

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Judge Méndez-Miró
Nominee to be United States District Judge for the District of Puerto Rico
July 20, 2022

1. You have been a judge for over five years, serving on the Puerto Rico Court of Appeals.

a. Please give an overview of your role as a judge on the Court of Appeals. What types of cases do you routinely handle?

Response: The Puerto Rico Court of Appeals, where I currently serve, is an intermediate appellate court that reviews decisions from trial courts and administrative agencies. The court functions as an error-correcting appellate forum, who sits in panels of at least, three judges. As a court of general jurisdiction, the court decides a wide range of cases, including civil and criminal matters.

As an appellate judge I routinely handle all case types in the court's jurisdiction, including review of legal rulings pertaining to jury trials, constitutional rights, and Puerto Rico rules that mirror the Federal Rules of Civil Procedure and the Federal Rules of Evidence, among others.

b. How has serving on this court prepared you to handle the types of cases that district court judges often preside over in the District of Puerto Rico?

Response: As an appellate judge for nearly six years, I have ample experience with a myriad of procedural and substantive topics that are also examined at the federal level.

Specifically, I have handled thousands of cases involving complex civil and criminal litigation in multiple areas of the law, such as constitutional law, speedy trial violations, confrontation clause, Sixth Amendment right to counsel, searches and seizures, post-conviction procedures, civil rights, employment discrimination, contract, torts, insurance, bankruptcy, among others. My experience in such a wide range of areas of civil and criminal law includes authoring over 750 opinions. As mandated by state jurisprudence, as an Appeals Court judge I have often review decisions from trial courts on summary judgment *de novo*, where I appraise documentary evidence as well as witness and expert testimony in civil cases in matters that relevant to federal courts. Likewise, I often manage and review criminal law cases on appeal, both bench and jury trials.

Thus, I consider that my experience as an appellate judge has helped me prepare for the District of Puerto Rico's docket.

- 2. Virtually all judicial nominees bring with them to the bench expertise in certain areas of the law. And all of these nominees, once confirmed, must consider and rule on a host of legal issues they have not personally confronted beforehand.**

- a. What steps would you take to familiarize yourself with legal issues that you have not previously encountered in your career?**

Response: As an appellate judge I approach my cases considering the factual record and the applicable law, which I thoroughly research to apply the relevant precedent. If confirmed, I will continue my approach and perform independent and thorough research to apply Supreme Court and circuit court precedent to the facts in the record, as presented by the parties, including with any novel areas of the law which I had not handled before.

- 3. Please explain the power that Congress has under the Constitution.**

Response: The Supreme Court has stated “the legislative powers granted to Congress are sizable, but they are not unlimited. The Constitution confers on Congress not plenary legislative power but only certain enumerated powers. Therefore, all other legislative power is reserved for the states as the Tenth Amendment confirms.” *Murphy v. National Collegiate Athletic Association*, 138 S. Ct. 1461, 1476 (2018).

The Constitution provides for the assignment of legislative power to Congress, investing it with the authority to make all laws which shall be necessary and proper for carrying out its enumerated powers. As with all branches of the government, Congress must exercise its powers subject to the limitations placed by the Constitution on governmental action.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Gina R. Méndez Miró
Judicial Nominee to the U.S. District Court for the District of Puerto Rico

1. In the context of federal case law, what is super precedent?

Response: I am unfamiliar with the term “super precedent”, nor have I used it before. If I am confirmed as a District Court Judge, I will apply all binding Supreme Court and First Circuit precedent.

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

Response: I am not familiar with Judge Jackson’s statement or its context. Black’s Law Dictionary defines “living constitutionalism,” as “[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values.” *Living Constitutionalism, Black’s Law Dictionary* (11th ed. 2019). As a sitting judge for nearly six years at the Puerto Rico Court of Appeals, I have never applied a specific label related to a theory of constitutional interpretation to myself. If confirmed, I would faithfully apply all Supreme Court and First Circuit precedent.

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

Response: Black’s Law Dictionary defines equity as “[f]airness; impartiality; evenhanded dealing.” *Equity, Black’s Law Dictionary* (11th ed. 2019). As a sitting judge at the Puerto Rico Court of Appeals for close to six years I have only applied the law to the facts faithfully and impartially and will continue to do so if confirmed as a District Court Judge.

4. Is threatening Supreme Court Justices right or wrong? Please explain your answer.

Response: Under 18 U.S. Code § 115, threats against federal officers, including the Justices of the Supreme Court, could constitute a crime.

5. Under what circumstances can federal judges add to the list of fundamental rights the Constitution protects?

Response: The Supreme Court held in *Washington v. Glucksberg*, 521 U.S. 702 (1997), that the Due Process Clause of the Fourteenth Amendment guarantees some rights not enumerated in the Constitution. Any such “fundamental” right must be “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Id.* at

721. This was reiterated recently in *Dobbs v. Jackson Women's Health*, 142 S. Ct. 2228 (2022).

6. What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

Response: In *New York State Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held, "that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.' *Konigsberg v. State Bar of Cal.*, 366 U. S. 36, 50, n. 10 (1961)." *Id.* at *8. In evaluating a question under the Second Amendment, I would apply *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111 (2022), and First Circuit precedent.

7. As a general matter, if a judge encounters unsettled Supreme Court precedent, should she anticipate where the Supreme Court will end up, or simply do her best to apply what the Supreme Court has already held?

Response: As a sitting judge at the Puerto Rico Court of Appeals, it is not my role to resolve cases predicting how the Supreme Court will rule on a future matter not yet before its consideration. If confirmed as a District Court Judge, I will continue to apply binding precedent.

8. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.

Response: 18 U.S.C. § 1507 provides: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both. Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

9. Under Supreme Court precedent, is 18 USC § 1507 constitutional on its face?

Response: To the best of my knowledge and based on my research, the Supreme Court

and the First Circuit have not considered or ruled on whether 18 U.S.C. § 1507 is constitutional on its face. As a sitting judge at the Puerto Rico Court of Appeals, it would not be appropriate for me to opine on whether this statute is constitutional.

10. Do parents have a constitutional right to direct the education of their children?

Response: The Supreme Court reaffirmed in *Washington v. Glucksberg*, 521 U.S. 702 (1997) that parents enjoy the constitutional right to direct the education of their children. *Id.* at 720.

11. Do Blaine Amendments violate the Constitution?

Response: My understanding is that Blaine Amendments were a failed effort to “amend[] the Constitution to bar any aid to sectarian institutions.” *Mitchell v. Helms*, 530 U.S. 793, 828 (2000). In *Espinoza v. Montana Dep’t of Revenue*, 140 S. Ct. 2246 (2020) and *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), the Supreme Court considered the constitutionality of state laws that prohibit public funds being spent in aid of religious institutions or religious education. Applying strict scrutiny to its review of the state laws at issue, the Court held the laws violated the Free Exercise clause of the First Amendment. *See also Carson v. Makin*, 142 S. Ct. 1987 (2022). If confirmed and presented with a case concerning a “Blaine Amendments” issue, I would apply Supreme Court and First Circuit precedent.

12. Would you describe a method of interpreting enumerated individual constitutional rights that depends on their original public meaning at the time of their enumeration as “rigid”?

Response: The Supreme Court has addressed the role original public meaning should play in the interpretation of specific provisions. If confirmed as a District Court Judge, I would faithfully and impartially follow all precedent from the Supreme Court and First Circuit, including those regarding the methods of constitutional interpretation. This includes *District of Columbia v. Heller*, 554 U.S. 570 (2008), in which the Supreme Court explained that courts are “guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” *Id.* at 576. If confirmed as a District Court Judge, I would faithfully and impartially apply Supreme Court and First Circuit precedent.

13. Would you describe a method of interpreting unenumerated individual constitutional rights that depends on them being “deeply rooted in the nation’s history” as “rigid”?

Response: The Supreme Court, in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), reiterated that although not mentioned in the Constitution, certain substantive rights are nevertheless protected by the Due Process Clause where those unenumerated rights are “deeply rooted in [our] history and tradition and whether it is essential to our Nation’s scheme of ordered liberty.” *Id.* at 2246. If confirmed as a

District Court Judge, I would faithfully and impartially apply Supreme Court and First Circuit precedent.

14. Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:

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

Response: As a sitting judge at the Puerto Rico Court of Appeals and a judicial nominee, I must refrain from commenting on the correctness of any Supreme Court decision. However, and following the practice of prior judicial nominees, I make the exception regarding *Brown v. Board of Education*, 347 U.S. 483 (1954) and *Loving v. Virginia*, 388 U.S. 1 (1967), which are two of a few cases that are firmly rooted in American jurisprudence, and it is highly unlikely that they will be litigated in the courts. If they apply to the facts of the case before me, I would faithfully apply precedent and the cases identified above, except for *Roe v. Wade* and *Planned Parenthood v. Casey*, which were overruled by *Dobbs v. Jackson Women's Health*, 142 S. Ct. 2228 (2022).

15. Would you agree that exceeding jurisdictional limitations to opine on questions of substantive law is a form of judicial activism?

Response: Black's Law Dictionary defines, "judicial activism," as, "A philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu[ally] with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." *Judicial Activism, Black's Law Dictionary*, 11th ed. (2019). As a sitting judge for nearly six years, the only method I have used in deciding cases that come before me is to apply the law fairly and impartially to the facts, and without regard to my personal views or opinions. I will continue to use that method of confirmed as a district court judge.

16. 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: Regarding the interpretation of the Constitution, the text of the provision at issue always controls. If confirmed and I were confronted with the rare circumstance that the interpretation of the constitutional provision was an issue of first impression, I would consider the text of the provision and apply the method of interpretation used by the Supreme Court and the First Circuit in the most analogous circumstance.

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

Response: None. A judge must impartially consider each case without regard to personal views. As I have done as a sitting judge for nearly six years, if confirmed as a District Court Judge, I will continue to resolve cases based solely on the record and arguments brought before me, applying law to the facts at hand.

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

Response: No.

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

Response: No.

20. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Woodward Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

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

Response: No.

22. Demand Justice is a progressive organization dedicated to “restor[ing] ideological balance and legitimacy to our nation’s courts.”

- a. Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

- c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

23. The Alliance for Justice is a “national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society.”

- a. Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

- c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

24. Arabella Advisors is a progressive organization founded “to provide strategic guidance for effective philanthropy” that has evolved into a “mission-driven, Certified B Corporation” to “increase their philanthropic impact.”

- a. Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**

Response: None.

- c. Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

- d. Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

25. The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."

- a. Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

- c. Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

26. Fix the Court is a “non-partisan, 501(C)(3) organization that advocates for non-ideological ‘fixes’ that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people.”

- a. Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

- c. Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

27. The Raben Group is “a national public affairs and strategic communications firm committed to making connections, solving problems, and inspiring change across the corporate, nonprofit, foundation, and government sectors.” It manages the Committee for a Fair Judiciary.

- a. Has anyone associated with The Raben Group or the Committee for a Fair Judiciary requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. Are you currently in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

Response: No.

- c. Have you ever been in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

Response: Yes. Mr. Robert Raben is the Chair of the Hispanic National Bar Association's Judicial Endorsements Committee. HNBA endorsed my judicial nomination before the Senate Judiciary Committee. *See* <https://www.judiciary.senate.gov/imo/media/doc/7.7.22%20-%20HNBA%20Support%20for%20Mendez.pdf>

28. Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

Response: On September 14, 2021, I was contacted by the White House Counsel's Office to schedule an interview concerning a judicial vacancy on the District Court in the District of Puerto Rico. On September 20, 2021, I interviewed with attorneys from the White House Counsel's Office. On November 18, 2021, I was advised that I had been selected for Justice Department vetting. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 15, 2022, the President announced my nomination, and it was submitted to the Senate.

29. Please explain, with particularity, the process whereby you answered these questions.

Response: On July 20, 2022, the Office of Legal Policy sent me these questions. I personally answered each of these questions based on my own analysis and legal research. I received minor feedback from a representative from the Office of Legal Policy which I considered before finalizing my answers. My answers are my own.

SENATOR TED CRUZ

U.S. Senate Committee on the Judiciary

Questions for the Record for Judge Méndez-Miró, Nominee for the United States District Court for the District of Puerto Rico

I. Directions

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

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

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

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

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

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

II. Questions

1. Is racial discrimination wrong?

Response: Yes. Discrimination based on race is generally unlawful. Specifically, the Fourteenth Amendment prohibits a state from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” Furthermore, there are federal statutes prohibiting racial discrimination in a variety of contexts, and the Supreme Court has held that any classifications based on race must satisfy strict scrutiny review.

2. In how many cases have you appeared before federal district court

a. How many were criminal cases?

Response: For nearly six years I have been serving as a sitting judge at the Puerto Rico Court of Appeals. In that capacity, I have participated in the review of thousands of civil and criminal cases on appeal from the trial court, often de novo, as mandated by state jurisprudence. During this time, my experience includes authoring over 750 opinions in cases involving complex civil and criminal litigation in multiple areas of the law, such as constitutional law, speedy trial violations, the confrontation clause, Sixth Amendment right to counsel, searches and seizures, post-conviction procedures, civil rights, employment discrimination, contract, torts, insurance, bankruptcy, among others. In addition, prior to my judicial experience, the approximately twenty years of my legal career have involved both civil and criminal legal experience in the private sector and in public service in all three branches of government.

For example, in private practice, I appeared before federal district court in approximately five occasions, all in civil cases. Later, at the Puerto Rico Department of Justice I served as a Special Prosecutor. Furthermore, as General Counsel at the Office of Legal Affairs of the Puerto Rico Judicial Branch, I supervised the legal strategy of numerous cases filed before both the state and federal district trial court, in addition to administrative agencies including the U.S. Equal Employment Opportunity Commission.

3. Your wife sits on Puerto Rico Supreme Court. Do you foresee your wife’s role as a Puerto Rico Supreme Court Justice to be a potential conflict of interest in which one of you may need to recuse from a given case?

Response: If confirmed, I would recuse myself from cases where my spouse, who is Chief Justice of the Puerto Rico Judicial Branch, was involved or matters in which the Puerto Rico Judicial Branch appears as a party. I take recusal obligations very seriously and would also carefully consider whether recusal was appropriate in other cases based on 23 U.S.C. 455, the Code of Conduct for United States Judges, and consultation with colleagues.

4. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

Response: In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court reiterated that certain substantive rights, although not mentioned in the Constitution, are protected by the Due Process Clause where those unenumerated rights are "deeply rooted in [our] history and tradition and whether it is essential to our Nation's scheme of ordered liberty." *Id.* at 2246 (internal punctuation and citations omitted). Because the question of whether there are additional unenumerated rights in the Constitution is the subject of pending federal litigation and the subject of public debate, as a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee, it would not be appropriate for me to provide an opinion on whether there are any yet unarticulated unenumerated rights in the Constitution.

5. Does Congress have plenary power?

Response: No. As the Supreme Court has stated "the legislative powers granted to Congress are sizable, but they are not unlimited. The Constitution confers on Congress not plenary legislative power but only certain enumerated powers. Therefore, all other legislative power is reserved for the states as the Tenth Amendment confirms." *Murphy v. National Collegiate Athletic Association*, 138 S. Ct. 1461, 1476 (2018).

However, the Supreme Court has also stated that "Congress has broad power to enact statutes 'necessary and proper' to the exercise of its specifically enumerated constitutional authority." *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 515 (2010).

6. Do you believe it should be easier to pass laws through Congress than it is presently?

Response: This is a matter that would be best addressed by policymakers from the legislative branch of government. As a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee it would be inappropriate for me to opine.

7. How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.

Response: In the close to six years that I have served as a judge at the Puerto Rico Court of Appeals my approach to the cases has been the same: I study the facts of the case before me with an open mind, I study the law and the precedents that apply to those facts, and given that I serve at an appellate bench, I review and apply the controlling standard to that particular set of facts, and apply the law evenhandedly and impartially. I treat the parties with respect, whether they are represented by counsel or are pro se litigants. I believe justice should be afforded swiftly and efficiently. Finally, I strive to

provide a sound, strictly legally based decision that is accessible and easily understood by counsel, scholars and lay person alike. If confirmed as a District Court Judge I will continue this approach to resolve cases and controversies applying all binding U.S. Supreme Court and First Circuit precedent.

While I respect all U.S. Supreme Court Justices, I cannot identify a particular Supreme Court Justice whose philosophy is most analogous to mine.

8. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an ‘originalist’?

Response: Black’s Law Dictionary defines “originalism” as a “doctrine that words of a legal instrument are to be given the meanings they had when they were adopted.” *Originalism, Black’s Law Dictionary* (11th ed. 2019). The Supreme Court has applied originalism in certain constitutional contexts, such as adjudicating Second Amendment rights. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). As a sitting judge for nearly six years at the Puerto Rico Court of Appeals, I have never applied a specific label related to a theory of constitutional interpretation to myself. If confirmed, I would faithfully apply and adhere to all Supreme Court and First Circuit precedent.

9. Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a ‘living constitutionalist’?

Response: Black’s Law Dictionary defines “living constitutionalism,” as, “[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values.” *Living Constitutionalism, Black’s Law Dictionary* (11th ed. 2019). As a sitting judge for nearly six years at the Puerto Rico Court of Appeals, I have never applied a specific label related to a theory of constitutional interpretation to myself. If confirmed, I would faithfully apply all Supreme Court and First Circuit precedent.

10. If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?

Response: Regarding the interpretation of the Constitution, the text of the provision at issue always controls. If confirmed and I were confronted with the rare circumstance that the interpretation of the constitutional provision was an issue of first impression, I would consider the text of the provision and apply the method of interpretation used by the Supreme Court and the First Circuit in the most analogous circumstance.

11. Is the public’s current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?

Response: The Supreme Court has held that “[i]t’s a ‘fundamental canon of statutory construction’ that words generally should be ‘interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute.’” *Wisconsin Central Ltd. v. United States*, 138 S. Ct. 2067, 2068 (2018).

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

Response: No. The U.S. Constitution can only be amended through the process set forth by Article V. *See* U.S. Const. art. V.

13. Is the Supreme Court ruling in *Dobbs v. Jackson Women's Health Organization* settled law?

Response: *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), is binding precedent and if confirmed as a District Court Judge I will follow all Supreme Court precedents.

14. Is the Supreme Court ruling in *New York Rifle & Pistol Association v. Bruen* settled law?

Response: *New York Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111 (2022) is binding precedent and if confirmed as a District Court Judge I will follow all Supreme Court precedents.

15. What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?

a. What are the policy rationales underlying such a presumption?

Response: Pretrial detention is permitted under the Bail Reform Act of 1984 if no condition or combination of conditions exist which could reasonably assure the appearance of the defendant and the safety of an individual or the community. *See* 18 U.S.C. § 3142(e). Further, if probable cause is found indicating that the defendant committed one of the offenses listed under 18 U.S.C. § 3142(e)(3), a statutory presumption that pretrial detention is warranted attaches. It also holds that “a grand jury indictment is sufficient to establish probable cause for purposes of triggering” the statutory presumptions found under § 3142(e). *See United States v. Vargas*, 804 F.2d 157, 163 (1st Cir. 1986).

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

Response: Yes. There are limits to what the government may impose or require of religious organizations or small businesses based on the Establishment Clause and Free Exercise Clause of the First Amendment of the United States Constitution as well as certain federal statutes such as the Religious Freedom Restoration Act. *See e.g., Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020). For example, the Supreme Court recently held that strict scrutiny applies where the government treats any comparable secular activity more favorably than religious exercise. *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). *See also, Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020); *Fulton v. City of Philadelphia*, 141 S. Ct. 1848 (2021); *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm’n*, 138 S. Ct. 1719 (2018).

17. Is it ever permissible for the government to discriminate against religious organizations or religious people?

Response: Generally speaking, no. The Supreme Court has held that laws which discriminate on the basis of religion are subject to strict scrutiny and “must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest”. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993). Under the Religious Freedom of Restoration Act, 42 U.S.C. §§ 2000bb, et seq., federal laws that substantially burden religion, even if neutral and generally applicable, are also subject to strict scrutiny. 42 U.S.C. §§ 2000bb-1(a)-(b); *See also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

18. In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court’s holding on whether the religious entity-applicants were entitled to a preliminary injunction.

Response: In *Roman Catholic Diocese of Brooklyn, New York v. Andrew M. Cuomo, Governor of New York*, 141 S. Ct. 63 (2020), the Supreme Court held the applicants in this case were entitled to a preliminary injunction because they had shown a likelihood of success on their First Amendment claims. First, the Court held that the applicants had made a “strong” showing that the challenged restrictions violated a “minimum requirement of neutrality” by specifically naming religious entities for restrictions while allowing secular businesses like manufacturing plants, garages, and acupuncture facilities, categorized as “essential.” To that extent, the Court concluded that the state’s action was neither neutral toward religion nor of general applicability and therefore, must satisfy strict scrutiny. Since the State’s executive order was an outright ban rather than a quantitative restriction on attendance, the Court held it was insufficiently narrowly tailored to survive strict scrutiny. *Id.* at 67. Second, the Supreme Court found that the enforcement on the restriction on the religious services constituted irreparable harm.

19. Please explain the U.S. Supreme Court’s holding and rationale in *Tandon v. Newsom*.

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), applicants filed a petition for a writ of injunction, alleging that a regulation established by the State of California violated the Free Exercise Clause of the First Amendment. The State had established restrictions that limited religious gatherings in homes to three households during the COVID-19 pandemic. The Court held that the Ninth Circuit’s failure to grant an injunction pending appeal was erroneous. Applying strict scrutiny, the Supreme Court held that California’s regulations treated “comparable secular activity more favorably than religious exercise” permitting hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at a time. Therefore, the Court concluded that the regulations were neither neutral nor generally applicable. *Id.* at 1296. Accordingly, the Court concluded that the plaintiffs were likely to succeed on the merits of their free exercise claim, and thus were entitled to an injunction.

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

Yes. The First Amendment protects the rights of Americans to hold and exercise their religious beliefs. U.S. Const., amend. I; *See, e.g., Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753 (1995); *Employment Div., Dep’t. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 877 (1990).

21. Explain your understanding of the U.S. Supreme Court’s holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm’n*, 138 S. Ct. 1719 (2018), the Supreme Court held that the Colorado Civil Rights Commission violated the Free Exercise Clause of the First Amendment rights of a baker who declined for religious reasons to bake a cake for a same-sex couple’s wedding. The record demonstrated “clear and impermissible hostility toward the sincere religious beliefs that motivated” the petitioner, which the Supreme Court found sufficient to show animus in violation of the Free Exercise Clause. *Id.* at 1729–31.

22. Under existing doctrine, are an individual’s religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?

Response: Yes. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014), where the Supreme Court held that it is not for courts to decide that religious beliefs are

mistaken or insubstantial, but rather to determine whether the “line drawn” reflects an “honest conviction” (quoting *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 716 (1981)).

a. Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?

Response: The Supreme Court has determined that individuals are entitled to invoke First Amendment protection for “sincerely held religious beliefs” even if the belief does not represent an accepted belief or tenet of the person’s religious organization. *Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829, 832-35 (1989). The “narrow function” of a court is to determine whether the religious belief is “an honest conviction.” See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014) (quoting *Thomas v. Review Bd. of Indiana Empl. Sec. Div.*, 450 U.S. 707, 715 (1981)). Courts have “no business” addressing whether the religious belief is reasonable. *Id.* “[I]t is not for [courts] to say that [a person’s] religious beliefs are mistaken or insubstantial.” *Id.*

b. Can courts decide that anything could constitute an acceptable “view” or “interpretation” of religious and/or church doctrine?

Response: The Supreme Court has established that it is not for the courts to decide what religious beliefs or interpretations are mistaken or insubstantial, but rather whether the line drawn is an “honest conviction.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014).

c. Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?

Response: As a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee it is not appropriate for me to give my opinion on the official stance of any church with respect to issues that are being litigated before the courts and that could be brought before me.

23. In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment’s Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court’s holding and reasoning in the case.

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020), the Supreme Court held that the ministerial exception barred the plaintiffs’ employment discrimination claims brought under the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA). The Court explained that, while religious organizations are normally not exempt from the requirements of generally applicable anti-discrimination statute, the ministerial exception—which is grounded in

the First Amendment's Religion Clauses—provides that “courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions.” *Id.* at 2060. The decision rests on the premise that the First Amendment gives religious institutions the right to decide matters of church governance free from state interference. *Id.* at 2060.

24. **In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia’s refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court’s holding in the case.**

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1848 (2021), the Supreme Court held that the City of Philadelphia violated the First Amendment free exercise rights of Catholic Social Services by refusing to refer children to the agency after learning of the agency’s refusal, on religious grounds, to certify same-sex couples to be foster parents. The Court concluded that the policy was not neutral and not generally applicable as it allowed exceptions to the anti-discrimination requirement at the sole discretion of the Commissioner and as such was subject to strict scrutiny. The Court held the policy did not serve a compelling governmental interest and its certification requirement was not narrowly tailored.

25. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine’s tuition assistance program because it discriminated against religious schools and thus undermined Mainers’ Free Exercise rights. Explain your understanding of the Court’s holding and reasoning in the case.**

Response: In *Carson v. Makin*, 142 S. Ct. 1987 (2022), the Supreme Court held that Maine’s “nonsectarian” requirement for its otherwise generally available tuition assistance payments violated the Free Exercise Clause of the First Amendment because it excluded qualified private schools from otherwise available public benefits due solely to their religion.

26. **Please explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that the Bremerton School District violated a high school football coach’s free exercise and free speech rights under the First Amendment by suspending him for his practice of praying after games. Regarding free exercise rights, the Court concluded that the coach met his burden of showing that the government burdened a sincere religious practice pursuant to a policy that was not neutral or generally applicable. Concerning his free speech rights, the Court concluded that the coach’s prayers were a matter of public concern performed as a private citizen—not as a public employee. After finding that the employee had met his burden as to both the free exercise and free speech claims, the Court considered whether the government could satisfy its burden. The Court concluded

that the government could not meet its burden under any of the applicable standards.

- 27. Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.**

Response: In Justice Gorsuch's concurrence in *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), he set out a three-part test he would use to assess First Amendment claims under *Fulton v. Philadelphia*, 141 S. Ct. 1868 (2021): (a) the government must establish its interest with specificity and with respect to the specific religious community; (b) the government must show why it cannot provide the same exemption given to other groups and given in other jurisdictions; and (c) the state must demonstrate that its policy is narrowly tailored "with evidence" and not "supposition."

- 28. Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: As a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee, it would be inappropriate for me to opine as to a hypothetical legal question which could come before me.

- 29. Would it be appropriate for the court to provide its employees trainings which include the following:**

- a. One race or sex is inherently superior to another race or sex;**
- b. An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**
- c. An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**
- d. Meritocracy or related values such as work ethic are racist or sexist?**

Response: I am not aware of any such training in the First Circuit or District of Puerto Rico. All trainings provided must comply with the U.S. Constitution, federal laws and applicable regulations.

- 30. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?**

Response: I am not aware of any such training in the First Circuit or District of Puerto

Rico. I will commit that my court, so far as I have a say, will provide trainings that comply with the U.S. Constitution, federal laws, and applicable regulations.

- 31. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?**

Response: Yes.

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

Response: As a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee, it would be inappropriate for me to comment on how the Executive Branch selects its political appointments. If I am confirmed as District Court Judge and a case came before me presenting this issue, I would fully and faithfully follow all binding Supreme Court and First Circuit precedents.

- 33. Is the criminal justice system systemically racist?**

Response: As a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee it would be inappropriate for me to comment on issues that are being handled by policy makers. The federal criminal justice system is designed to ensure that every person, regardless of race or any other characteristic, receives the benefit of a fair and just process. If confirmed as a District Court Judge, I would continue to faithfully adhere to the concept of equal justice under the law and approach each case with an open mind, applying the law and the precedents of the Supreme Court and First Circuit to the facts of the case before me, as I have done for nearly six years as a sitting judge at the Puerto Rico Court of Appeals.

- 34. What is your stance on Puerto Rico becoming a state, instead of maintaining its territorial status?**

Response: As a sitting judge at the Puerto Rico Court of Appeals I must refrain from expressing opinions on political matters as per Canon 28 of the Code of Judicial Ethics, and as a judicial nominee, as per Canon 5 of the Code of Conduct for United States Judges, it would not be appropriate to comment on these political matters.

- 35. You served on the drafting committee creating the handbook for protection orders in domestic violence situations, published by the Office of Administration of the Courts of Puerto Rico. Can you explain what “male privilege,” as written in the handbook, means?**

Response: The Court Manual regarding domestic violence situations was drafted and adopted by the Puerto Rico Judicial Branch in accordance with the policy established by the legislature in Act No. 54 of August 15, 1989, as amended, known as “Domestic Abuse Prevention and Intervention Act.” The handbook incorporates concepts and terms

included in the referred statute, as well as terms utilized in the Domestic Abuse Intervention Project or “Duluth Model” from Minnesota. I have no recollection of the term “male privilege” being included in said Court Manual.

- 36. President Biden has created a commission to advise him on reforming the U.S. Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: As a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee, it would be inappropriate for me to comment on a matter that is best left to policy makers. If confirmed, I will faithfully follow all precedent from the Supreme Court.

- 37. In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: As a sitting judge at the Puerto Rico Court of Appeals and judicial nominee, I respect and uphold the legitimacy of the Supreme Court and its members.

- 38. What do you understand to be the original public meaning of the Second Amendment?**

Response: Consistent with the Supreme Court’s decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), the Second Amendment protects “an individual right to keep and bear arms” without regard to service in a militia.

- 39. What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court’s decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the District of Columbia was prohibited from banning the possession of handguns for self-protection in the home. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court held that same prohibition applied to a city government deriving its powers from the state. Most recently, in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that states may not prohibit the possession of handguns outside of the home for self-protection.

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

Response: Yes, according to *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: No.

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

Response: No.

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

Response: As a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee, it would not be appropriate for me to opine on such policy issues. The decision to pursue a particular course of action regarding the enforcement of a law generally lies with the executive branch. Whether such decision is appropriate absent an alleged violation of constitutional or other law is a policy decision better left to the legislative and executive branches. If confirmed, and if presented with such an issue, I will apply Supreme Court and First Circuit precedent.

- 44. Explain your understanding of what distinguishes an act of mere ‘prosecutorial discretion’ from that of a substantive administrative rule change.**

Response: Generally, my understanding is that prosecutorial discretion involves the privilege prosecutors enjoy in determining whether to charge an individual with a crime and, if he or she does so, whether to offer a plea. Regarding a substantive administrative rule change, the Administrative Procedure Act describes rule-making as the “agency process for formulating, amending, or repealing a rule.” 5 U.S.C. § 551(5). A “rule,” for purposes of the statute, is defined to include any “agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.” 5 U.S.C. § 551(4).

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

Response: No. The federal death penalty statute, 18 U.S.C. § 3591 et seq., is an act of Congress and the President could not abolish the death penalty in federal cases absent Congress amending or repealing 18 U.S.C. § 3591.

- 46. Explain the U.S. Supreme Court’s holding on the application to vacate stay in *Alabama Association of Realtors v. HHS*.**

Response: In *Alabama Association of Realtors v. HHS*, 141 S. Ct. 2485 (2021), the Supreme Court vacated the District Court’s stay of its judgment vacating the Center for Disease Control (CDC) moratorium on evictions. The Supreme Court held that 42 U.S.C. § 264(a) does not give the CDC the authority to impose a nationwide ban on evicting tenants from residential rental properties to slow the spread of COVID-19. “If a federally

imposed eviction moratorium is to continue,” the Court reasoned, “Congress must specifically authorize it.” *Id.* at 2490.

Senator Josh Hawley
Questions for the Record

Judge Gina Mendez-Miro
Nominee, U.S. District Court for the District of Puerto Rico

1. Then-Judge Ketanji Brown Jackson made a practice of refusing to apply several enhancements in the Sentencing Guidelines when sentencing child pornography offenders. Please explain whether you agree with each of the following Guidelines enhancements and whether, if you are confirmed, you intend to use them to increase the sentences imposed on child pornography offenders.

- a. The enhancement for material that involves a prepubescent minor or a minor who had not attained the age of 12 years**
- b. The enhancement for material that portrays sadistic or masochistic conduct or other depictions of violence**
- c. The enhancement for offenses involving the use of a computer**
- d. The enhancements for the number of images involved**

Response: If confirmed as a District Court Judge, when sentencing any individual, I would consider and apply the factors set forth in 18 U.S.C. § 3553(a), the U.S. Sentencing Guidelines, and the recommendations of the prosecution, defense attorneys, and probation office. I would take seriously all these factors in a case-by-case basis, carefully considering whether the facts warrant a particular sentencing enhancement.

2. Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's 0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.

- a. Do you agree that the penalties should be aligned?**
- b. If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?**

Response: I believe that the question of what penalties should apply be included as part of the U.S. Sentencing Guidelines is a policy matter for Congress to address.

3. Do you believe that the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* is settled law?

Response: *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), is binding precedent and if confirmed I will follow all Supreme Court precedents.

4. Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."

a. Do you agree with that philosophy?

Response: I am not familiar with this quote. Courts must adjudicate cases and controversies by applying the applicable law to the particular facts of the case. That is what I have done for nearly six years as a sitting judge at the Puerto Rico Court of Appeals and what I will continue to do, if confirmed as a federal District Court Judge.

b. If not, do you think it is a violation of the judicial oath to hold that philosophy?

Response: As sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee, it would not be appropriate for me to offer an opinion on whether a current or former Supreme Court Justice violated a judicial oath.

5. What is the standard for each kind of abstention in the court to which you have been nominated?

Response: Younger abstention doctrine requires federal courts to abstain from hearing cases that are already pending in state proceedings. *Younger v. Harris*, 401 U.S. 37 (1971). *Younger* involved a pending state criminal prosecution but the Supreme Court later extended the doctrine to some state civil proceedings. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 607 (1975). In the First Circuit the Younger abstention doctrine applies "when the requested relief would interfere: (1) with an ongoing state judicial proceeding; (2) that implicates an important state interest; and (3) that provides an adequate opportunity for the federal plaintiff to advance his federal constitutional challenge." *Rossi v. Gemma*, 489 F.3d 26, 34-35 (1st Cir. 2007).

Under Pullman abstention, first established in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), federal courts should abstain from a decision when "difficult and unsettled questions of state law must be resolved before a substantial federal constitutional question can be decided." *Haw. Housing Auth. v. Midkiff*, 467 U.S. 229, 236 (1984). The First Circuit considers two factors in determining whether Pullman abstention is appropriate: "(1) whether there is substantial uncertainty over the meaning of

the state law at issue; and (2) whether a state court's clarification of the law would obviate the need for a federal constitutional ruling." *Ford Motor Co. v. Meredith Motor Co.*, 257 F.3d 67, 71 (1st Cir. 2001).

Under Burford abstention, first established in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), federal courts will abstain from cases in which federal adjudication could interfere with a complex state administrative scheme. The First Circuit has found that Burford abstention applies narrowly and "rest[s] upon . . . the threat . . . that a federal court might, in the context of the state regulatory scheme, create a parallel, additional, federal 'regulatory review' mechanism, the existence of which would significantly increase the difficulty of administering the state regulatory scheme" *Forty Six Hundred LLC v. Cadence Educ., LLC*, 15 F.4th 70, 75 (1st Cir. 2021) (quoting *Bath Mem'l Hosp. v. Maine Health Care Fin. Comm'n*, 853 F.2d 1007, 1013 (1st Cir. 1988)). Hence, Burford abstention applies only in "unusual circumstances, where the federal court risks usurping the state's role as the regulatory decision-making center." *Forty Six Hundred LLC*, 15 F.4th at 75 (internal quotations omitted).

Rooker-Feldman doctrine is often raised when defendants argue for abstention as it prevents "lower federal courts . . . from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006). This is because 28 U.S.C. §1257 vests sole jurisdiction over appeals from final state-court judgments in the Supreme Court. *Id.* The First Circuit applies the Rooker-Feldman abstention doctrine where "the losing party in state court filed suit in federal court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment." *Federacion de Maestros v. Junta de Relaciones del Trabajo*, 410 F.3d 17, 23-24 (1st Cir. 2005) (quoting *Exxon Mobil Corp. v. Saudi Basic Induc. Corp.*, 544 U.S. 280, 291 (2005)).

Under the Colorado River abstention doctrine, federal courts may stay proceedings in cases involving concurrent state and federal suits addressing the same subject matter based on considerations of "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976). The First Circuit will consider its authority under an exceptional circumstances test balancing the non-exclusive list of factors drawn from Colo. River and its progeny: "(1) whether either court has assumed jurisdiction over a res; (2) the [geographical] inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether state or federal law controls; (6) the adequacy of the state forum to protect the parties' interests; (7) the vexatious or contrived nature of the federal claim; and (8) respect for the principles underlying removal jurisdiction." *Jimenez v. Rodriguez-Pagan*, 597 F.3d 18, 27-28 (1st Cir. 2010) (internal quotations omitted).

6. Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?

- a. If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.**

Response: No.

7. What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?

Response: The Supreme Court has held that the text and original meaning of a constitutional provision play an important role in interpreting the Constitution. *See, e.g., United States v. Jones*, 565 U.S. 400 (2012); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004). If confirmed, I will follow the Supreme Court and First Circuit precedents regarding interpretation of the Constitution.

8. Do you consider legislative history when interpreting legal texts?

Response: The Supreme Court has held that "when the meaning of a statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1749 (2020). The Supreme Court has also held that legislative history may be used to help interpret ambiguous statutory language. *See Milner v. Dep't of Navy*, 562 U.S. 562, 572 (2011). However, legislative history should not be used to create ambiguity where the text of a statute is clear. *Id.* If confirmed as a District Court Judge, I would follow these and all other binding precedents from the Supreme Court and the First Circuit.

- a. If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?**

Response: The Supreme Court has held that the "authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'" *Garcia v. United States*, 469 U.S. 70, 76 (1984) (quoting *Zuber v. Allen*, 396 U.S. 168, 186 (1969)). The Supreme Court has "eschewed reliance on the passing comments of one Member . . . and casual comments from the floor debates." *Id.* If confirmed as a District Court Judge, I would follow these and all other binding precedents from the Supreme Court and the First Circuit.

- b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?**

Response: I would not consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution, unless there is binding Supreme Court or First Circuit precedent directing me to do so.

- 9. Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?**

Response: "A prisoner must show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and the State has refused to adopt without a legitimate penological reason" to establish that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment. *Bucklew v. Precythe*, 139 S. Ct. 1112, 1125 (2019).

- 10. Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

Response: Yes. The Supreme Court reaffirmed in *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019), relying on *Glossip v. Gross*, 135 S. Ct. 824 (2015), that "[t]he Eighth Amendment does not come into play unless the risk of pain associated with the State's method is 'substantial when compared to a known and available alternative.'" *Id.* at 1125.

- 11. Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

Response: In *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 67–74 (2009), the Supreme Court held that convicted prisoners do not have a due process right to access DNA evidence. This standard has been applied by the First Circuit. *Tevlin v. Spencer*, 621 F.3d 59, 70 (1st Cir. 2010).

- 12. Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

Response: No.

- 13. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free**

exercise of religion? Please cite any cases you believe would be binding precedent.

Response: The Supreme Court held in *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993), that laws which incidentally burden the free exercise of religion are subject to strict scrutiny when they are not facially neutral or generally applicable. In that case, such law must be justified by a compelling governmental interest and narrowly tailored to advance that interest. The Supreme Court has found that a statute is not neutral and generally applicable if it treats comparable activity between secular and religious groups differently. *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). Moreover, in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1882 (2021), the Supreme Court held that a restriction that burdens religious liberty is not generally applicable if it allows for discretionary exemptions that may allow for different treatment between secular and religious groups. Also, in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court held that the government's application of a facially neutral public accommodations law violated the Free Exercise Clause where a transcript of the commission meetings showed a religious animus against the cakeshop owner's religious beliefs.

14. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: Under the Free Exercise Clause of the First Amendment, the government is not permitted to discriminate against religious organizations or religious people unless the discriminatory law or regulation is narrowly tailored to achieve a compelling governmental interest. See *Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

15. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014), the Supreme Court held that the "narrow function" of a court is to determine whether the religious belief is "an honest conviction" and that it is not for courts to decide that religious beliefs are mistaken or insubstantial. In *Welsh v. United States*, 398 U.S. 333, 339 (1970) the Court reasoned that "the central consideration" is whether the beliefs "play the role of a religion and function as a religion in the registrant's life". The First Circuit follows the precedent of the Supreme Court and applies the standard set out in *Hobby Lobby* and *Welsh*.

16. The Second Amendment provides that, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

- a. What is your understanding of the Supreme Court’s holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held “that the Second Amendment confers an individual right to keep and bear arms,” *Id.* at 622, and that the firearm regulations at issue in that case violated the Second Amendment, *Id.* at 636.

- b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.**

Response: No.

17. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, “The 14th Amendment does not enact Mr. Herbert Spencer’s Social Statics.” 198 U.S. 45, 75 (1905).

- a. What do you believe Justice Holmes meant by that statement, and do you agree with it?**

Response: As a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee, it is not appropriate for me to provide an opinion about what Justice Holmes may have meant in his dissent. In that same dissent, he also observed, “a Constitution is not intended to embody a particular economic theory.” *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting).

- b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?**

Response: The Supreme Court effectively overruled *Lochner* in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937); *See also Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963) (the “doctrine that prevailed in *Lochner* . . . has long since been discarded”). If confirmed as a District Court Judge, I would apply binding Supreme Court precedent.

18. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

- a. If so, what are they?**

Response: I cannot identify any Supreme Court opinions that have not been formally overruled but that I believe are no longer good law.

- b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?**

Response: Yes. If confirmed as a District Court Judge, I would be bound by, and would faithfully and impartially follow, all Supreme Court precedents.

19. Judge Learned Hand famously said 90% of market share “is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not.” *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

- a. Do you agree with Judge Learned Hand?**

Response: I do not have a view on the opinion expressed by Judge Learned Hand. If confirmed as a District Court Judge, I will follow all Supreme Court and First Circuit precedent about what constitutes a monopoly.

- b. If not, please explain why you disagree with Judge Learned Hand.**
- c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.**

Response: I am not aware of any Supreme Court or First Circuit precedent establishing a minimum percentage of market share for a company to constitute a monopoly. However, the Supreme Court’s holdings on sufficient market shares in a particular case serve as guidance. The Supreme Court found in *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 481 (1992), that evidence that a party holds more than an 80% share of the product market, “with no readily available alternatives,” was sufficient to support a finding of monopoly power. The Court in *Eastman* also cited to two earlier cases where the Supreme Court held that companies holding 87% of the market and more than two-thirds of the market constituted monopolies. *Id.* (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 571 (1966); *American Tobacco Co. v. United States*, 328 U.S. 781, 797 (1946)).

20. Please describe your understanding of the “federal common law.”

Response: According to *Black’s Law Dictionary*, federal common law is generally defined as “[t]he body of decisional law derived from federal courts when adjudicating federal questions and other matters of federal concern . . . but excluding all cases governed by state law.” *Federal Common Law*, *Black’s Law Dictionary* (11th ed. 2019). Most recently, in *Rodriguez v. Federal Deposit Insurance*

Corporation, 140 S. Ct. 713, 717 (2020), the Supreme Court addressed federal common law:

Judicial lawmaking in the form of federal common law plays a necessarily modest role under a Constitution that vests the federal government's "legislative Powers" in Congress and reserves most other regulatory authority to the States. *See* U.S. Const., art. I, § 1; amdt. 10. As this Court has put it, there is "no federal general common law." *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). Instead, only limited areas exist in which federal judges may appropriately craft the rule of decision. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729, 124 S.Ct. 2739, 159 L.Ed.2d 718 (2004).

21. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: In accordance with Supreme Court precedent, I would interpret the scope of the state constitutional right consistent with how it had been interpreted by the state's highest court. *See Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).

a. Do you believe that identical texts should be interpreted identically?

Response: In our system of federalism, the highest court of a state may interpret that state's constitution more broadly than the Supreme Court has interpreted the U.S. Constitution even if the relevant text is identical in both documents, provided that the interpretation of the state constitution does not infringe on a right protected by the U.S. Constitution. *See, e.g., Wainwright v. Goode*, 464 U.S. 78, 84 (1983); *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980).

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Please see answer to Question 21a.

22. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: As a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee, I must refrain from commenting on the correctness of any Supreme Court decision. However, and following the practice of prior judicial nominees, I make the exception regarding *Brown v. Board of Education*, 347 U.S. 483 (1954), which is one of a few cases that are firmly rooted in American jurisprudence and it is highly unlikely that it will be litigated in the courts.

23. Do federal courts have the legal authority to issue nationwide injunctions?

- a. If so, what is the source of that authority?**
- b. In what circumstances, if any, is it appropriate for courts to exercise this authority?**

Response: Federal Rule of Civil Procedure 65 establishes procedures for the issuance of injunctive relief. This is a highly litigated and contested matter, and the question remains as to whether courts have the power, under this rule or otherwise, to issue nationwide injunctions. If confirmed as a District Court Judge and presented with a request for a nationwide injunction, I would apply Supreme Court and First Circuit precedent to determine the proper scope of any injunction to be issued.

24. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: Please see my answer to Question 23.

25. What is your understanding of the role of federalism in our constitutional system?

Response: Federalism is a foundational principle of the United States' constitutional system. As the Supreme Court has stated, it was designed to ensure "a healthy balance of power between the States and the Federal Government" in order to "reduce the risk of tyranny and abuse from either front." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). The U.S. Constitution gives only limited powers to the federal government, while it reserves all other powers to the States. To that extent, federal law must be supported by a specific constitutional provision, while states have more freedom to enact their own laws without such a limitation. The Supremacy Clause of the United States Constitution, however, provides that the Constitution, federal law, and treaties "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby." U.S. Const. art. VI.

26. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: Please see my answer to Question 5 regarding abstention.

27. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: If confirmed as a District Court Judge, I would follow Supreme Court and First Circuit precedent in weighing and balancing the advantages and disadvantages of awarding damages versus injunctive relief in the case before the court.

28. What is your understanding of the Supreme Court’s precedents on substantive due process?

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held that the Due Process Clause of the Fifth and Fourteenth Amendments protect certain unenumerated “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.” This concept is known as substantive due process. *Id.* The “liberty” interests protected by the due process clause include, among others, the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); to direct the education and upbringing of one’s children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); and to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965). Most recently, the Supreme Court, in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), reiterated that certain substantive rights, although not mentioned in the Constitution, are nevertheless protected by the Due Process Clause where those unenumerated rights are “deeply rooted in [our] history and tradition and whether it is essential to our Nation’s scheme of ordered liberty.” *Id.* at 2246.

29. The First Amendment provides “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

a. What is your view of the scope of the First Amendment’s right to free exercise of religion?

Response: The Supreme Court has held that under the Free Exercise Clause of the First Amendment, the government is not permitted to discriminate against religious organizations or religious people unless the discriminatory law or regulation is narrowly tailored to achieve a compelling governmental interest. *See Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). If confirmed as a District Court Judge, I will faithfully apply the Supreme Court precedents regarding the First Amendment’s right to free exercise of religion.

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: The Supreme Court has stated: “The Free Exercise Clause embraces a freedom of conscience and worship . . .” *Lee v. Weisman*, 505

U.S. 577, 591 (1992). Yet, I am not aware of any precedent where the Supreme Court has defined the Free Exercise Clause as exactly synonymous with the freedom of worship.

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720, 723 (2014), the Supreme Court looked to two factors to find that the plaintiffs' religious exercise was substantially burdened by governmental action: (1) non-compliance with the contraceptive mandate would cause severe economic consequences for the plaintiffs and (2) compliance with the mandate would require the plaintiffs to violate their sincerely held religious beliefs. Furthermore, the Religious Freedom Restoration Act requires that the government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability unless the government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §2000bb-1.

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014), the Supreme Court held that the "narrow function" of a court is to determine whether the religious belief is "an honest conviction" and that it is not for courts to decide that religious beliefs are mistaken or insubstantial. In other words, a court's inquiry is limited to whether the beliefs are sincerely held, not whether the beliefs are consistent with any religious faith or doctrine. *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989).

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: The Religious Freedom Restoration Act (RFRA) "applies to all Federal law, and the implementation of that law, whether statutory or otherwise." 42 U.S.C. § 2000bb-3(a). As held by the Supreme Court, "Congress enacted [the Religious Freedom Restoration Act, in 1993 in order to provide very broad protection for religious liberty." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014). As set forth by the Supreme Court, "Congress, in enacting RFRA, took the position that 'the compelling interest test as set forth in prior Federal court rulings is a workable test for

striking sensible balances between religious liberty and competing prior governmental interests.’ 42 U. S. C. §2000bb(a)(5).” *Id.* at 735.

- f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.**

Response: No.

- 30. Justice Scalia said, “The judge who always likes the result he reaches is a bad judge.”**

- a. What do you understand this statement to mean?**

Response: I am not familiar with Justice Scalia’s statement but, as a sitting judge at the Puerto Rico Court of Appeals, I make decisions based on the law and judicial record before me, even if I personally disagree with the results that the law warrants. If confirmed, I will continue to do so as a District Court Judge.

- 31. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?**

- a. If yes, please provide appropriate citations.**

Response: No.

- 32. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.**

Response: No.

- 33. Do you believe America is a systemically racist country?**

Response: Whether America is a systemically racist country is a highly debated policy issue best left for policymakers to address. As a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee, it would not be appropriate for me to offer an opinion.

- 34. Have you ever taken a position in litigation that conflicted with your personal views?**

Response: Yes.

35. How did you handle the situation?

Response: I always represented my clients and the litigation position zealously and to the best of my ability, irrespective of my personal views.

36. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: As a sitting judge at the Puerto Rico Court of Appeals for nearly six years, I have always sought to faithfully apply the law to the facts of the case before me, without regard to personal beliefs or the desirability of the outcome. If confirmed, I would faithfully apply Supreme Court and First Circuit precedent and would render decisions consistent with that precedent, based on the judicial record and an impartial application of the law to the facts of the case.

37. Which of the Federalist Papers has most shaped your views of the law?

Response: My views of the law have not been shaped by any particular Federalist Paper.

38. Do you believe that an unborn child is a human being?

Response: In *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022), the Supreme Court did not answer that question and noted that its "opinion [regarding such overruling] is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth." Considering this expression by the Supreme Court, and as a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee, it would be inappropriate to give my opinion on this issue, as it may come before me.

39. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: Yes, I have testified under oath during a deposition at a civil proceeding. I do not have a record of that deposition.

40. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

- a. *Roe v. Wade*, 410 U.S. 113 (1973)?
- b. The Supreme Court's substantive due process precedents?
- c. Systemic racism?

d. Critical race theory?

Response: No to all.

41. Do you currently hold any shares in the following companies:

a. Apple?

b. Amazon?

c. Google?

d. Facebook?

e. Twitter?

Response: No to all.

42. Have you ever authored or edited a brief that was filed in court without your name on the brief?

a. If so, please identify those cases with appropriate citation.

Response: No.

43. Have you ever confessed error to a court?

a. If so, please describe the circumstances.

Response: To the best of my recollection, no.

44. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: All judicial nominees take the oath before testifying before the Senate Judiciary Committee, which requires them to provide truthful information in their responses to all questions. At my confirmation hearing, I made a promise to tell the truth and to answer the Committee's questions to the best of my ability, and I have done so. My ability to answer questions as a nominee when testifying before the Senate Judiciary Committee is bound by the ethical and practical considerations set forth in Canon 3(A)(6) of the Code of Conduct for United States Judges, which applies to judicial nominees.

**Questions for the Record for Gina Raquel Méndez-Miró
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.

Questions for the Record
Senator John Kennedy
Gina R. Méndez-Miró

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

Response: In the close to six years that I have served as a judge at the Puerto Rico Court of Appeals my approach to the cases has been the same: I study the facts of the case before me with an open mind, I study the law and the precedents that apply to those facts. Given that I serve at an appellate bench, I review and apply the standard that applies to that particular set of facts and apply the law evenhandedly and impartially. I treat the parties with respect, whether they are represented by counsel or are pro se litigants. I believe justice should be afforded swiftly and efficiently. Finally, I strive to provide a sound, strictly legally based decision that is easily understood by counsel, scholars and lay person alike.

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

Response: If the text of a law is clear, a judge must apply that law to the relevant facts of the case before the court. If there is no ambiguity, a judge must not look beyond the law's text.

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

Response: The Supreme Court has held that the "authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'" *Garcia v. United States*, 469 U.S. 70, 76 (1984) (quoting *Zuber v. Allen*, 396 U.S. 168, 186 (1969)). The Supreme Court has "eschewed reliance on the passing comments of one Member . . . and casual comments from the floor debates." *Id.* If confirmed as a District Court Judge, I will follow this and all other binding Supreme Court and First Circuit precedent.

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

Response: In *Lloyd Corp. v. Tanner*, 407 U.S. 551, 552 (1972), the Supreme Court held that private owners of shopping centers do not violate the Constitution by imposing speech restrictions on speech unrelated to the shopping center's operations, such as prohibiting the distribution of handbills on its property. If confirmed as a District Court Judge, I would follow this and all binding Supreme Court and First Circuit precedent.

5. What does the repeated reference to "the people" mean within the Bill of Rights? Is the meaning consistent throughout each amendment that contains reference to the

term?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2018), the Supreme Court analyzed the term “the people” in the Second Amendment, in part by comparing how the term was used in other provisions of the Constitution. The Court explained: “The first salient feature of the operative clause is that it codifies a ‘right of the people.’” *Id.* at 579. In addition, the Supreme Court has explained that “the people,” as referred by the First, Second, Fourth, Ninth, and Tenth Amendments, “refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990).

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

Response: To my knowledge, the Supreme Court has not addressed whether non-citizens unlawfully present in the United States have a right to privacy. The Supreme Court has addressed the rights of non-citizens in certain contexts. In *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886), the Supreme Court found that non-citizens in this country have due process rights, explaining “[t]he Fourteenth Amendment to the Constitution is not confined to the protection of citizens” but rather applies “to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality.” Furthermore, in *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), the Court observed that “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” If confirmed, I will apply this and all binding Supreme Court and First Circuit precedent.

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

Response: The Supreme Court has held that, “searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border.” *United States v. Ramsey*, 431 U.S. 606, 616 (1977). Furthermore, the Supreme Court has recognized, that “the Fourth Amendment’s balance of reasonableness is qualitatively different at the international border than in the interior. Routine searches of the person and effects of entrants are not subject to any requirement of reasonable suspicion, probable cause, or warrant . . .” *United States v. Montoya de Hernandez*, 473 U.S. 531, (1985).

8. At what point does equal protection of the law attach to a human life?

Response: In *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022), the Supreme Court did not answer that question and noted that its “opinion [regarding

such overruling] is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth.” Considering this expression by the Supreme Court, and as a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee, it would be inappropriate to give my opinion on this issue, as it may come before me.

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

Response: The Supreme Court held in *Crawford v. Marion County*, 553 U.S. 181 (2008), that photo identification requirements for voting were not per se unconstitutional. If I am confirmed as a District Court Judge, I will faithfully apply all binding Supreme Court and First Circuit precedent.

Senator Mike Lee
Questions for the Record
Gina R. Mendéz-Miró, Nominee to the United States District Court for the District of
Puerto Rico

1. How would you describe your judicial philosophy?

Response: In the close to six years that I have served as a judge at the Puerto Rico Court of Appeals my approach to the cases has been the same: I study the facts of the case before me with an open mind, I study the law and the precedents that apply to those facts, given that I serve at an appellate bench, I review and apply the standard that applies to that particular set of facts, and apply the law evenhandedly and impartially. I treat the parties with respect, whether they are represented by counsel or are pro se litigants. I believe justice should be afforded swiftly and efficiently. Finally, I strive to provide a sound, strictly legally based decision that is easily understood by counsel, scholars, and lay person alike. If confirmed as a District Court Judge I will continue this approach to resolve cases and controversies applying all binding U.S. Supreme Court and First Circuit precedent.

2. What is the role of a federal judge in our Republican form of government?

Response: In the United States, federal judges serve on courts established under Article III of the U.S. Constitution. The federal judiciary operates separately and independently from the executive and legislative branches and “it is emphatically the duty of the Judicial Department to say what the law is.” *Marbury v. Madison*, 5 U.S. 137 (1803). However, federal judges can only consider cases and controversies that are properly justiciable in federal courts. The primary role of the federal judges is to resolve only those properly justiciable matters brought before them as authorized by the Constitution and federal statutes.

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

Response: If confirmed as a District Court Judge, I would consult and follow Supreme Court and First Circuit precedent interpreting the relevant text. If there is no binding precedent, first, I would look to the text and interpret it according to its plain and ordinary meaning. If there was ambiguity in the text, I would then look to any relevant canons of statutory construction, and Supreme Court or First Circuit precedent interpreting analogous statutory provisions, and potentially consider persuasive authority from other circuit courts. If necessary, I would consult legislative history to the extent permitted by Supreme Court and First Circuit precedent.

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

Response: Regarding the interpretation of the Constitution, the text of the provision at issue always controls. If confirmed and I were confronted with the rare circumstance that the interpretation of the constitutional provision was an issue of first impression, I would consider the text of the provision and apply the method of interpretation used by the Supreme Court and the First Circuit in the most analogous circumstance.

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

Response: The Supreme Court has held that the text and original meaning of a constitutional provision play an important role in interpreting the Constitution. *See, e.g., United States v. Jones*, 565 U.S. 400 (2012); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004). If confirmed, I would faithfully apply all Supreme Court and First Circuit precedent.

6. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?

Response: If confirmed as a District Court Judge, I would consult and follow Supreme Court and First Circuit precedent interpreting the relevant text. If there is no binding precedent, I would first look to the text and interpret the text according to its plain and ordinary meaning. If there was ambiguity in the text, I would then look to any relevant canons of statutory construction, and Supreme Court or First Circuit precedent interpreting analogous statutory provisions, and potentially consider persuasive authority from other circuit courts. If necessary, I would consult legislative history to the extent permitted by Supreme Court and First Circuit precedent.

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

Response: If confirmed, I will follow the Supreme Court and First Circuit precedent regarding interpretive methods. The Supreme Court has indicated that the plain or “ordinary” meaning refers to the public understanding of the text at the time of its enactment. *See e.g., Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020).

7. What are the elements of Article III justiciability?

Response: Article III of the Constitution vests “[t]he judicial Power of the United States ... in one Supreme Court, and in such inferior Courts as the Congress may ... establish.” U.S. Const. art. III, § 1. This “judicial power of federal courts is constitutionally restricted to ‘cases’ and ‘controversies’.” *Flast v. Cohen*, 392 U.S.

83, 94 (1968). “Justiciability” is the term employed to “expres[s] this ... limitation placed upon federal courts by the case-and-controversy doctrine.” *Id.* at 95. Thus, “[t]he justiciability doctrines determine which matters federal courts can hear and decide and which must be dismissed. Specifically, justiciability includes the prohibition against advisory opinions, standing, ripeness, mootness, and the political question doctrine.” Erwin Chemerinsky, *Constitutional Law: Principles and Policies*, Sec. 2.3 (2019). However, it should be noted that these doctrines have prudential elements, which “Congress, by statute, may override prudential,” (Chemerinsky, Sec. 2.3) and “core component[s]” which are “essential and unchanging part of the case-or-controversy requirement of Article III”. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

8. When does a federal court have subject matter jurisdiction over a case?

Response: Federal courts have subject matter jurisdiction limited to federal question jurisdiction and diversity jurisdiction. A litigant may bring a claim on a federal court if it arises from a federal law or the Constitution, or in civil actions where the matter in controversy exceeds the sum or value of \$75,000 and the dispute is between citizens of different states.

9. Can subject matter jurisdiction be waived?

Response: No.

10. When should a federal court apply state law?

Response: When confronted with the issue of whether to apply federal or state law in a lawsuit, federal judges must apply state law on issues of substantive law. When the legal question is based on a procedural issue, the federal courts should apply federal law. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938).

11. When should a court apply federal common law?

Response: The Supreme Court has stated that, “Only limited areas exist in which federal judges may appropriately craft the rule of decision.” *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729, 124 S. Ct. 2739, 159 L.Ed.2d 718 (2004). These areas have included admiralty disputes and certain controversies between States.” *See, e.g., Norfolk Southern R. Co. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14, 23, 125 S. Ct. 385, (2004); *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, (1938). The Supreme Court has stated that before federal judges may claim a new area for common lawmaking, strict conditions must be satisfied, holding that “one of the most basic is that federal common lawmaking must be “necessary to protect uniquely federal interests.” *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981).

The Supreme Court, in *Rodriguez v. Federal Deposit Insurance Corporation*, 140 S. Ct. 713 (2020) held that the federal common law rule known as the Bob Richards rule, which is used by some courts to determine ownership of consolidated corporate tax refunds, is not a legitimate exercise of federal common lawmaking.

12. Can federal courts decide issues of state-law?

Response: Yes. For example, federal courts have jurisdiction over civil claims where the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states. In those cases, that court can apply state law to decide the issues.

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

Response: In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court held that the necessary and proper clause in Article I, Section 8, of the United States Constitution gives Congress certain implied powers that are not explicitly enumerated in the Constitution.

14. 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 what is set forth in Article I of the Constitution to evaluate the scope of Congress's power. I would also consult Supreme Court and First Circuit precedent evaluating similar laws to determine the scope of Congress's power within the pertinent regulatory area.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held that the Due Process Clause of the Fifth and Fourteenth Amendments protect certain unenumerated "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." This concept is known as substantive due process. *Id.* The "liberty" interests protected by the due process clause include, among others, the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); and to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

16. What rights are protected under substantive due process?

Response: The "liberty" interests protected by the due process clause include, among others, the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children,

Skinner v. Oklahoma, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); and to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965). Most recently, the Supreme Court, in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), reiterated that certain substantive rights, although not mentioned in the Constitution, are nevertheless protected by the Due Process Clause where those unenumerated rights are "deeply rooted in [our] history and tradition and whether it is essential to our Nation's scheme of ordered liberty." *Id.* at 2246.

- 17. 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: The rights protected by substantive due process are recognized by the Supreme Court and the only appropriate basis to distinguish these rights are those authorized and established by Supreme Court precedent. As a sitting judge, and as a District Court Judge, if confirmed, I will follow all binding precedent of the Supreme Court and of the First Circuit regarding substantive due process.

- 18. What are the limits on Congress's power under the Commerce Clause?**

Response: Congress' authority under the Commerce Clause is limited to three categories: (1) it may regulate the use of the channels of interstate commerce; (2) it may regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce even if threatened only by "intrastate activities"; and (3) it may regulate those activities having a substantial relation to interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-559 (1995).

- 19. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?**

Response: Race, national origin, religion, and alienage are four recognized suspect classifications. *Graham v. Richardson*, 403 U.S. 365, 372 (1971).

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

Response: The checks and balances and separation of powers principle was intended to balance power between the branches of government to avoid the concentration of power in one branch.

- 21. 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 begin by identifying and applying binding Supreme Court and First Circuit precedent, together with the text of the Constitution regarding the

branch's grants of authority and the scope of authority of the other branches, to determine whether the branch in question had exceeded its constitutional authority. The principal guidance on this regard would be that set forth in *Marbury v. Madison*, 5 U.S. 137 (1803), and its progeny, that held that if a court finds that a branch of government has exerted authority not granted to it by the text of the Constitution or any implied power from that text, the action should be stricken.

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

Response: None. A judge must impartially consider each case without regard to personal views. As I have done as a sitting judge for nearly six years, if confirmed as a District Court Judge, I will continue to resolve cases based solely on the record and arguments brought before me, applying law to the facts at hand.

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

Response: Both actions are equally improper, and judges should strive to avoid both results.

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

Response: I have not studied the number of times the Supreme Court has exercised its power of judicial review to strike down federal statutes over time. I cannot therefore issue an opinion on what changes, if any, there have been, their frequency, or the underlying reasoning for such decisions. If confirmed as a District Court Judge, I would faithfully and impartially follow all Supreme Court precedents regardless of historical patterns in the Court's jurisprudence.

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

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

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

Response: As a sitting judge and as a judicial nominee, it would not be appropriate for me to offer an opinion on how elected officials should strike this balance. However, Article VI requires all federal and state legislators, executive officers, and judicial officers to be “bound by Oath or Affirmation, to support [the United States] Constitution.” U.S. Const., Art. VI. State officials in the executive, legislative and judicial branches are bound to follow the United States Supreme Court’s decisions interpreting the Constitution. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

27. **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: I understand this to mean that judges have a limited role and must only address the cases before them, applying the law and the applicable precedent to the facts of the controversy brought before the court. If confirmed as a District Court Judge, my role would be limited to that judicial function, adhering to my oath to impartially interpret and apply the law to the specific facts established in the record in each case or controversy.

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

Response: The role of a District Court Judge is to follow the precedent of the Supreme Court and the circuit in which they sit and evaluate each case on its own facts and the applicable law. If a precedent does not speak to the issue at hand, then the judge is required to determine whether other precedent speaks more directly to the issue and in that analysis apply it to the facts at issue to render a reasoned opinion based in law and fact. As a sitting judge at the Puerto Rico Court of Appeals and, if confirmed, as a District Court Judge, my obligation is to follow binding precedents and fairly and faithfully apply the law to the facts of each case.

29. **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: None. I would follow 18 U.S.C. § 3553(a), which sets out the appropriate sentencing factors judges should consider when delivering a sentence and establishes that demographics do not play a role. The United States Sentencing Guidelines set out that considerations of race, sex, national origin, creed, religion, and socio-economic status are not relevant in determining a sentence. U.S.S.G. § 5H1.10.

30. **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: As a judge I would apply the term "equity" in accordance to its legal definition. Please see my response to Question 31 below.

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

Response: Black's Law Dictionary defines equity as "[f]airness; impartiality; evenhanded dealing." *Equity, Black's Law Dictionary* (11th ed. 2019). The same dictionary defines equality as "the quality, state or condition of being equal; esp., likeness in power or political status." *Equality, Black's Law Dictionary* (11th ed. 2019)

32. **Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?**

Response: The Fourteenth Amendment guarantees the equal protection of the laws. *See* U.S. Const., amend. XIV.

33. **How do you define "systemic racism?"**

Response: Black's Law Dictionary does not have a definition for systemic racism. The Oxford English Dictionary defines "systemic racism," as, "[d]iscrimination or unequal treatment on the basis of membership in a particular racial or ethnic group (typically one that is a minority or marginalized), arising from systems, structures, or expectations that have become established within society or an institution." *Systematic Racism, Oxford English Dictionary* (3rd ed. 2022).

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

Response: 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." *Critical Race Theory*, *Black's Law Dictionary* (11th ed. 2019)

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

Response: I would distinguish critical race theory from systemic racism based on comparing and contrasting the two definitions cited above in response to Questions 33 and 34.

- 36. If you're confirmed to the district court, do you think it would be appropriate for people who disagree with your rulings or judicial philosophy to attack your spouse for it?**

Response: Pursuant to Supreme Court precedent, "the law gives judges as persons, or courts as institutions no greater immunity from criticism than other persons or institutions. ... The operations of the courts and the judicial conduct of judges are matters of utmost public concern." *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 839 (1978). Whether a particular criticism is within the boundaries of appropriate discourse would be for other forums to decide, since a "judge should be faithful to ... the law and should not be swayed by ... fear of criticism." See Code of Conduct for United States Judges, Canon 3.

- 37. Would it be appropriate for people to attack you for your spouse's political views or judicial opinions?**

Response: Please see response to Question 36.

- 38. Would you need to recuse yourself from cases that implicate your spouse's judicial opinions or role as Chief Justice of the Supreme Court of Puerto Rico?**

Response: If confirmed, I would recuse myself from cases where my spouse, who is Chief Justice of the Puerto Rico Judicial Branch, was involved or matters in which the Puerto Rico Judicial Branch appears as a party. I take recusal obligations very seriously and would also carefully consider whether recusal was appropriate in other cases based on 23 U.S.C. 455, the Code of Conduct for United States Judges and consultation with colleagues.

- 39. Apart from being an actual litigant in a case before you, do you think your spouse's role as chief justice of the Supreme Court of Puerto Rico would have any bearing on your role as a judge?**

Response: No. If confirmed, I would strictly adhere to the Code of Conduct for United States Judges, and other applicable authority, including Canon 2, which provides that

a “judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment.”

Senator Ben Sasse
Questions for the Record for Gina R. Méndez-Miró
U.S. Senate Committee on the Judiciary
Hearing: “Nominations”
July 13, 2022

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

Response: In the close to six years that I have served as a judge at the Puerto Rico Court of Appeals my approach to the cases has been the same: I study the facts of the case before me with an open mind, I study the law and the precedents that apply to those facts. Given that I serve at an appellate bench, I review and apply the standard that applies to that particular set of facts and apply the law evenhandedly and impartially. I treat the parties with respect, whether they are represented by counsel or are pro se litigants. I believe justice should be afforded swiftly and efficiently. Finally, I strive to provide a sound, strictly legally based decision that is easily understood by counsel, scholars and lay person alike. If confirmed as a District Court Judge I will strive to continue this approach to resolve cases and controversies applying all binding Supreme Court and First Circuit precedent.

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

Response: Black’s Law Dictionary defines “originalism” as a “doctrine that words of a legal instrument are to be given the meanings they had when they were adopted.” *Originalism, Black’s Law Dictionary* (11th ed. 2019). The Supreme Court has applied originalism in certain constitutional contexts, such as adjudicating Second Amendment rights. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). As a sitting judge for nearly six years at the Puerto Rico Court of Appeals, I have not applied a specific label related to a theory of constitutional interpretation to myself. If confirmed, I would faithfully apply all Supreme Court and First Circuit precedent.

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

Response: Black’s Law Dictionary defines “textualism” as a “[t]he doctrine that the words of a governing text are of paramount concern and that what they fairly convey in their context is what the text means.” *Textualism, Black’s Law Dictionary* (11th ed. 2019).

Furthermore, the Supreme Court has held that the text and original meaning of a constitutional provision play an important role in interpreting the Constitution. *See, e.g., United States v. Jones*, 565 U.S. 400 (2012); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004). While I have not applied specific labels to myself, as a sitting judge for nearly six years on the Puerto Rico Court of Appeals, I do believe, and my record reflects, that I faithfully look to the texts of the statutes or the constitutional provision that may be at issue in a particular case. If confirmed, I will faithfully apply all Supreme Court and First Circuit precedent.

5. Do you believe the Constitution is a “living” document whose precise meaning can change over time? Why or why not?

Response: Black’s Law Dictionary defines “living constitutionalism,” as, “[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values.” *Living Constitutionalism*, *Black’s Law Dictionary* (11th ed. 2019). As a sitting judge for nearly six years at the Puerto Rico Court of Appeals, I have not applied a specific label related to a theory of constitutional interpretation to myself. If confirmed, I would faithfully apply all Supreme Court and First Circuit precedent.

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

Response: I deeply respect all the Justices who have served on the Supreme Court, but there is not one particular Justice whose jurisprudence I admire the most.

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

Response: In the First Circuit, “newly constituted panels in a multi-panel circuit are bound by prior panel decisions that are closely on point”. *United States v. Santiago-Colon*, 917 F.3d 43, 57 (1st Cir. 2019). If confirmed as a District Court Judge, I am obligated to follow binding First Circuit precedent regardless of whether it conflicts with the original public meaning of the Constitution or the text of a statute. An appellate court, such as the First Circuit, cannot overrule its own precedent unless it is sitting *en banc*.

8. 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: Please see my response to question 7.

9. What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?

Response: Extrinsic factors should not play a factor in statutory interpretation if the text is unambiguous. If confirmed as a District Court Judge, first, I would consult and follow Supreme Court and First Circuit precedent interpreting the relevant text. If there is no binding precedent, then, I would look to the text and interpret it according to its plain and ordinary meaning. If there was ambiguity in the text, I would then look to other relevant sources like legislative history and Supreme Court or First Circuit precedent interpreting analogous statutory provisions, and potentially consider persuasive authority from other circuit courts.

10. 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. The United States Sentencing Guidelines set out that considerations of race, sex, national origin, creed, religion, and socio-economic status are not relevant in determining a sentence. U.S.S.G. § 5H1.10. If confirmed as a District Court Judge, I would follow 18 U.S.C. § 3553(a), which sets out the appropriate sentencing factors judges should consider when delivering a sentence and establishes that demographics do not play a role.

Questions from Senator Thom Tillis
for Gina R. Méndez-Miró
Nominee to be United States District Judge for the District of Puerto Rico

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

Response: I do.

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

Response: Black's Law Dictionary defines, "judicial activism," as, "A philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu[ally] with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." *Judicial Activism, Black's Law Dictionary* (2019). Considering that definition, I consider this judicial approach inappropriate. As a sitting judge for nearly six years at the Puerto Rico Court of Appeals, the only method I have used in deciding cases that come before me, and that I would continue to use if confirmed as a District Court Judge, is to apply the law fairly and impartially to the facts, and without regard to my personal views or opinions.

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

Response: I believe it is an expectation for a judge to be impartial. It is required under the oath that I have taken as a Judge at the Puerto Rico Court of Appeals and, if confirmed, the oath I would take as a United States District Court Judge.

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

Response: No. The role of a judge is not to make policy or to second-guess policy decisions made by the legislature. Instead, the role of the judge is to decide cases and controversies through scrupulous review of the factual record and the impartial application of the law and precedents to the facts at hand.

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

Response: As a sitting judge at the Puerto Rico Court of Appeals for nearly six years, I have always sought to faithfully apply the law to the facts of the case before me without regard to personal beliefs or the desirability of the outcome. If confirmed, I would faithfully apply Supreme Court and First Circuit precedent and would render decisions consistent with that precedent.

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

Response: No.

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

Response: If I am fortunate enough to be confirmed as a District Court Judge, I will continue to do what I have sought to do as a sitting judge at the Puerto Rico Court of Appeals, which is to faithfully apply the text and precedents, which include *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022).

- 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: I would evaluate any such case presented before me in accordance with binding precedent, including, for example, *District of Columbia v. Heller*, 554 U.S. 570 (2008), which recognizes an individual Second Amendment right to keep and bear arms, and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), which held that this individual right is applicable to the states and most recently *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022).

- 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: Qualified immunity is a doctrine which provides government officials protection from civil damages liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). In analyzing a qualified immunity claim, the Supreme Court has set out a two-part test to determine whether qualified immunity applies: (1) whether the plaintiff has established a violation of a constitutional right; and (2) whether the right at issue was "'clearly established' at the time of the defendant's alleged misconduct." *Pearson v. Callahan*, 555 U.S. 223, 233 (2009) (quoting *Saucier v. Katz*, 522 U.S. 194, 201 (2001)). If confirmed, I would apply all binding Supreme Court and First Circuit precedent regarding qualified immunity for all government officials including police officers.

- 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: If I am confirmed as a District Court Judge, I would apply all binding Supreme Court and First Circuit precedent regarding qualified immunity. The question of whether the qualified immunity doctrine provides sufficient protection for law enforcement officers is an issue that is best left to policy makers and legislatures.

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

Response: If I am confirmed as a District Court Judge, I would apply all binding Supreme Court and First Circuit precedent regarding qualified immunity. The scope of the qualified immunity doctrine as applied to law enforcement officers is a policy question that would be better addressed by legislatures. As a sitting judge and as a judicial nominee, it would not be appropriate for me to provide an opinion on matter that could be brought before me.

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

Response: As a sitting judge and as a judicial nominee, it would not be appropriate for me to offer an opinion on Supreme Court jurisprudence involving issues of patent eligibility that could come before me. If I am fortunate enough to be confirmed as a District Court Judge, I would strive to study the facts of the case, apply the law, and will follow all binding Supreme Court and First Circuit precedent.

13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.

- a. *ABC Pharmaceutical Company* develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?
- b. *FinServCo* develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?
- c. *HumanGenetics* Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that

contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?

- d. *BetterThanTesla ElectricCo* develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla*'s billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?
- e. *Natural Laws and Substances, Inc.* specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?
- f. A business methods company, *FinancialServices Troll*, specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?
- g. *BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should *BioTechCo* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTech Co* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?
- h. Assuming *BioTechCo*'s diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?

- i. ***Hantson Pharmaceuticals* develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?**
- j. ***Stoll Laboratories* discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: As a sitting judge at the Puerto Rico Court of Appeals and as a judicial nominee, it would not be appropriate for me to offer an opinion or comment on any hypothetical case that could come before me. If I am fortunate enough to be confirmed as a District Court Judge, I would strive to study the facts of the case, apply the law and will follow all binding Supreme Court and First Circuit precedents.

- 14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court’s ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: Please see my response to Questions 12 and 13a above.

- 15. Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the lawfulness of a use of digital content and technologies.**

- a. **What experience do you have with copyright law?**

Response: None.

- b. **Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.**

Response: None.

- c. **What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?**

Response: I do not recall any particular experiences that I have had involving the Digital Millennium Copyright Act.

- d. **What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?**

Response: None.

16. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office recently reported courts have conflated statutory obligations and created a “high bar” for “red flag knowledge, effectively removing it from the statute...” It also reported that courts have made the traditional common law standard for “willful blindness” harder to meet in copyright cases.

- a. **In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?**

Response: If confirmed as a District Court Judge, I would consult and follow Supreme Court and First Circuit precedent interpreting the relevant text. If there is no binding precedent, I would first look to the text and interpret the text according to its plain and ordinary meaning. If there was ambiguity in the text, I would then look to any relevant canons of statutory construction, and Supreme Court or First Circuit precedent interpreting analogous statutory provisions, and potentially consider persuasive authority from other circuit courts. If necessary, I would consult legislative history to the extent permitted by Supreme Court and First Circuit precedent. *See, e.g., Milner v. Department of the Navy*, 562 U.S. 562, 572 (2011); *Garcia v. United States*, 469 U.S. 70, 76 (1984). The “authoritative source for finding the Legislature’s intent lies in the Committee Reports on the bill, which ‘represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.’”

- b. **Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?**

Response: I am not aware of a binding precedential ruling by the Supreme Court definitively addressing whether the advice and analysis of the U.S. Copyright Office should or should not have any weight in the analysis of a copyright case. However, the Supreme Court has articulated the standard for judicial deference to an administrative agency’s statutory interpretation in *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

- c. Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?**

Response: This is a matter that would be best addressed by policymakers from the legislative branch of government and as a sitting judge at the Puerto Rico Court of Appeals and judicial nominee it would be inappropriate for me to opine.

17. The scale of online copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and there was a lot less infringing material online.

- a. How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the ascension of dominant platforms, and the proliferation of automation and algorithms?**

Response: Judges must interpret and apply the law as written and in accordance with the language of the statute with applicable binding precedent.

- b. How can judges best interpret and apply prior judicial opinions that relied upon the then-current state of technology once that technological landscape has changed?**

Response: Judges must interpret and apply the law as written and in accordance with the language of the statute with applicable binding precedent.

18. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about the fact that nearly one quarter of all patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.

- a. Do you see “judge shopping” and “forum shopping” as a problem in litigation?**

Response: My understanding is that in the Puerto Rico District Court, cases are randomly assigned and therefore, “judge shopping” is not an issue. I have not studied the issue of “forum shopping” and therefore do not have an opinion on this issue.

- b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?**

Response: Judges have a responsibility to follow the law and to faithfully and neutrally apply the law to the facts of the case before them.

- c. Do you think it is *ever* appropriate for judges to engage in “forum selling” by proactively taking steps to attract a particular type of case or litigant?**

Response: No. I do not believe judges should proactively take steps to attract a particular type of case or litigant and I have never done so in the nearly six years that I have served as a judge at the Puerto Rico Court of Appeals.

- d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?**

Response: Please see my response to question 18c.

19. In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.

- a. What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?**

Response: The U.S. Judicial Conference could address this issue. In addition, this is an issue that could be addressed by the court of appeals in the judge’s district.

- b. Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?**

Response: Please see my response to Question 19a.

20. When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation’s 94 judicial districts, does this undermine the perception of fairness and of the judiciary’s evenhanded administration of justice?

Response: I have not studied this issue nor if an overwhelming concentration of a particular type of litigation in one or two judicial districts might affect perceptions of the judiciary. As a sitting judge and judicial nominee, I am committed to deciding cases based on the facts and law.

- a. **If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?**

Response: Please see my response to Question 20.

- b. **To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?**

Response: Please see my response to Question 20.

21. Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.

- a. **If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is behaving in a lawless manner?**

Response: I have not had the opportunity to study the frequency of mandamus reversals by the courts of appeals and do not have a basis for an opinion on this issue.

- b. **Would five mandamus reversals be sufficient? Ten? Twenty?**

Response: Please see my response to Question 21a.