policy I have advocated for while employed by the Brennan Center. The question of whether state law should permit Americans to vote while incarcerated, as is the policy in Maine and Vermont, should be answered by the legislative branch.

28. **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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects a law-abiding citizen’s rights to keep and bear arms in the home. The Supreme Court extended the *Heller* ruling to the states. See *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

29. **What is the scope of the right protected by the Second Amendment?**

Response: The scope of the right to keep and bear arms is an issue making its way through the courts. As such, it would be inappropriate for me to comment. If confirmed, I would follow all Supreme Court and Second Circuit precedents, including *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

30. **Please describe what you believe to be the Supreme Court’s holding in *Greer v. United States*, 593 U.S. \_\_\_\_\_ (2021).**

Response: *Greer* held that a *Rehaif* error is not a basis for plain-error relief in a felon-in-possession case unless the defendant first makes a sufficient argument or representation on appeal that they would have presented evidence at trial that they did not in fact know he was a felon.

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

Response: *Terry* held that a person convicted of a crack offense is eligible for a sentence reduction under the First Step Act only if the crack offense triggered a mandatory minimum sentence.

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

Response: *Jones* held that a sentence of life imprisonment without parole for a juvenile does not require a finding that the juvenile is permanently incorrigible.

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

Response: *Tandon* held that government regulations that treat a secular activity more favorably than a comparable religious activity are not neutral and generally applicable, thus triggering strict scrutiny under the Free Exercise Clause.

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

Response: The granting of Temporary Protected Status under 8 U.S.C. §1254a does not qualify as an admission under 8 U.S.C. §1255 for adjustment to lawful permanent resident status.

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

Response: When chosen by the parties, arbitration of disputes can be a cost-effective tool to resolving disputes in a timely manner.

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

Response: On June 21, 2021, these questions were provided to me by the Office of Legal Policy at the Department of Justice. I reviewed the questions, researched any relevant case law, and drafted answers. I provided my answers to attorneys from the Office of Legal Policy who reviewed my answers and provided me with feedback. The final answers are my own.

**37. 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: On June 21, 2021, these questions were provided to me by the Office of Legal Policy at the Department of Justice. I reviewed the questions, researched any relevant case law, and drafted answers. I provided my answers to attorneys from the Office of Legal Policy who reviewed my answers and provided me with feedback. The final answers are my own.

Senator Ted Cruz  
U.S. Senate Committee on the Judiciary  
Questions for the Record for Myrna Pérez, Nominee for United States Circuit Judge for the  
Second Circuit

## **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. According to your Senate Judiciary Committee Questionnaire, your nominations process began in February of this year.

a. **Is it correct, then, that you referred to my amicus brief on behalf of 10 other Senators in *Brnovich v. DNC* as “outrageous and harmful” while you were under consideration for nomination to the Second Circuit? If so, do you believe these comments were appropriate for a person under consideration for nomination to the federal bench?**

Response: While I was under consideration as a candidate, I continued to have job responsibilities advocating for my clients in my practice area of voting rights. As an advocate, my role was to zealously advance the interests of my client in all available fora. Moreover, given my specific practice area, I was required to be highly sensitive to threats to the right to vote. If confirmed, I would cease to hold the role of advocate and would take on the role of judge. Judges are duty-bound to set aside personal policy views, if any, and instead impartially and objectively apply the law to the record and facts in the case or controversy before them. I would faithfully discharge that duty and apply relevant precedent, including the Supreme Court’s holding in *Brnovich v. DNC*.

b. **This month, you published an article entitled “The GOP Campaign to Make Elections Less Free.” Did you write this article while you were under consideration for nomination to the Second Circuit. If so, do you believe writing this article was appropriate for a person under consideration for nomination to the federal bench?**

Response: I drafted and submitted that article before I was a nominee. I did not approve the article title, nor was I even aware of the article title until it was published. As an advocate, my role was to zealously advance the interests of my client in all available fora. If confirmed, I would cease to hold the role of advocate and would take on the role of judge. Judges are duty-bound to set aside personal policy views, if any, and instead impartially and objectively apply the law to the record and facts in the case or controversy before them. I would faithfully discharge that duty and apply relevant precedent.

c. **In March, you stated on a virtual panel that many of the voting laws being passed across the country were due to “anxiety over the browning of the America, and people having anxiety of the fact that certain folks in power are not going to be able to stay in power.” Did you make these comments while you were under consideration for nomination to the Second Circuit? If so, do you believe these comments were appropriate for a person under consideration for nomination to the federal bench?**

Response: Without more information, I am unable to provide context for that remark, but in March of 2021 I was an advocate. As an advocate, my role was to zealously advance the interests of my client in all available fora. Moreover, given my specific practice area, I was required to be attune to issues of racial disparities. If confirmed, I would cease to hold the role of advocate and would take on the role of judge. Judges are duty-bound to set aside personal policy views (if any) and instead impartially and objectively apply the law to the record and facts in the case or controversy before them. I would faithfully discharge that duty and apply relevant precedent.

2. **Do you believe that a litigant in a voting rights case will perceive you as unbiased and neutral if they are aware of the comments described in question 1? If so, explain your basis for that belief.**

Response: I have spent the better part of the last two decades protecting a constitutionally-designed framework that has different people playing different roles. One role is that of an advocate, another role is that of a judge. The framework I have worked so hard to defend does not work if people do not perform their respective roles. I have no information or belief as to what a hypothetical litigant may perceive of me. If confirmed, I would faithfully discharge my duty to impartially and objectively apply the relevant law to the facts and record in front of me.

3. **On July 13, you sent a letter to the Committee notifying us that *Sojourners* had published an article that you wrote before your nomination entitled “The GOP Campaign to Make Elections Less Free.”**

- a. **After your nomination but prior to your being aware that your article would be published, did you communicate in any way with any representative at *Sojourners* asking them not to publish your article?**

Response: No.

- b. **After learning that your article would be published, but prior to publication, did you communicate in any way with any representative at *Sojourners* asking them not to publish your article?**

Response: No.

- c. **After your article was published, did you communicate in any way with any representative at *Sojourners* asking them to retract the publication?**

Response: No.

- d. **You stated in your letter to the Committee that you “did not see or approve the title of the article before it was published.” Did you communicate in any way with any representative at *Sojourners* asking them to alter the headline?**

Response: No. I would note that prior to publication, I did believe the piece would be entitled, “Voters Want to Vote: Unprecedented state-level legislation aims to disenfranchise Americans.”

- e. **You stated in your letter to the Committee that you “did not see or approve the title of the article before it was published.” Do you believe that the headline appropriately reflects the content of the article?**

Response: No. The article does not mention either political party. As an advocate, I would be critical of any politician—irrespective of their political party—who advanced policies that improperly interfered with the right to vote.

4. **When introducing you at your confirmation hearing, Senator Schumer stated that you have dedicated your career to “voting rights” and that you “chose the legal profession as a means to achieve that noble goal.” Was this accurate—did you choose the legal profession as a means to achieve a policy goal? If not, explain how this statement was inaccurate.**

Response: The right to vote keeps us free. It protects us from tyranny. It is preservative of all other rights. I chose the career of a voting rights attorney to protect the country I care so much about.

5. **When introducing you at your confirmation hearing, Senator Schumer stated that you have the personality that will “help [you] persuade fellow members of the Second Circuit to the righteousness of the causes that [you] will follow.” Do you agree with Senator Schumer that, if confirmed, your role as a judge will be to persuade fellow judges on the “righteousness” of “causes”? If not, why not?**

Response: I interact—personally and professionally— with all sorts of people and I strive to find common ground to build upon in my interactions generally. I believe that all people are created in God’s likeness and image and I keep that at the front of my brain when I am interacting with people—even people with whom I have disagreements.

6. **Please explain the holding and reasoning of the majority in *Washington v. Glucksberg*.**

Response: In *Washington v. Glucksberg*, the Supreme Court held that there was no fundamental liberty interest that protected access to assisted suicide under the Due Process Clause of the 14th Amendment. As such, a Washington State law making it a crime to assist an individual seeking to commit an assisted suicide was subject to rational basis review. 521 U.S. 702 (1997).

7. **Is the Supreme Court’s test outlined in *Washington v. Glucksberg* for determining whether an asserted liberty interest is fundamental under the Constitution binding precedent?**



Response: Yes.

8. **Senator Kennedy questioned you about the standard a Federal Judge should use when creating new rights under the constitution. You mentioned that you will be guided by precedent. Senator Kennedy then asked you about what your standard would be when there is no precedent, and you replied that “there is always precedent.” Is it your position that there are no constitutional cases of first impression? If not, please answer Senator Kennedy’s question.**

Response: The judiciary has been interpreting the Constitution since at least *Marbury v. Madison* was decided in 1803. Even when there is no binding precedent squarely on all fours with a particular question presented, there will be something helpful when addressing a case or controversy from any or all of the following: nonbinding, but persuasive opinions, judicial frameworks, analogous scenarios, canons of construction, or interpretative guidelines. With respect to the specific question Senator Kennedy asked, I would also note that federal judges are bound by the *Washington v. Glucksberg* test. A federal judge considering whether there were new enumerated rights under the Due Process clause would need to consider whether the claimed right was “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 (1997) (internal italics omitted).

9. **At your confirmation hearing, you were asked about the following statement you made at an event you participated in just two months ago:**

**If you are one of these people who think that we were at our best when our country was first founded and didn’t include women or people of color or people without property in the electoral process, this is probably not a conversation for you.**

**While under oath, you told Senator Grassley that the comment was made in response to hostile and inappropriate comments in the chat. However, this appears to be false given the statement of Marilyn Carroll, the host of the event, who explained that all the Q&A questions from the audience would be funneled to her, and she would select questions from the pool to then ask you.**

**Please provide any evidence supporting your assertion that your remarks were made in response to hostile and inappropriate written comments, including but not limited to, a transcript of those comments.**

Response: As I testified, I was speaking at an event via video. Comments before and during the event made plain that there were confrontational audience members. There were comments over one of the written communication options that were visible to me that were not conducive to a constructive and civil conversation. The clip, around the 56:24 minute mark, shows me in fact referencing these written comments, and also shows me explaining to those making the remarks that irrespective of any disagreement we may

have, I would fight for their right to free, fair, and accessible elections because I thought our democracy works best when it includes all the diverse voices in our country.

10. **When I questioned you about whether you believe felons should be allowed to vote, you said that the canons of judicial ethics preclude you from answering my question because you may later judge such a case. Later, Senator Cotton questioned you similarly, and you said that you would be “on the record, as an advocate, of trying to advocate for the right to vote if the criminal justice system had deemed them to be fit to be living amongst us.” Either this answer violates the canons of judicial ethics or you were not truthful when you invoked the judicial canons in response to my question. Did your answer to Senator Cotton violate the canons of judicial ethics?**

Response: My response to Senator Cotton acknowledged that in my work at the Brennan Center, I have publicly advocated for restoring voting rights to persons living and working in the community with criminal convictions—the policy position of the Brennan Center. In contrast to the response to Senator Cotton, our exchange on this topic involved my personal beliefs, and a deviation from the Brennan Center policy (specifically, voting while incarcerated), both of which could implicate the canons of judicial ethics.

11. **In the amicus brief you filed in *Brnovich v. DNC*, you argued that Arizona’s law “would permit states to return to similar Jim Crow-era restrictions[.]” Do you believe that minorities living in Arizona are now living under a Jim Crow-style system?**

Response: As an advocate, I made an argument in a brief before the Supreme Court. The Supreme Court gets to “say what the law is.” *Marbury v. Madison*, 5 U.S. 137 (1803). The Supreme Court upheld the Arizona policies at issue in the case, and *Brnovich* case is now precedent that I would follow faithfully and without reservation.

12. **After *Brnovich*, what is the standard for reviewing a section 2 vote-denial claim?**

Response: The Supreme Court in *Brnovich v. DNC* expressly declined to set forth a test for Section 2 vote denial claims, but instead provided a non-comprehensive list of “guideposts” to consider. 141 S. Ct. 2321 (2021).

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

Response: The President has the duty to “take Care that the Laws be faithfully executed” pursuant to Article II, Section 3 of the Constitution.

14. **Please describe the difference between living constitutionalism and originalism.**

Response: There is no one consensus definition as to these academic labels. At least one definition of originalism, from Black’s Law Dictionary is “The theory that the U.S. Constitution should be interpreted according to the intent of those who drafted and

adopted it.” *Black’s Law Dictionary* 1126 (7th ed. 1999). The same edition of the Black’s Law Dictionary does not define “living constitutionalism,” but in the past I have explained the concept to lay audiences using a quote from Justice William Brennan, said at the “Text and Teaching Symposium” at Georgetown University on October 12, 1985: “The genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs.” When interpreting the Constitution, I would first look at the text of the Constitution and the binding precedent of the Supreme Court or Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the interpretive canons of construction, the contextual structure in which the text was found, the legislative history, and any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

15. **Was the Supreme Court’s decision in *Dred Scott v. Sandford* an example of living constitutionalism? Why or why not?**

Response: Labels such as “living constitutionalism” are inchoate and changing, but *Dred Scott v. Sandford* was effectively overturned by the Reconstruction Amendments. The fact that we have had more than two dozen amendments since the Constitution was first ratified in 1788 meets at least one reasonable definition of “living.”

16. **Please provide three examples of cases where the opinion for the Supreme Court employs living constitutionalism as its interpretive methodology.**

Response: I am not aware of any Supreme Court holding that justified its ruling on account of the term “living constitutionalism.”

17. **Given your previous comments, I understand that your judicial philosophy is more closely aligned with Justice Brennan’s philosophy of a living constitution than any other justice’s philosophy. If this is incorrect, please name the Justice whose judicial philosophy is most analogous with yours.**

Response: I have not studied the 230 years of Supreme Court jurisprudence this country has had in a way that allows me to conclude which Justice’s philosophy is most analogous to what academics and courtwatchers would label mine as if I am confirmed. Justice Sandra Day O’Connor’s appointment to the Supreme Court had a big impact on me as a young girl growing up in Texas.

18. **With whose judicial philosophy to you more closely align, Justice Brennan or Justice Scalia?**

Response: I have spent the better part of last two decades working at the Brennan Center, which is a living memorial to Justice Brennan. I have not studied the cases, interviews, and public comments of Justice Brennan or Justice Scalia in a way that allows me to conclude which Justice’s philosophy is most analogous to what academics and courtwatchers would label mine as if I am confirmed, In terms of my own judicial

philosophy, if confirmed, I would approach constitutional questions by first looking at the text at issue and the binding precedent of the Supreme Court and Second Circuit. If those sources do not resolve a question, I would look to precedent from the Supreme Court involving relevant constitutional topics, and persuasive precedent from other circuits, the contextual structure of the text, the canons of construction, and relevant contemporaneous history.

19. **Please state and describe one aspect of living constitutionalism with which you disagree?**

Response: There is no consensus definition of “living constitutionalism.” I very much believe in the importance of the rule of law, fidelity to precedent, and that the text of the Constitution is the most probative evidence of its meaning.

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

Response: The Supreme Court gets to say what the law is. *Marbury v. Madison*, 5 U.S. 137 (1803). While *Dred Scott v. Sandford* was overturned through the amendment process, other cases get overturned on occasion outside the amendment process, for example, *Brown v. Board of Education* overturned *Plessy v. Ferguson*.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects a law-abiding citizen’s rights to keep and bear arms in the home. The Supreme Court extended the *Heller* ruling to state regulations. See *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

22. **Is the criminal justice system systemically racist?**

Response: I have not performed qualitative or quantitative research on this topic. If confirmed, I would impartially and objectively apply all laws to the parties before me without regard to a party’s race or ethnicity.

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

Response: As a judicial nominee, it would be inappropriate for me to comment on the constitutionality of factors to be considered in making political appointments.

Questions for the Record for Myrna Pérez  
From Senator Mazie K. Hirono

1. **As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:**

a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

Response: No.

b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

Response: No.

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

Response: I would first look at the text of the statute and the binding precedent of the Supreme Court and Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the interpretive canons of construction, the contextual structure in which the text was found, the legislative history, and any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

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

Response: I would first look at the text of the Constitution and the binding precedent of the Supreme Court and Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the interpretive canons of construction, the contextual structure in which the text was found, the legislative history, and any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

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

Response: Where the Supreme Court has created binding precedent that a constitutional provision should be interpreted based on the text and original meaning, I will faithfully apply that precedent. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 576-600 (2008).

**4. If a constitutional provision is ambiguous, and there is no controlling precedent, would it be appropriate to consult—as Justice Stephen Breyer contends—“the values” underlying the provision’s language?**

Response: I am unfamiliar with the context of the Justice Breyer quote provided. If the constitutional provision is ambiguous, and there was no controlling precedent, I would look at the contextual structure in which the text was found, use the relevant canons of construction, consult the legislative history, and research any relevant case law in other circuits or guidance the Supreme Court has provided for other constitutional provisions. In so doing, I would be bound by the record put before me by the parties.

**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: I would first look at the text of the statute and the binding precedent of the Supreme Court and Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the contextual structure in which the text was found, use any relevant canons of construction, consult the legislative history, and review any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

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

Response: “Plain meaning” is defined as “The meaning that would be attributed to a document (usu. by a court) based on a commonsense reading of the words, giving them their ordinary sense and without reference to extrinsic indications of the author’s intent.” *Black’s Law Dictionary* 995 (7th ed. 1999).

**7. If confirmed, would you consult legislative history when interpreting ambiguous statutory terms?**

Response: I would first look at the text of the statute and the binding precedent of the Supreme Court and Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the contextual structure in which the text was found, use any relevant canons of construction, consult the legislative history, and review any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

**8. If confirmed, would you look to the underlying purpose of a Congressional statute to construe ambiguous provisions?**

Response: I would first look at the text of the statute and the binding precedent of the Supreme Court or Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the contextual structure in which the text was found (including any express “purpose” section in the statute), use any relevant canons of construction, consult the legislative history, and review any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

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

Response: The Supreme Court affirmed in *McCulloch v. Maryland*, 17 U.S. 316 (1819) that Congress can rely on the Necessary and Proper Clause to enact laws based on the enumerated powers in Article I, Section 8 even if the specific act taken is not enumerated in that Section.

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

Response: I would look to Supreme Court and Second Circuit precedent to evaluate the constitutionality of the law. If there were no binding precedent that addressed the issue, I would look to other instructive or helpful law, for example, precedents in other circuits or evaluative methods the Supreme Court has laid out for other provisions.

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

Response: The Supreme Court has determined that the Constitution protects certain rights that are not specifically enumerated in its text. These rights include the right to privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965) and the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967).

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), the Supreme Court said that substantive due process protects “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.”

**13. 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: If confirmed, I would faithfully and without reservation apply the law and precedent relevant to the facts and the record the parties put before me—irrespective of any personal beliefs I may have.

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

Response: Checks and balances and separation of powers are two of the ingenious frameworks set forth by our Constitution. They promote and foster key constitutional values like self-governance and democracy.

**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: I would study the relevant constitutional text and look to Supreme Court and Second Circuit precedent to determine the law that applied to the question before me.

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

Response: A judge is duty-bound to apply the law to the case in question regardless of personal feelings. If confirmed, I would faithfully discharge that duty.

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

Response: Both are undesirable outcomes that a judge should seek to avoid.

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

Response: In my many years as an academic and practicing lawyer, I have never heard anyone describe the term "judicial supremacy." Judicial review means "A court's power to review the actions of other branches or levels of government, esp. the court's power to invalidate legislative and executive actions as being unconstitutional." *Black's Law Dictionary* 852 (7th ed. 1999).

**19. 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: Elected officials swear an oath to uphold the Constitution.

**20. 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: A judge's job is to determine "what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

**21. As a circuit 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: If confirmed, I would be bound by Supreme Court and Second Circuit precedent. If there were no binding precedent that addressed the issue, I would look to other instructive or helpful law, for example, precedents in other circuits or evaluative methods the Supreme Court has laid out for other provisions.

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

Response: No.

**23. 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: 18 U.S.C. § 3553(a) specifies the factors a federal judge shall consider when imposing a sentence. No sentencing judge should discriminate when sentencing based on race, gender, nationality, sexual orientation, or gender identity.

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

Response: I was not previously aware of the above definition. If a case involving the definition of "equity" came before me, I would look first to Supreme Court and Second Circuit precedent to define it. If confirmed, my personal views on the executive's definition of equity would not factor into any case.

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

Response: "Equity" is defined as "Fairness; impartiality; evenhanded dealing," and "The body of principles constituting what is fair and right; natural law." *Black's Law Dictionary* 560 (7th Ed. 1999). "Equality" is defined as "The state of being equal; esp., likeness in power or political status. *Black's Law Dictionary* 556 (7th Ed. 1999).

**26. Does the 14th Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?**

Response: The 14th Amendment’s text includes the phrase “equal protection,” not “equity” or “equality.”

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

Response: I am not aware of any consensus definition of the phrase, but I am aware that there is much public discussion and debate over the issue. If confirmed, any personal views I have on the topic would be put aside.

**28. How do you define “critical race theory?”**

Response: My understanding is that there is not one consensus definition of “critical race theory.” Black’s Law Dictionary defines “Critical Race Theory” as “A reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities.” *Black’s Law Dictionary* 382 (7th ed. 1999).

**29. Do you distinguish “critical race theory” from “systemic racism,” and if so, how?**

Response: I have not researched or studied the differences between systemic racism and critical race theory.

**30. At the hearing, I asked you whether you would adopt a Living Constitutionalist approach to interpreting the Constitution, and you demurred, stating that you would look at the provision in question, precedent, canons, etc. For the record, please distinguish your approach to constitutional interpretation from Justice Brennan’s “Living Constitutionalist” theory of interpretation.**

Response: I have spent most of my professional career at the Brennan Center, created 25 years ago as a living memorial to Justice Brennan, and I have spoken about him in that capacity. In terms of my own judicial philosophy, if confirmed, I would approach constitutional questions by first looking at the text at issue and the binding precedent of the Supreme Court and Second Circuit. If those sources do not resolve a question, I would look to precedent from the Supreme Court involving relevant constitutional topics, persuasive precedent from other circuits, the contextual structure of the text, the canons of construction, and relevant contemporaneous history.

**31. Justice Brennan once said that “The Law is not an end in itself, nor does it provide ends; it is preeminently a means to serve what we think is right.” Do you agree with this statement? If not, with what aspects of the statement do you disagree?**

Response: I believe the constitutional frameworks of the rule of law, separation of powers, and federalism allow us to protect and live out constitutional ideals like equal justice under the law, democracy, and freedom of religion.

- 32. In your hearing testimony, you stated that you believed the Constitution was an “enduring” document, and listed several “great values of . . . equal justice under the law, liberty, the right to free exercise, [and] all of those important attributes of the American experience are still relevant in guiding us today[.]” Do you believe every provision of the Bill of Rights is an “enduring” Constitutional provision? If not, which provisions of the Bill of Rights do you think we should not be guided by today?**

Response: I believe the Constitution, including its existing amendments, have endured.

- 33. Do you believe the Second Amendment is an “enduring” provision of the Constitution? If not, how do you distinguish it from “the right to free exercise,” which you listed as a “great value?”**

Response: I believe the Constitution, including its existing amendments, have endured.

- 34. Do you believe there is a meaningful difference between the terms “enduring” and “unchanging” when referring to a constitutional provision?**

Response: Webster’s Encyclopedic Unabridged Dictionary of the English Language defines “enduring” as “lasting, permanent”. *Webster’s Encyclopedic Unabridged Dictionary of the English Language* 472 (1989 edition). Webster’s Encyclopedic Unabridged Dictionary of the English Language offers as an antonym to “change; changing” the words “remain” and “permanence.” *Webster’s Encyclopedic Unabridged Dictionary of the English Language* 246 (1989 edition). Whatever debates there may be over the difference between the words “enduring” and “unchanging,” it is indisputable that in 2021 we have had more than two dozen amendments since the Constitution was ratified in 1788; women have the right to vote; African Americans are recognized as 5/5 of a person under the law, and *Brown v. Board of Education* overruled *Plessy v. Ferguson*.

- 35. In your hearing testimony, you stated that the label “Originalist” is “inchoate and constantly shifting.” Merriam Webster’s dictionary defines “originalism” as “a legal philosophy that the words in documents and especially the U.S. Constitution should be interpreted as they were understood at the time they were written.” Similarly, the National Constitution Center explains that “Originalists believe that the constitutional text ought to be given the original public meaning that it would have had at the time that it became law.” I agree with these definitions, as would the vast majority of people who describe**

**themselves as Originalists. Do you agree or disagree with “Originalism” as a theory of constitutional interpretation as so defined by either Merriam Webster’s dictionary or the National Constitution Center?**

Response: As I testified, academic labels like “originalism” do not have one consensus definition. For example, the Black’s Law Dictionary I took to law school, and keep in my home today, defines “originalism” as “The theory that the U.S. Constitution should be interpreted according to the intent of those who drafted and adopted it.” *Black’s Law Dictionary* 1126 (7th ed. 1999). As such, the approach and methodology I would undertake is more revealing than any label. When interpreting the Constitution, I would first look at the text of the Constitution and the binding precedent of the Supreme Court and Second Circuit. If I needed to go beyond those sources to rule on a case, I would look at the interpretive canons of construction, the contextual structure in which the text was found, the legislative history (including contemporaneous definitions), and any relevant case law in other circuits. In so doing, I would be bound by the record put before me by the parties.

**36. You mentioned at the hearing that you—having never been a judge—do not have a personal judicial philosophy, but will nonetheless possess a judicial philosophy once confirmed. Have you given any thought to what kind of judicial philosophy you will have if confirmed, or do you anticipate developing one immediately upon being confirmed?**

Response: I do not know what, if any, labels courtwatchers and academics will ascribe to my judicial opinions if confirmed. I do know that, if confirmed, my method will be to first look at the text at issue and the binding precedent of the Supreme Court and Second Circuit. If those sources do not resolve a question, I would look to precedent from the Supreme Court involving relevant constitutional topics, persuasive precedent from other circuits, the contextual structure of the text, the canons of construction, and relevant contemporaneous history.

**37. If you do not feel comfortable identifying with a particular judicial philosophy, what insight can you provide into how you would interpret cases of first impression?**

Response: If confirmed, I would approach cases of first impression by first looking at the text at issue, precedent from the Supreme Court involving relevant constitutional topics, persuasive precedent from other circuits, the contextual structure of the text, the canons of construction, and relevant contemporaneous history.

**38. You mentioned that you believe that the Constitution is “enduring.” Are there any provisions in the Constitution that “endure”—in their historic form—despite “societal evolution,” or should each provision of the Constitution be amenable to reinterpretation where it fails to reflect or adapt to current social norms?**

Response: Pursuant to *Marbury v. Madison*, it is the duty of the Supreme Court to “say what the law is.” *Marbury v. Madison*, 5 U.S. 137 (1803). If confirmed, I would be bound to follow all U.S. Supreme Court and Second Circuit precedent.

- 39. You said that your past—and biased—activism will not impede your ability to dutifully and faithfully apply precedent that you once criticized. Does this assertion mean that you will not be subject to the effects of implicit or unconscious bias?**

Response: Humans have implicit or unconscious bias. I will ensure that any implicit or unconscious bias does not permeate my methodology or approach to the law.

- 40. Without asking your opinion on the merits of the *Roe v. Wade*, can you articulate the judicial theory that was used in *Roe* to discover the right to abortion in the Constitution? Does that constitutional theory or judicial philosophy align with your own?**

Response: The Supreme Court held in *Roe v. Wade* that the “right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” 410 U.S. 113, 153 (1973). If confirmed, I would be duty-bound to objectively apply the Supreme Court’s precedent in *Roe* and subsequent cases like *Planned Parenthood v. Casey*, and others, without regards to any personal views I have as to the merits of the constitutional theory or judicial philosophy underlying the decision.

- 41. Do you believe that Rhode Island’s voter ID law (Rhode Island State Law 1719-24.2), which requires voters to present valid identification prior to voting at the polls, is comparable to any Jim Crow-era vote suppression measure? If so, which measure, and how is it similar?**

Response: As a nominee, it is inappropriate for me to comment because I do not want to leave a prospective litigant with the mistaken impression that I have pre-decided a relevant issue. If confirmed, I will follow all binding Supreme Court and Second Circuit precedent, including *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

- 42. Do you believe that Florida’s voter ID law (Florida Statutes 101.043), which requires voters to present valid identification prior to voting at the polls, is comparable to any Jim Crow-era vote suppression measure? If so, which measure, and how is it similar?**

Response: As a nominee, it is inappropriate for me to comment because I do not want to leave a prospective litigant with the mistaken impression that I have pre-

decided a relevant issue. If confirmed, I will follow all binding Supreme Court and Second Circuit precedent, including *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

- 43. In a May 27, 2021 virtual panel on “Voting Rights in America: Ensuring Fair and Full Voting for All,” you said “if you are one of these people who think that we were at our best when our country was first founded and didn’t include women or people of color or people without property in the electoral process, this is probably not the conversation for you.” When I asked you about this statement, you testified that you “were trying to de-escalate folks who were disrupting a conversation via chat.” Now that you’ve had time to review those remarks, do you stand by that characterization?**

Response: Yes. As I testified, I was speaking at an event via video. Comments before and during the event made plain that there were confrontational audience members. There were comments over one of the written communication options that were visible to me that were not conducive to a constructive and civil conversation. The clip, around the 56:24 minute mark, shows me in fact referencing these written comments, and also shows me explaining to those making the remarks that irrespective of any disagreement we may have, I would fight for their right to free, fair, and accessible elections because I thought our democracy works best when it includes all the diverse voices in our country.

Senator Ben Sasse  
Questions for the Record  
U.S. Senate Committee on the Judiciary  
Hearing: “Nominations”  
July 21, 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: I have spent most of my professional career at the Brennan Center, created 25 years ago as a living memorial to Justice Brennan, and I have spoken about him in that capacity. In terms of my own judicial philosophy, if confirmed, I would approach constitutional questions by first looking at the text at issue and the binding precedent of the Supreme Court and Second Circuit. If those sources do not resolve a question, I would look to precedent from the Supreme Court involving relevant constitutional topics, persuasive precedent from other circuits, the contextual structure of the text, the canons of construction, and relevant contemporaneous history.

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

Response: I have never used the term “originalist” to describe myself. In terms of my own judicial philosophy, if confirmed, I would approach constitutional questions by first looking at the text at issue and the binding precedent of the Supreme Court and Second Circuit. If those sources do not resolve a question, I would look to precedent from the Supreme Court involving relevant constitutional topics, persuasive precedent from other circuits, the contextual structure of the text, the canons of construction, and relevant contemporaneous history.

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



Response: While I have never publicly used the term “textualist” to describe myself, I do believe that the text of a statute is the most probative evidence as to its meaning. If confirmed, I will follow Supreme Court and Second Circuit precedent when interpreting the text of any statute at issue before me.

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

Response: The Constitution is an enduring document. If confirmed, I would follow all Supreme Court and Second Circuit precedent about the meaning of the Constitution.

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

Response: There is no justice whose entire body of cases I can say I wholesale endorse. Justice Sandra Day O’Connor’s appointment to the Supreme Court had a big impact on me as a young girl growing up in Texas.

**6. Was *Marbury v. Madison* correctly decided?**

Response: Yes. As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. However, there may be some cases for which it is highly unlikely that the precedent established would be challenged in future cases. *Marbury v. Madison*, and its holding that the Supreme Court has the power of judicial review, is one of those exceptions.

**7. Was *Lochner v. New York* correctly decided?**

Response: If confirmed to the Second Circuit, I would be duty-bound to follow all Supreme Court and Second Circuit precedent. As I testified, *Lochner* was largely overturned in *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

**8. Was *Brown v. Board of Education* correctly decided?**

Response: Yes. As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. However, there may be some cases for which it is highly unlikely that the precedent established would be challenged in future cases. *Brown v. Board of Education*, and its holding that de jure segregation in public schools is illegal, is one of those exceptions.

**9. Was *Bolling v. Sharpe* correctly decided?**

Response: Yes. As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. However, there may be some cases for which it is highly unlikely that the precedent established would be challenged in future cases. *Bolling v. Sharpe*, and its holding that the de jure segregation in D.C. public schools is illegal, is one of those exceptions.

**10. Was Cooper v. Aaron correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**11. Was Mapp v. Ohio correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**12. Was Gideon v. Wainwright correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

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

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**14. Was South Carolina v. Katzenbach correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**15. Was Miranda v. Arizona correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**16. Was Katzenbach v. Morgan correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

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

Response: Yes. As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. However, there may be some cases for which it is highly unlikely that the precedent established would be challenged in future cases. *Loving v. Virginia*, and its holding that Virginia's law banning interracial marriage was illegal, is one of those exceptions.

**18. Was *Katz v. United States* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

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

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**20. Was *Romer v. Evans* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**21. Was *United States v. Virginia* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**22. Was *Bush v. Gore* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

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

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**24. Was *Crawford v. Marion County Election Board* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**25. Was *Boumediene v. Bush* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**26. Was *Citizens United v. Federal Election Commission* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**27. Was *Shelby County v. Holder* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**28. Was *United States v. Windsor* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**29. Was *Obergefell v. Hodges* correctly decided?**

Response: As a nominee, it is generally inappropriate for me to comment on whether any given Supreme Court precedent is correctly decided. I will follow all binding Supreme Court precedent if confirmed.

**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: The Second Circuit is generally bound by stare decisis until decisions are overruled by an en banc panel or the Supreme Court. Pursuant to Rule 35 of the Federal Rules of Appellate Procedure, en banc panels are heard when a majority of the circuit judges who are in regular active service and who are not disqualified believe that: “(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance.”

**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: The Second Circuit is generally bound by stare decisis until decisions are overruled by an en banc panel or the Supreme Court. Pursuant to Rule 35 of the Federal Rules of Appellate Procedure, en banc panels are heard when a majority of the circuit judges who are in regular active service and who are not disqualified believe that: “(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance.”

**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: No.

For Ms. Myrna Pérez:

**1. You serve in the senior leadership of the Brennan Center for Justice and have worked there since 2006. On its website, the Center, named for former Supreme Court Justice William Brennan, describes how the Center “was founded . . . as a living memorial to his ideals” and prominently features the following quotation from the late Justice: “For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs.” Do you subscribe to Justice Brennan’s philosophy? Do you agree with his words quoted above?**

Response: I love that we have a Constitution that has endured since our country’s founding notwithstanding the trials and tests our country has faced and I love that the values our Constitution effectuates are timeless and relevant today.

**2. Are there any legal views adopted publicly by the Brennan Center with which you disagree? If so, please identify them.**

Response: The Brennan Center positions fall into four buckets: (1) those I personally agree with, (2) those I do not personally agree with, (3) those I have not reached a personal viewpoint on, and (4) those that I do not know about because it was not in my area of expertise. As a judicial nominee, it would be inappropriate to sort Brennan Center positions into any of these buckets because I would not want to give a prospective litigant the mistaken impression that I have prejudged a matter. Moreover, irrespective of my personal views on a topic, I would faithfully and impartially apply the relevant law to the facts and record before me.

- 3. In a January 2021 discussion with the League of Women Voters in Norwalk, Connecticut, you suggest that the current makeup of the federal bench leads you to believe that “the courts won’t save us.” Please explain this statement, including by identifying who you meant by “us” and what function the federal judiciary would serve by “sav[ing] us.”**

Response: If we are to have a government “of the people, by the people, and for the people,” the people need to be participatory in our democracy. In my role as an advocate, I have reminded the public of their role and obligations in their own self-governance.

- 4. In a May 2021 tweet, you asserted: “We need solutions to this assault on democracy: The For the People Act and the John Lewis Voting Rights Advancement Act. These federal bills would rollback or block many of these restrictions. Congress must pass them immediately.” Given your advocacy for these pieces of legislation, is it fair to assume that you believe all provisions of these bills are constitutional?**

Response: It is fair to presume that I would not advocate for legislation that I knew to be unconstitutional, but it is also true that with pieces of legislation I have supported in my role as an advocate, there are provisions that I am more familiar with and others I may not have studied in depth.

Questions from Senator Thom Tillis  
for Myrna Pérez  
Nominee to be United States Circuit Judge for the Second Circuit

**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: Judicial activism can mean a court going beyond the case and controversy the court was called to decide or a judge ignoring precedent because of personal views on public policy. If confirmed, I would follow precedent of the Supreme Court and Second Circuit and apply the law to the record in the case and controversy in front of me.

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

Response: Impartiality is an expectation that is mission critical for a judge.

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

Response: Legislative bodies decide policy. Judges adjudicate cases and controversies, and their personally desired policy outcomes would have no impact on their decision making.

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

Response: Judges are duty-bound to faithfully and impartially interpret the law. Our constitutional framework depends on the different branches of government performing their roles, and my abiding commitment to that framework would mean that I would impartially and objectively apply the law to the facts and record of the case and controversy before me.

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

Response: A judge must apply the law to the record and facts of the case and controversy before her or him without regard to any personal politics or policy preferences.

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

Response: If confirmed, I would faithfully apply Supreme Court and Second Circuit precedent when deciding any cases involving the Second Amendment, including *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *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: The values and ideals of the Constitution matter the most in times of crisis. I would begin by reviewing the arguments of the parties and researching Supreme Court and Second Circuit precedent. I would then apply the law to the specific facts and record of the case before me.

- 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?**

Response: If confirmed, I would faithfully apply Supreme Court and Second Circuit precedent when considering qualified immunity cases, including *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) and *Mullenix v. Luna*, 577 U.S. 7 (2015).

- 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: Whether law enforcement officers have sufficient protection under current qualified immunity jurisprudence is a policy question for legislatures. If confirmed, I would follow all Supreme Court and Second Circuit precedent regarding qualified immunity.

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

Response: The proper scope of qualified immunity protections for law enforcement is a policy question for the legislative branch. If confirmed, I would follow all Supreme Court and Second Circuit precedent regarding qualified immunity.