Senator Richard J. Durbin
Chair, Senate Judiciary Committee
Written Questions for Adeel Mangi
Nominee to be United States Circuit Judge for the Third Circuit
December 20, 2023

1. **Over the course of your legal career, you have devoted more than 4,000 hours to pro bono work.**

    a. **Why has it been important to you during your career to take on pro bono representation?**

    Response: I consider it fundamentally important to help ensure that everyone in our country, regardless of their resources, has access to the full measure of rights guaranteed to them by the Constitution. In some cases, it requires significant legal resources to timely and effectively secure those rights. I have been privileged to represent many clients whose lives we have been able to improve through pro bono legal services, including both high-profile cases with trailblazing resolutions of national import, and small individual cases that have no wider precedential significance but had life-changing impact for the litigants. As a lawyer, my most fulfilling work involved these pro bono cases and being able to both advance the cause of justice and help people facing difficult situations. I have also worked extensively to advance religious liberty, which I consider to be a fundamental American value, and to combat religious bigotry against any religious group. I have been proud to represent a unique and massive coalition that I built over many years involving major Christian, Jewish, Muslim, Hindu, Sikh, and other religious groups on matters of common interest before the United States Supreme Court and other appellate courts. It is distinctly American for people of so many different faiths to come together in unity in this manner and I have been honored to lead their representation.

    b. **How do you think your pro bono work has prepared you to serve as a federal appellate judge?**

    Response: I have litigated sophisticated and complex pro bono cases that raise challenging legal issues. Like all substantive experience dealing with complex legal issues, that experience has helped me develop and hone the legal skills necessary to serve as a federal appellate judge. These pro bono cases have also made me conscious of the disparity of resources available to litigants, and the importance of fair and just adjudication regardless of a litigant's resources.

2. **As a litigator with over two decades of experience, you have worked on a wide range of issues, including false advertising, antitrust, consumer protection, and class action defense. Recently, you represented the plaintiff in *Appian Corporation v. Pegasystems, Inc.*—a trade secrets case. The jury awarded your client more than $2 billion in damages for theft of trade secrets.**

a. Can you discuss the legal issues involved in this case?

Response: This case involved allegations of theft of trade secrets in the software industry. The case was the subject of two jury trials in 2022: a statute of limitations trial under Virginia procedure and then a seven-week merits trial. The merits trial involved legal claims asserted under the Virginia Uniform Trade Secrets Act and the Virginia Computer Crimes Act. The legal issues involved in the litigation included application of statutes of limitations and associated burden-shifting; preemption and the relative overlap between the asserted legal claims; novel issues of trade-secret law in Virginia, such as the application of burden shifting to calculate unjust enrichment damages under the Virginia Uniform Trade Secrets Act; jurisdictional issues, including multiple motions to compel arbitration; several intricate evidentiary issues over the course of the seven-week trial on the merits, including challenges associated with the admission of hearsay materials and authenticating digital forms of evidence; the appropriate legal standards and jury instructions under each claim; and the standards and issues involved in applying statutory fee shifting. At the conclusion of the merits trial, the jury awarded my client, Appian, more than two billion dollars in damages for theft of trade secrets, found that Pegasystems had acted willfully and maliciously, and found that Pegasystems had violated the Virginia Computer Crimes Act. The trial judge later denied motions to set aside the verdict and awarded Appian its attorney fees of $23 million. I argued the appeal before the Virginia Court of Appeals in November 2023.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Mr. Adeel Abdullah Mangi, nominated to serve as U.S. Circuit Judge for the Third Circuit

Instructions:

You must provide an answer specific to each question and sub-question. You may not group your answer to one question with other questions nor may you answer questions by cross-referencing other answers. Failure to follow these instructions will be interpreted as an intentional evasion of the question.

With respect to questions that ask for a yes or no answer, please start your response with a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to follow these instructions will be interpreted as an intentional evasion of the question.

1. **At your hearing, when questioned about your role as a member of the Board of Advisors for the deeply concerning "Rutgers Center for Security, Race and Rights" ("the Center"), you told Senator Kennedy: "*my role was limited to providing advice on academic areas of research, primarily through a meeting held once a year*."**

    a. **Was this an accurate statement?**

    Response: Yes.

    b. **What academic areas of research did you advise on?**

    Response: I joined the advisory board of the Center for Security, Race and Rights at Rutgers Law School based on its mission to combat bigotry and discrimination and advance religious liberty through academic research at one of New Jersey's preeminent law schools. Academic areas of research that I advised on included the Religious Land Use and Institutionalized Persons Act, the Religious Freedom Restoration Act, freedom of information, actions under 42 U.S.C. § 1983, employment discrimination, school bullying, appropriate law enforcement approaches when dealing with religious minorities, and national security.

    c. **Did you ever provide advice on specific events, lectures, or workshops?**

    Response: No. The advisory board had no role in relation to oversight or governance of the Center—it is not a board of directors. My role on the advisory board did not extend to or include providing advice or approval on specific events, lectures, or workshops.

        i. **If yes, please identify which events, lectures, or workshops you provided advice on.**

2. **Your law firm, Patterson Belknap, is identified as a "Law Fellow Sponsor" for the "Center for Security, Race and Rights" at Rutgers Law School and the firm's logo is displayed on the Center's website.**

   a. **Were you, prior to your hearing, aware that your law firm is a sponsor of the Center?**

      Response: Patterson Belknap Webb & Tyler LLP did not sponsor the Center for Security, Race and Rights. Patterson Belknap has sponsored Law Fellowships at the Center for Security, Race and Rights through donations to the Rutgers University Foundation that provide law students with professional training in 2021, 2022, and 2023.

      i. **If yes, when did you become aware your law firm was a sponsor of the Center?**

         Response: Patterson Belknap Webb & Tyler LLP did not sponsor the Center for Security, Race and Rights. Patterson Belknap has sponsored Law Fellowships at the Center for Security, Race and Rights that provide law students with professional training in 2021, 2022, and 2023. I was first aware of the Law Fellowship requests submitted to Patterson Belknap Webb & Tyler LLP at the time that they were made in 2021, 2022, and 2023.

   b. **Did you have any role in securing or facilitating your firm's sponsorship of the Center?**

      Response: Patterson Belknap Webb & Tyler LLP did not sponsor the Center for Security, Race and Rights at Rutgers Law School or any speaker events, lectures, or workshops at the Center for Security, Race and Rights. Patterson Belknap received requests from the Center for Security, Race and Rights to support Law Fellowships to help law students gain professional experience at Rutgers Law School through donations to the Rutgers University Foundation. The decisions to support those Law Fellowships in 2021, 2022, and 2023 were made by Patterson Belknap's Chief Diversity Officer, management committee, and/or senior management. I do not serve and have never served on the firm management committee or in a management role, and I was not present during any discussions of those committees or groups relating to whether to support Law Fellowships. Requests for sponsorship were made either to me, or to me and another partner at the firm, and then directed to the appropriate committees and leadership for consideration. I was informed of the decisions after they were made.

      i. **If yes, did you mislead the committee when you stated your role at the Center "*was limited to providing advice on academic areas of research, primarily through a meeting held once a year*?"**

         Response: No. My role on the advisory board for the Center for Security, Race and Rights at Rutgers Law School was as described. Moreover, and to

reiterate, Patterson Belknap Webb & Tyler LLP did not sponsor the Center for Security, Race and Rights.

c. Did anyone at your law firm discuss the decision to sponsor the Center with you?

Response: Patterson Belknap Webb & Tyler LLP did not sponsor the Center for Security, Race and Rights at Rutgers Law School or any speaker events, lectures, or workshops at the Center for Security, Race and Rights. Patterson Belknap received requests from the Center for Security, Race and Rights to support Law Fellowships to help law students gain professional experience at Rutgers Law School through donations to the Rutgers University Foundation. The decisions to support those Law Fellowships in 2021, 2022, and 2023 were made by Patterson Belknap's Chief Diversity Officer, management committee, and/or senior management. I do not serve and have never served on the firm management committee or in a management role, and I was not present during any discussions of those committees or groups relating to whether to support Law Fellowships. Requests for sponsorship were made either to me, or to me and another partner at the firm, and then directed to the appropriate committees and leadership for consideration. I was informed of the decisions after they were made.

d. How much money has Patterson Belknap donated to the Center?

Response: I understand from having queried the records of Patterson Belknap Webb & Tyler LLP that donations for Law Fellowships were directed to the Rutgers University Foundation in the amounts of $2,000 (2021), $5,000 (2022), and $6,000 (2023). The decisions to sponsor those Law Fellowships were made by Patterson Belknap's Chief Diversity Officer, management committee, and/or senior management. I do not serve and have never served on the firm management committee or in a management role and I was not present during any discussions of those groups relating to whether to sponsor Law Fellowships.

3. Have you made any financial donations to the Center?

Response: I have made donations to the Rutgers University Foundation, which I understood would support the academic research of the Center for Security, Race and Rights at Rutgers Law School.

a. If yes, please list all donations to the center, noting the year and amount donated.

Response: My records reflect donations to the Rutgers University Foundation in the amounts of $500 (2018), $2,500 (2019), $1,500 (2020), and $2,000 (2021). These donations were all intended to support the academic research of the Center for Security, Race and Rights at Rutgers Law School to oppose bigotry and discrimination and to advance religious liberty.

4. Have you otherwise attempted to raise money for the Center?

Response: I do not recall ever raising money for the Center for Security, Race and Rights. I do not recall making any contributions to the Center for Security, Race and Rights at any time other than as set forth above.

5. On what date did you join the Center's advisory board?

Response: I joined the advisory board of the Center for Security, Race and Rights at Rutgers Law School in 2019. My records do not indicate, and I do not recall, the specific date.

a. Who invited you to join the board?

Response: I was invited to the join the advisory board for Center for Security, Race and Rights at Rutgers Law School by its Director, Professor Sahar Aziz. I understood that invitation to be based upon my work litigating civil rights and religious liberty cases in New Jersey and in particular cases relating to the denial of houses of worship, which had given me an expertise in the Religious Land Use and Institutionalized Persons Act.

b. Were there any conditions to joining the board?

Response: I do not recall any conditions. I do recall being told that the time commitment required would be minimal because the advisory board played no role in active management of the Center for Security, Race and Rights, and that based upon my expertise, my role would focus on providing advice regarding academic research that could support civil rights and religious liberty litigation, such as cases involving the refusal of zoning or planning permission to religious houses of worship.

c. Did you conduct any due diligence on the Center before joining the Board?

Response: Yes. The Center for Security, Race and Rights had been recently established at the time that I was invited to join its advisory board. I therefore relied primarily on the fact that the Center for Security, Race and Rights would be based at Rutgers Law School, which is one of the preeminent law schools in the State of New Jersey, and would be run by a Rutgers professor holding the title of Distinguished Professor of Law who had previously worked at the Department of Homeland Security. I understood that the Center would have faculty affiliates at leading universities around the country. I also focused on the mission of the Center for Security, Race and Rights, which was to fight bigotry and discrimination and to advance religious liberty. I have fought throughout my career to oppose all forms of bigotry and discrimination, including prejudice directed at minority groups such as Muslims and Jews, to protect the rights of all people of faith to worship freely, and to ensure that the First Amendment's Free Exercise Clause is protected and effectuated.

6. On what date did you leave the Center's advisory board?

Response: I informed the Director of the Center for Security, Race and Rights at Rutgers Law School of my resignation from my position as an advisory board member on June 15, 2023. The Director accepted my resignation and requested that I delay it taking formal effect

while she sought to recruit a replacement law firm advisory board member. I agreed it could take effect as of the end of July to allow her time to do so. I had previously told the Executive Director and advisory board in 2022 that I might leave the advisory board the following year absent developments in the nature of the academic output from the Center.

7. On what date did the White House and Department of Justice begin vetting you for your current nomination?

Response: I was first contacted by Senator Booker's office about a vacancy on the Third Circuit Court of Appeals in September 2023. The White House and Department of Justice began vetting activities in October 2023.

8. Why did you leave the Center's advisory board?

Response: The academic research output of the Center for Security, Race and Rights had not matched what I personally felt were the most productive areas of academic focus to support civil rights litigation. I had previously told the Executive Director and advisory board in 2022 that I might leave the advisory board the following year absent developments in the nature of the academic output from the Center. Additionally, I have served on the advisory boards or boards of directors of many organizations, and find it is productive and healthy for membership to turn over periodically. I decided to deploy my available time, which is limited in view of my heavy work schedule, in other places.

9. Are you aware if the Center receives funding from any foreign source?

Response: I am not aware of any such funding.

10. When did you first meet the Center's director Sahar Aziz?

Response: I do not recall when I first met Professor Aziz, though I believe I was introduced to her at a legal conference. I would estimate that may have been in or before 2018.

11. The director of the Center, Sahar Aziz, signed an open letter in 2021 that read, in part: "*We are in awe of the Palestinian struggle to resist violent occupation, removal, erasure, and the expansion of Israeli settler colonialism*."

a. Were you aware of this letter?

Response: No. My role on the advisory board was limited to participating in four meetings over the course of four years where I focused on academic research. It did not extend to or include providing advice or approval on Professor Aziz's signatures on open letters.

b. Were you aware this letter was posted on the Center's website while you were a member of the Board of Advisors?

Response: No.

c. Does it surprise you that the director of the Center would sign an open letter containing this statement?

Response: My role as a member of an advisory board did not extend to oversight of the activities of Professor Aziz. An advisory board, unlike a board of directors, has no governance or oversight role. My role on the advisory board was limited to participating in four meetings over the course of four years where I focused on academic research, and I had no knowledge of any letters signed by Professor Aziz. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit.

d. Does it surprise you that the Center would publish an open letter containing this statement on its website?

Response: My role as a member of an advisory board did not extend to oversight of the activities of Professor Aziz or the content of the Center's website. An advisory board, unlike a board of directors, has no governance or oversight role. My role on the advisory board was limited to participating in four meetings over the course of four years where I focused on academic research, and I had no knowledge that the Center had published any letters signed by Professor Aziz. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit.

12. The Jewish Federation of MetroWest NJ recently stated "[t]he director of th[e] [C]enter [for Security, Race and Rights], Rutgers Law Professor Sahar Aziz has regularly and consistently promoted vile antisemitic propaganda." Do you agree with this statement?

Response: I am not familiar with the Jewish Federation of MetroWest NJ and have not previously heard the quoted statement. Based on an internet search, however, it appears that this statement was made on November 30, 2023 and addressed events that occurred after October 7, 2023. First, let me state again, as I did at my hearing, the events of October 7, 2023 were horrific, and I condemn them and any attempts to justify or defend them. Second, and as noted above, I resigned from the advisory board in June 2023 and had no involvement of any kind with Rutgers Law School thereafter. Based on the same internet search, the quoted statement regarding Professor Aziz forms part of a proposed email and states that "Rutgers Law Professor Sahar Aziz has regularly and consistently promoted vile antisemitic propaganda on her private social media pages, and in her role as a member of the Westfield Board of Education, has had an ethics complaint filed against her by a fellow BOE member." My role as a member of the advisory board did not include any oversight of Professor Aziz's "private social media pages" or "her role as a member of the Westfield Board of Education." I have not reviewed statements made by Professor Aziz in either forum and therefore cannot characterize them. My role on the advisory board was limited to participating in four meetings over the course of four years where I focused on academic research. I oppose antisemitism in all its forms and condemn any antisemitic statements.

13. In 2022, the director of the Center, Prof. Sahar Aziz, criticized the Anti-Defamation League writing in a post on X "ADL has an ongoing pattern of attacking social justice movements by ... immigrants, Muslims, Arabs, ... while aligning itself with right-wing leaders, and perpetrators of state violence." Do you agree with this statement?

Response: No. I am not familiar with the quoted statement from Professor Aziz, but I disagree with it as quoted based upon on my own personal experience working with the Anti-Defamation League ("ADL"). I represented the Islamic Society of Basking Ridge in a lawsuit against Bernards Township and various of its officials relating to the denial of permission to build a mosque in Bernards Township. One of the first entities to reach out and offer support in connection with that lawsuit was ADL. I worked with ADL in the course of that lawsuit and recognized ADL's commitment to opposing religious discrimination against Muslims in New Jersey. I do not have a basis to opine on issues beyond my personal experience. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit.

14. On June, 3 2021, while you were on the Board of Advisors, the Center held an event titled "*The Hundred Years' War on Palestine: A History of Settler Colonialism and Resistance, 1917–2017*." The "Jewish News Center" labeled this a "pro-Hamas" event and a "terrorist-whitewashing webinar."

a. Were you aware that the Center held this event while you were on the Board of Advisors?

Response: Unrelated to my role on the advisory board, I do recall being told by a colleague at my law firm about a lecture by Professor Rashid Khalidi of Columbia University, who wrote a book with the title set forth in italics above. My role on the advisory board did not extend to or include providing advice or approval on the selection of speakers, speaker events, lectures, or workshops. Other than participating in four meetings of the advisory board over a period of four years, I did not attend any events at Rutgers Law School.

b. Does it surprise you that the Center where you sat on the Board of Advisors would host this event?

Response: I am not familiar with the Jewish News Center and have not been able to identify the source of these quotes, nor am I am familiar with the content of the event described. My role as a member of an advisory board did not extend to or include providing advice or approval on the selection of speakers, speaker events, lectures, or workshops. An advisory board, unlike a board of directors, has no governance or oversight role. My role on the advisory board was limited to participating in four meetings over the course of four years where I focused on academic research. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit. I condemn all forms of terrorism and any attempted justifications of acts of terrorism.

c. Do you agree with the "Jewish News Center's" description of this event?

Response: I am not familiar with the Jewish News Center and have not been able to identify the source of these quotes, nor am I am familiar with the content of the event described. I therefore cannot assess its content or the accuracy of characterizations of its content. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit. I condemn all forms of terrorism and any attempted justifications of acts of terrorism.

15. On September the 11th, 2021, while you were on the Board of Advisors, the Center sponsored an event titled "*Whose Narrative? 20 Years since September 11, 2001*." One of the event's stated purposes was to "challenge[] the exceptionalization of 9/11/2001."

Representative Josh Gottheimer (a Democrat) condemned the Center by name for hosting this event. He said: "*At an event marking the twentieth anniversary of September 11, Rutgers' Center for Security, Race and Rights held an event with several controversial speakers, including those who have ties to terrorist organizations. It is unconscionable that a day meant to reflect on the deadliest attack on United States soil was used to provide a platform to those affiliated with Palestinian Islamic Jihad — a foreign terrorist organization designated by the United States. There is simply no reason why those with ties to militant terrorist organizations, groups who have killed civilians, deserve a podium to students here at Rutgers.*"

a. Were you aware that the Center hosted this event while you were on the Board of Advisors?

Response: No. I have worked in New York City for 23 years and was living in Manhattan on September 11, 2001. I saw the horrific attacks of that day with my own eyes. As I noted at the hearing, it was my city that was attacked. My role on the advisory board did not extend to or include providing advice or approval on the selection of speakers, speaker events, lectures, or workshops. Other than participating in four meetings of the advisory board over a period of four years, I did not attend any events at Rutgers Law School.

b. Were you aware that Rep. Gottheimer criticized the Center and this event by name?

Response: No.

c. Do you agree with Rep. Gottheimer's statement?

Response: I am not familiar with the content of this event and had no involvement in it. I therefore cannot assess its content or the accuracy of characterizations of its content. I condemn all forms of terrorism and any attempted justifications of any acts of terrorism.

d. One of the speakers at the event was Sami Al-Arian, convicted and imprisoned for providing support to the "Palestinian Islamic Jihad" terrorist organization. "Palestinian Islamic Jihad" has victimized countless Jews and Arabs across the Middle East. According to the State Department, Palestinian Islamic Jihad was involved in the atrocities committed against the Jewish people on October 7th, 2023.

i. Were you aware that the Center where you sat on the Board of Advisors sponsored such a speaker?

Response: No. My role on the advisory board did not extend to or include providing advice or approval on the selection of speakers, speaker events, lectures, or workshops. Other than participating in four meetings of the advisory board over a period of four years, I did not attend any events at Rutgers Law School. I do not know any individual named Sami Al-Arian and had not heard of any such person prior to the hearing of the Senate Judiciary Committee on December 13, 2023.

ii. Does it surprise you that the Center where you sat on the Board of Advisors sponsored such a speaker?

Response: My role as a member of an advisory board did not extend to or include providing advice or approval on the selection of speakers, speaker events, lectures, or workshops. An advisory board, unlike a board of directors, has no governance or oversight role. My role on the advisory board was limited to participating in four meetings over the course of four years where I focused on academic research. I have no knowledge regarding this event or any speakers at this event. I condemn all forms of terrorism and any attempted justifications of any acts of terrorism. I do not support providing a platform to any terrorists.

iii. At the event, Al-Arian stated: "*When 9/11 happened, the American political establishment had to explain to the American people what had actually taken place. They only had two possible answers: either the attacks happened because of our policies – which included at the time the occupation of the birthplace of Islam in Saudi Arabia after the Sadam invasion of Kuwait, the subsequent sanctions on Iraq that killed half a million people because, in the words of former Secretary of State Madeline 'Half-Bright,' it was worth it. Or because of the full support and backing of successive US administrations to the . . . colonial settler state of Israel providing it state of the . . . art military hardware.*" Do you think it was appropriate for the Center to host a speaker who made this statement?

Response: I disagree with those statements and condemn any forms of terrorism or attempts to justify or defend any acts of terrorism. I do not support providing a platform to any terrorists. My role on the advisory board did not extend to or include providing advice or approval on the selection of

speakers, speaker events, lectures, or workshops. I have no knowledge regarding this event or any speakers at this event.

iv. **Rep. Josh Gottheimer further stated in reaction to the Center's decision to host the event: "*If these are the speakers shaping the minds of students on campuses, how can any university claim to be working against antisemitism? The free exchange of ideas does not mean support for those who support terrorism and violent extremism*." Do you agree with Rep. Gottheimer's statement?**

Response: I am not familiar with the content of this event and had no involvement in it. I therefore cannot assess its content or the accuracy of characterizations of its content. I oppose antisemitism and bigotry in all its forms, including on college campuses, and condemn all forms of terrorism and any attempted justifications of any acts of terrorism. To the extent this question asks about the boundaries of permissible speech under the First Amendment, I am not permitted under the Code of Conduct for United States Judges to express an opinion as matters presenting these issues may come before me.

v. **In a post on X, Jonathan Greenblatt, CEO of the ADL, praised Rep. Gottheimer's speech condemning the Center stating: *"[i]mportant speech from @RepJoshG at @RutgersU on rise of #antisemitic rhetoric and the need for leaders to better support Jewish communities: 'If we stand together, support one another against hatred, I believe that our best days will always, always be ahead of us.'*" Do you agree with Mr. Greenblatt's statement?**

Response: I am not familiar with the content of this event and had no involvement in it. I therefore cannot assess its content or the accuracy of characterizations of its content. I oppose antisemitism and bigotry in all its forms, including on college campuses, and condemn all forms of terrorism and any attempted justifications of any acts of terrorism. My own work with the ADL on civil rights is a very good example of the approach set forth in this quotation from Mr. Greenblatt, i.e., that "If we stand together, support one another against hatred, I believe that our best days will always, always be ahead of us." To the extent this question asks about the boundaries of permissible speech under the First Amendment, I am not permitted under the Code of Conduct for United States Judges to express an opinion as matters presenting these issues may come before me.

vi. **In 2021, Jason Shames CEO of the Jewish Federation of Northern New Jersey stated that the Center's Sep. 11, 2021 Panel titled "*Whose Narrative? 20 Years since September 11*" sought to "*delegitimize Israel and to push their antisemitic agenda into a mainstream discourse*." Do you agree with Mr. Shames' description of this event?**

Response: I am not familiar with the content of this event and had no involvement in it. I therefore cannot assess its content or the accuracy of characterizations of its content. I condemn antisemitism and bigotry in all its forms, including on college campuses, and condemn all forms of terrorism and any attempted justifications of any acts of terrorism.

16. In 2022, while you were on the Board of Advisors, the Center held an event "*Consistent Partiality: US Foreign Policy on Palestine-Israel*" One of the speakers Peter Beinart stated "There is a deep identification among many conservative white American Christians with Israel. . . . and it partly comes from the fact that Israel, like the United States, is a settler-colonial state"

a. Were you aware that the Center hosted this event while you were on the Board of Advisors?

Response: No. My role on the advisory board did not extend to or include providing advice or approval on the selection of speakers, speaker events, lectures, or workshops. Other than participating in four meetings of the advisory board over a period of four years, I did not attend any events at Rutgers Law School.

b. Do you agree with this statement?

Response: I am not familiar with the content of this event and had no involvement in it. I therefore cannot assess its content or the accuracy of characterizations of its content. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, or any purported "deep identification among many conservative white American Christians with Israel," all of which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit.

17. In 2022, while you were on the Board of Advisors, the Center held an event titled "*Innocent Until Proven Muslim*" with Dr. Maha Hilal.

a. Were you aware that the Center hosted this event while you were on the Board of Advisors?

Response: No. My role on the advisory board did not extend to or include providing advice or approval on the selection of speakers, speaker events, lectures, or workshops. Other than participating in four meetings of the advisory board over a period of four years, I did not attend any events at Rutgers Law School.

b. At the event Dr. Hilal quotes President Bush nine days after 9/11, who said, "*Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated. . . . Whether we bring our enemies to justice, or bring justice to our enemies, justice will be done*." Hilal says that "*when [President Bush] talks about justice, what he's saying is that justice is effectively whatever the United States says it is*." Do you agree with this statement?

Response: I am not familiar with the content of this event and had no involvement in it. I therefore cannot assess its content or the accuracy of characterizations of its content. To the extent I understand the quoted statement from Dr. Hilal, I do not agree with it. I condemn all forms of terrorism and support any effort to bring terrorists to justice.

c. At the same event, Dr. Hilal argued that after 9/11: "*What did change is the use and justification of narratives that legitimized brute force and a different way of coopting and coercing states into a new global world order that the United States was creating*." Do you agree with this statement?

Response: I am not familiar with the content of this event and had no involvement in it. I therefore cannot assess its content or the accuracy of characterizations of its content. To the extent I understand the quoted statement, I do not agree with it. I condemn all forms of terrorism and support any effort to bring terrorists to justice.

18. In April 2022, while you were on the Board of Advisors, the Center hosted a workshop titled: "*College Activism on Palestine*."

a. Were you aware that the Center hosted this workshop while you were on the Board of Advisors?

Response: No. My role on the advisory board did not extend to or include providing advice or approval on the selection of speakers, speaker events, lectures, or workshops. Other than participating in four meetings of the advisory board over a period of four years, I did not attend any events at Rutgers Law School.

19. In March 2023, while you were on the Board of Advisors, the Center held an event titled: "*Mobilizing International Law and Social Movements in the Palestinian Struggle for Justice*."

a. Were you aware that the Center hosted this event while you were on the Board of Advisors?

Response: No. My role on the advisory board did not extend to or include providing advice or approval on the selection of speakers, speaker events, lectures, or workshops. Other than participating in four meetings of the advisory board over a period of four years, I did not attend any events at Rutgers Law School.

20. In November 2022, while you were on the Board of Advisors, the Center held an event titled: "*Settler Colonialism, Race, and the Law: Why Structural Racism Persists*."

a. Were you aware that the Center hosted this event while you were on the Board of Advisors?

Response: No. My role on the advisory board did not extend to or include providing advice or approval on the selection of speakers, speaker events, lectures, or

workshops. Other than participating in four meetings of the advisory board over a period of four years, I did not attend any events at Rutgers Law School.

21. In September 2020, while you were on the Board of Advisors, the Center held an event titled: "*White Christian Privilege: The Illusion of Religious Equality in America.*"

a. Were you aware that the Center hosted this event while you were on the Board of Advisors?

Response: No. My role on the advisory board did not extend to or include providing advice or approval on the selection of speakers, speaker events, lectures, or workshops. Other than participating in four meetings of the advisory board over a period of four years, I did not attend any events at Rutgers Law School.

22. The Center has a "Facts on Palestinian Human Rights" section on their website. This section of the Center's website contains links to a 2021 "Resource Guide on Palestine" which appears to have been prepared by the Center. The resource guide links to a multitude of Anti-Israel and Anti-Semitic groups and publications. The resource guide provides the reader with a list of "Legal and Advocacy Organizations," presumably for the purposes of identifying reputable organizations on the topic. One group identified by the Center is "Jewish Voice for Peace."

a. Were you aware that the Center prepared this resource guide while you were on the Board of Advisors?

Response: No. My role on the advisory board did not extend to or include providing advice or approval on content posted on the website of the Center. I had no involvement in the cited 2021 "Resource Guide on Palestine" and have no knowledge regarding its content, drafting or authorship.

b. Are you aware that the Center has hosted board members for "Jewish Voice for Peace" as speakers?

Response: No. My role on the advisory board did not extend to or include providing advice or approval on the selection of speakers, speaker events, lectures, or workshops. Other than participating in four meetings of the advisory board over a period of four years, I did not attend any events at Rutgers Law School.

c. Are you aware the ADL describes "Jewish Voice for Peace" as "a radical anti-Israel activist group that advocates for a complete economic, cultural and academic boycott of the state of Israel?"

Response: No. I am not familiar with statements of the ADL regarding Jewish Voice for Peace.

23. Shortly after you left the Board of Advisors, and only three days after the brutal October 7th, 2023 massacre and mass rape in Southern Israel, the Center hosted an

event titled "*Psychoanalysis Under Occupation: Practicing Resistance in Palestine*" with Dr. Lara Sheehi.

a. Does it surprise you that the Center where you sat on the Board of Advisors would host this event?

Response: I have no knowledge regarding this event, which appears to have occurred months after I left the advisory board of the Center for Security Race and Rights at Rutgers Law School. The events of October 7, 2023 were horrific, and I condemn them and any attempts to justify or defend them.

b. At this event, Dr. Sheehi opened the talk by stating "It's impossible to give this talk without centering and reminding us how settler colonialism and in this case particularly Zionist settler colonialism is a structure that is the provocation." Do you agree with Dr. Sheehi's statement?

Response: I have no knowledge regarding this event, which appears to have occurred months after I left the advisory board of the Center for Security Race and Rights at Rutgers Law School. I therefore cannot assess its content or the accuracy of characterizations of its content. The events of October 7, 2023 were horrific, and I condemn them and any attempts to justify or defend them. To the extent I understand the quoted statements, I do not agree with them. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit.

24. The Center recently posted on Facebook "The [Anti-Defamation League] is urging hundreds of colleges to investigate Students for Justice in Palestine for material support for terrorism. September 11 politics are back in force." Do you agree with this statement?

Response: I am not familiar with this Facebook posting, which based upon the description above appears to have been made many months after I left the advisory board of the Center for Security Race and Rights at Rutgers Law School. I am not familiar with the purported actions of the ADL discussed therein. I therefore cannot assess its content or the accuracy of characterizations of its content. I am a judicial nominee for the United States Court of Appeals for the Third Circuit. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit.

25. On December 4, 2023, shortly after you left the Board of Advisors, the Center hosted an event titled "*The West, Israel and Settler Colonization of Palestine*" with Prof. Joseph Massad. Prof. Massad is a Distinguished Senior Fellow at the Center. Prof. Massad stated at the event that the "US media scaffolding for the solid U.S. support for the apartheid regime has yet again been shamelessly in evidence from the moment the Palestinian resistance retaliated against Israel, with the usual hypocrisy and radicalized

sympathy for Israeli Jewish victims of war and silence on the far greater numbers of Palestinian victims."

a. Do you agree with Prof. Massad's statement?

Response: I have no knowledge regarding this event, which appears to have occurred months after I left the advisory board of the Center for Security Race and Rights at Rutgers Law School. The events of October 7, 2023 were horrific, and I condemn them and any attempts to justify or defend them. Further, I do not agree with the quoted statements. I am judicial nominee for the United States Court of Appeals for the Third Circuit. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East or media coverage of that conflict. I condemn all forms of antisemitism and any terrorism or justification of acts of terrorism.

b. Does it surprise you that the Center where you (until recently) sat on the Board of Advisors would host this event?

Response: I have no knowledge regarding this event, which appears to have occurred months after I left the advisory board of the Center for Security Race and Rights at Rutgers Law School. The events of October 7, 2023 were horrific, and I condemn them and any attempts to justify or defend them. I am judicial nominee for the United States Court of Appeals for the Third Circuit. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East or media coverage of that conflict. I condemn all forms of antisemitism and any terrorism or justification of acts of terrorism.

c. Prof. Massad, further stated at the event: "[Secretary] Blinken pledged on the first day of the war to bolster Israel's security [and] he underscored the US's unwavering support for Israel's so-called right to defend itself. Claims of mass murder of babies and their decapitation and of mass rapes of women, among others, were dispensed to a white supremacist Western world and Western mainstream media, ready to believe any Israeli claim about the racially inferior Palestinians. The Western press immediately began disseminating Israel's claims as incontestable truth before quietly retracting many of them one by one although President Joe Biden continues shamelessly to propagate these libels as facts." Do you agree with this statement?

Response: I have no knowledge regarding this event, which appears to have occurred months after I left the advisory board of the Center for Security Race and Rights at Rutgers Law School. The events of October 7, 2023 were horrific, and I condemn them and any attempts to justify or defend them. Further, I do not agree with the quoted statement. I am judicial nominee for the United States Court of Appeals for the Third Circuit. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East or media coverage of that conflict. I condemn all forms of antisemitism and any terrorism or justification of acts of terrorism.

d. At the same event Prof. Massad also said: "The point of the current despicable propaganda is to transform the Palestinian struggle from an anti-colonial one into an anti-Semitic one to gain Israel world sympathy. To frame the Israeli soldiers and civilians who died on October 7th as victims of anti-Semitism has the explicit aim of hiding the fact that when Palestinians attack Israel and Israeli Jews they attacked them as colonizers not as Jews." He criticizes the "attempt to exonerate Israel and its Jewish settler citizens from the crime of settler colonialism and racial Supremacy." Do you agree with this statement?

Response: I have no knowledge regarding this event, which appears to have occurred months after I left the advisory board of the Center for Security Race and Rights at Rutgers Law School. The events of October 7, 2023 were horrific, and I condemn them and any attempts to justify or defend them. Further, I do not agree with the quoted statements. I am judicial nominee for the United States Court of Appeals for the Third Circuit. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East or media coverage of that conflict. I condemn all forms of antisemitism and any terrorism or justification of acts of terrorism.

26. With your current knowledge of the Center, do you agree that the Center promotes anti-Semitism?

Response: No one associated with the Center for Security, Race and Rights at Rutgers Law School expressed any antisemitic views to me during any of my personal interactions with them at four meetings of the advisory board over the course of four years. I have no personal knowledge of any activities of the Center for Security, Race and Rights at Rutgers Law School beyond those I have described herein. I oppose antisemitism and religious discrimination in all its forms. To the extent any speakers at any events hosted by the Center for Security, Race and Rights at Rutgers Law School made statements that were antisemitic, or that condoned or attempted to defend or justify the events of October 7, 2023, or any acts of terrorism, I condemn them. I joined the advisory board of the Center for Security, Race and Rights based on its mission to combat bigotry and discrimination and advance religious liberty through academic research at one of New Jersey's preeminent law schools. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit.

a. If yes, when did you conclude that the Center promotes anti-Semitism?

27. While on the Center's advisory board did you conduct any basic due diligence on the Center's activities?

Response: Yes. I conducted due diligence on matters relevant to my role on the advisory board of the center, which was limited to participating in four meetings over four years focused on academic research on areas such as the Religious Land Use and Institutionalized Persons Act. My role as a member of an advisory board did not extend to oversight of the activities of its Director on her personal social media or of speakers at events held by the

Center for Security, Race and Rights. An advisory board, unlike a board of directors, has no governance or oversight role.

a. If no, do you regret not conducting any basic due diligence on the Center?

28. Prior to your confirmation hearing, did you conduct any basic due diligence on the Center's past or current activities?

Response: Yes. I reviewed information on matters relevant to my role on the advisory board of the Center, which was limited to participating in four meetings over four years focused on academic research on areas such as the Religious Land Use and Institutionalized Persons Act. I did not conduct research on events, speakers, or people that have nothing to do with me.

a. If no, do you regret not conducting any basic due diligence on the Center?

29. Did you inform anyone at the White House, Department of Justice, or any Senate Democrats of the Center's activities?

Response: Yes. I disclosed my role on the advisory boards or boards of directors of any organizations to the Senate Judiciary Committee, as well as the White House and the Department of Justice. My role on the advisory board of the Center for Security, Race and Rights focused on academic research. It did not include approval of speaker events or any governance or oversight role.

a. If no, do you regret not informing the White House, Department of Justice, or any Senate Democrats of these activities?

30. Did you inform anyone at the White House, Department of Justice, or any Senate Democrats that (Democratic) Representative Josh Gottheimer and numerous Jewish groups had condemned the Center and/or its director by name for anti-Semitism?

Response: I had no knowledge regarding any such statements.

a. If no, do you regret not informing the White House, Department of Justice, or any Senate Democrats of these condemnations?

Response: I had no knowledge regarding any such statements.

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

Response: My selection process dates back to before the 2020 elections and encompasses almost the entire period of my service on the advisory board. During that time period, as set forth elsewhere herein, I participated in four meetings of the advisory board, where I focused on areas of academic research.

32. In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University's student bar association wrote "Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary." Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."

Response: Yes. I condemn all forms of antisemitism, terrorism, and any defense or justification of acts of terrorism. Any statements supporting or justifying terrorists, acts of terrorism, or the taking of innocent lives would be disqualifying. Disagreements with the policies of the State of Israel or support for the security, safety, and dignity of Palestinians would not be disqualifying.

33. Do you consider a law student's public endorsement of or praise for an organization listed as a "Foreign Terrorist Organization," such as Hamas or the Popular Front for the Liberation of Palestine, to be a disqualification for a potential clerkship in your chambers? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "no."

Response: Yes. I condemn all forms of antisemitism, terrorism, and any defense or justification of acts of terrorism. Any statements supporting or justifying terrorists, acts of terrorism, or the taking of innocent lives would be disqualifying. Disagreements with the policies of the State of Israel or support for the security, safety and dignity of Palestinians would not be disqualifying.

34. If you discovered a potential clerk had served as an advisory board member of a group widely accused of promoting anti-Semitism, would you consider that something worth investigating before extending a clerkship offer?

Response: I would have no concerns about a potential clerk having served on the advisory board of an academic center at a preeminent law school aimed at combatting bigotry and discrimination and advancing religious liberty. In assessing any such claims regarding events involving speakers who may have made antisemitic statements, I would be conscious of the fact that an advisory board is very different from a board of directors, and that advisory board members typically have a narrow focus and no role in governance or oversight. I would ask the potential clerk what their role was, whether they had any involvement in the challenged events, and assess the content of their character. I would not attribute antisemitic views to that potential clerk based upon a mere role on an advisory board, or based upon characteristics such as their religion. I would focus in my analysis on any statements made by that potential clerk, not upon statements by other people that the potential clerk does not know, or of which that potential clerk had no knowledge.

a. If this potential clerk claimed during his clerkship interview he had no knowledge of this group's numerous anti-Sematic events, including ones widely

reported in the press, would you consider that a possible indication of the potential clerk's lack of diligence?

Response: No. In assessing any such claims regarding events involving speakers who may have made antisemitic statements, I would be conscious of the fact that an advisory board is very different from a board of directors, and that advisory board members typically have a narrow focus and no role in governance or oversight. I would have no concerns about a potential clerk having served on the advisory board of an academic center at a preeminent law school aimed at combatting bigotry and discrimination and advancing religious liberty. I would ask the potential clerk what their role was, whether they had any involvement in the challenged events, and assess the content of their character. I would not attribute antisemitic views to that potential clerk based upon a mere role on an advisory board, or based upon characteristics such as their religion. I would focus in my analysis on any statements made by that potential clerk, not upon statements by other people that the potential clerk does not know, or of which that potential clerk had no knowledge.

b. If this potential clerk had played a role in arranging funding for this anti-Semitic group would you consider him/her disqualified from a potential clerkship in your chambers?

Response: I would have no concerns about a potential clerk having donated to a university foundation associated with a preeminent law school to help support academic research to defeat bigotry and discrimination and advance religious liberty. If a potential clerk arranged funding with the goal of promoting antisemitic goals, however, I would consider that disqualifying. I would not attribute antisemitic views to that potential clerk based upon a mere role on an advisory board or based upon characteristics such as their religion. I would focus in my analysis on any statements made by that potential clerk, not upon statements by other people that the potential clerk does not know, or of which that potential clerk had no knowledge.

c. If it emerged that this potential clerk had downplayed their role in this anti-Semitic group in order to receive a clerkship offer would you consider him/her disqualified from a potential clerkship in your chambers?

Response: I would have no concerns about a potential clerk having served on the advisory board of an academic center at a preeminent law school aimed at combatting bigotry and discrimination and advancing religious liberty. I would assess whether the potential clerk had accurately described their role. I would not attribute antisemitic views to that potential clerk based upon a mere role on an advisory board or based upon characteristics such as their religion. I would focus in my analysis on any statements made by that potential clerk, not upon statements by other people that the potential clerk does not know, or of which that potential clerk had no knowledge.

d. If this potential Clerk refused to clearly condemn this group's anti-Semitic remarks and events would you consider him/her disqualified from a potential clerkship in your chambers?

Response: I would have no concerns about a potential clerk having served on the advisory board of an academic center at a preeminent law school aimed at combatting bigotry and discrimination and advancing religious liberty. I would focus upon whether the potential clerk was willing to clearly condemn antisemitism in all its forms. If the potential clerk had repeatedly condemned any antisemitic statements, including any statements by speakers at events with which that potential clerk has no connection, I would consider that dispositive. I would consider it deeply inappropriate for any person to demand that a potential clerk endlessly repeat their condemnations of antisemitism and terrorism based on their religion. I would not attribute antisemitic views to that potential clerk based upon a mere role on an advisory board or based upon characteristics such as their religion. I would focus in my analysis on any statements made by that potential clerk, not upon statements by other people that the potential clerk does not know, or of which that potential clerk had no knowledge.

35. The Third Circuit has explained that "willful blindness" may be established by showing that a defendant "*deliberately closed his eyes to what otherwise would have been obvious to him concerning the fact in question*." *United States v. Brodie*, 403 F.3d 123, 148 (3d Cir. 2005). Is this an accurate legal definition of willful blindness?

Response: Black's Law Dictionary (11th ed. 2019) defines "willful blindness" as "deliberate avoidance of knowledge of a crime, esp. by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable." As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from expressing an opinion as matters that may come before me, including the accuracy of legal definitions set forth by the Third Circuit.

36. Please explain whether you agree or disagree with the following statement: "The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach."

Response: I disagree. Judges must set aside their personal views and adhere to binding precedent.

37. When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's response was: "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?

Response: No. Judges must set aside their personal views and adhere to binding precedent.

38. Do you believe it is appropriate for the Third Circuit to grant a petition for rehearing en banc because the relevant panel decision made a factual error?

Response: Petitions for rehearing en banc are governed by Federal Rule of Appellate Procedure 35(a). As set forth therein, an en banc hearing or rehearing "is not favored and ordinarily will not be ordered unless" one of two circumstances exists: "(1) en banc

consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance."

39. Do you believe it is appropriate for the Third Circuit to grant a petition for rehearing en banc because the relevant panel decision reached an undesirable policy outcome?

Response: Petitions for rehearing en banc are governed by Federal Rule of Appellate Procedure 35(a). As set forth therein, an en banc hearing or rehearing "is not favored and ordinarily will not be ordered unless" one of two circumstances exists: "(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance."

40. Please describe the relevant law governing when a federal court may entertain and grant a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court.

Response: 28 U.S.C. § 2254 governs when a federal court may entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a state court. As a threshold matter, habeas corpus can be granted only if the applicant is "in custody in violation of the Constitution or laws or treaties of the United States." *Id.* § 2254(a). Next, the applicant must have exhausted the available state remedies, or there must be no state remedies available, or any such process would be ineffective to protect the applicant's rights. *Id.* § 2254(b). For claims adjudicated on the merits in a state court proceeding, the court cannot grant habeas corpus unless that adjudication "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *Id.* § 2254(d). For adjudications based on a state court's determination of factual issues, there is a presumption that the state court's factual determinations are correct, and the applicant has the burden of rebutting that presumption by clear and convincing evidence. *Id.* § 2254(e)(1).

41. Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence.

Response: 28 U.S.C. § 2255(a) provides that a federal court may vacate, set aside, or correct a sentence if the court finds that "the [sentencing] court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." There is a one-year limitations period to seek this relief. *Id.* § 2255(f). Additionally, any second or successive motion under this provision requires certification by the appropriate court of appeals that the motion contains newly discovered evidence that would preclude a finding of guilt or that there is a new rule of constitutional law that was previously unavailable. *Id.* § 2255(h); *see also Jones v. Hendrix*, 599 U.S. 465, 480 (2023) (holding "Section 2255(h) specifies the two limited conditions in which Congress has permitted federal prisoners to bring second or successive collateral attacks on their sentences.").

42. Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.

Response: In *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, Students for Fair Admissions challenged Harvard College's and University of North Carolina's admissions policies for their consideration of race in making admissions decisions. 600 U.S. 181 (2023). The Supreme Court examined each policy under strict scrutiny and held that the admissions policies of Harvard College and the University of North Carolina violated the Equal Protections Clause because both programs "lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points." *Id.* at 230.

43. Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?

Response: Yes. I have periodically been involved in conducting interviews and advising on hiring determinations at my law firm Patterson Belknap Webb & Tyler LLP. I also served for a period of time when I was an associate on our firm's hiring committee.

If yes, please list each job or role where you participated in hiring decisions.

Response: Associate, Counsel, and Partner at Patterson Belknap Webb & Tyler LLP.

44. Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?

Response: No.

45. Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?

Response: No.

46. Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?

Response: Not to my knowledge.

If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

47. Under current Supreme Court and Third Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?

Response: Yes, racial classifications are subject to strict scrutiny, which considers "whether the racial classification is used to further compelling governmental interests" and "whether the government's use of race is narrowly tailored—meaning necessary—to achieve that interest." *Students for Fair Admissions Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206-07 (2023); *see also Hassan v. City of New York*, 804 F.3d 277, 299 (3d Cir. 2015).

48. Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.

Response: In *303 Creative LLC v. Elenis*, the Supreme Court held that the application of a Colorado public accommodations law would require a website designer to create websites for same-sex couples, which contradicted her sincerely held religious beliefs and constituted compelled speech that violated the First Amendment's free speech guarantees. 600 U.S. 570 (2023).

49. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: "*If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein*."

Is this a correct statement of the law?

Response: Yes, the Supreme Court has quoted this statement in recent decisions. *See, e.g.*, *303 Creative Inc. v. Elenis*, 600 U.S. 570, 584-85 (2023); *Janus v. Amer. Fed'n of State, Cnty., & Mun. Emps.*, 138 S. Ct. 2448, 2463 (2018).

50. How would you determine whether a law that regulates speech is "content-based" or "content-neutral"? What are some of the key questions that would inform your analysis?

Response: "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). To determine whether particular speech is content based, the court must consider whether the regulation "draws distinctions based on the message a speaker conveys," for example by the subject matter or function or purpose of the speech. *Id.* Additionally, even laws that are facially content neutral may be considered content based if the justification for the law is in reference to the content of the speech or if the law was adopted due to disagreement with the message conveyed. *Id.* at 164. "By contrast, laws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content neutral." *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 643 (1994).

51. What is the standard for determining whether a statement is not protected speech under the true threats doctrine?

Response: The true threats doctrine "encompass[es] those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003). "The speaker need not actually intend to carry out the threat." *Id.* at 359-60. A statement may be a true threat "based solely on its objective content." *Counterman v. Colorado*, 600 U.S. 66, 72 (2023).

52. Under Supreme Court and Third Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?

Response: The Supreme Court has recognized three categories of questions, which can be "vexing" to distinguish: questions of fact, questions of law, and mixed questions of fact and law. *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982). The Supreme Court stated, "the fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Miller v. Fenton*, 474 U.S. 104, 114 (1985).

53. Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?

Response: In 18 U.S.C. § 3353(a), courts are directed to impose a sentence "sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection" which are: "(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." These sentencing purposes together constitute just one of seven factors to be considered in imposing a sentence. 18 U.S.C. § 3353(a). I would consider each of the factors specified in statute. Congress has not elevated any one purpose of sentencing above the others as the most important.

54. Please identify a Supreme Court decision from the last 50 years that you think is particularly well reasoned and explain why.

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from expressing opinions on matters that may come before me, including opinions on the quality of the reasoning of a decision of the Supreme Court. If confirmed, I would follow all binding precedents of the Supreme Court.

55. Please identify a Third Circuit judicial opinion from the last 50 years that you think is particularly well reasoned and explain why.

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from expressing opinions on matters that may come before me, including opinions on the quality of the reasoning of a decision of the Third Circuit.

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

Response: 18 U.S.C. § 1507 prohibits any individual from picketing, parading, or similarly demonstrating in or near a courthouse, residence, or building occupied or used by a judge, juror, witness, or court officer with the intent to interfere with, obstruct, or impede the administration of justice, or to influence any judge, juror, witness, or court officer.

57. Is 18 U.S.C. § 1507 constitutional?

Response: To my knowledge, the Supreme Court has not considered the constitutionality of 18 U.S.C. § 1507. *See also Cox v. Louisiana*, 379 U.S. 536 (1965) (addressing constitutionality of state statute in case involving picketing before a courthouse). As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from expressing opinions on matters that may come before me, including the constitutionality of 18 U.S.C. § 1507.

58. Is it ever appropriate to consider foreign law in constitutional interpretation? If yes, please describe in which circumstances such consideration would be appropriate.

Response: The Supreme Court has only occasionally referenced foreign law in constitutional interpretation. For example, it referenced foreign law and international authorities to interpret the Eighth Amendment's prohibition on cruel and unusual punishment. *See, e.g.*, *Roper v. Simmons*, 543 U.S. 551, 575 (2005); *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002).

59. 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?

Response: Yes. As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, but *Brown v. Board of Education* is one of a small number of cases that addressed issues that are highly unlikely to come before the Third Circuit again. Accordingly, I view it as permissible under the Code of Conduct for United States Judges to state my opinion that it was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

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

Response: Yes. As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, but *Loving v. Virginia* is one of a small number of cases that addressed issues that are highly unlikely to come before the Third Circuit again. Accordingly, I view it as

permissible under the Code of Conduct for United States Judges to state my opinion that it was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

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

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

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

Response: The Supreme Court overruled *Roe v. Wade* it its recent decision in *Dobbs v. Jackson Women's Health*.

e. Was *Planned Parenthood v. Casey* correctly decided?

Response: The Supreme Court overruled *Planned Parenthood v. Casey* it its recent decision in *Dobbs v. Jackson Women's Health*.

f. Was *Gonzales v. Carhart* correctly decided?

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

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

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

h. Was *McDonald v. City of Chicago* correctly decided?

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me,

including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

k. Was *Dobbs v. Jackson Women's Health* correctly decided?

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

l. Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

m. Was *303 Creative LLC v. Elenis* correctly decided?

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

60. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?

Response: In *New York Rifle & Pistol Association v. Bruen*, the Supreme Court explained that to determine whether a firearm restriction is consistent with the Second Amendment, a court must "assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." 597 U.S. 1, 26 (2022).

61. 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? If so, who?

Response: No.

c. Have you ever been in contact with anyone associated with Demand Justice? If so, who?

Response: I do not recall being in contact with anyone associated with this group.

62. 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? If so, who?

Response: Nan Aron and Vasu Abhiraman, who are individuals formerly or currently associated with the Alliance for Justice, were present at the nominations hearing before the Senate Judiciary Committee on December 13, 2023. I spoke with Nan Aron and Vasu Abhiraman after the hearing.

c. Have you ever been in contact with anyone associated with the Alliance for Justice? If so, who?

Response: Yes. I was introduced socially to Nan Aron, who is a former President of the Alliance for Justice, perhaps over a decade ago. When I considered a judicial role, Ms. Aron introduced me to certain of her colleagues, including Daniel Goldberg, Vasu Abhiraman, and Jake Faleschini, who provided overviews regarding the judicial nomination and confirmation process.

63. 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: I am not familiar with any of these entities and have included them in my answer above.

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: I do not recall being in contact with anyone associated with this group.

64. 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? If so, who?

Response: No.

c. Have you ever been in contact with anyone associated with the Open Society Foundations? If so, who?

Response: I do not recall being in contact with anyone associated with this group.

65. 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? If so, who?

Response: No.

c. Have you ever been in contact with anyone associated with Fix the Court? If so, who?

Response: I do not recall being in contact with anyone associated with this group.

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

Response: Prior to the 2020 elections, I was invited to submit an application for judicial nomination to Senator Cory Booker's office. I met via Zoom with Senator Booker's judicial selection committee, his senior staff, and then with Senator Booker. I also spoke by telephone with Senator Menendez.

Subsequently, I had further discussions with Senator Booker's staff about potential openings, including in 2023. I was apprised in mid-September 2023 by Senator Booker's office that I was being considered for a position on the Third Circuit Court of Appeals. On September 28, 2023, I met via Zoom with Senator Menendez and members of his staff. I spoke again with Senator Menendez on October 4 and with Senator Booker a few days later.

Since October 4, 2023, I have been in contact with officials from the Office of the White House Counsel, the Department of Justice, and the Office of Legal Policy at the Department of Justice with regard to my potential nomination, my nomination, and then the confirmation process. On November 15, 2023, the President announced his intent to nominate me.

67. 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: I did not speak with anyone associated with this group and am not aware of anyone having done so on my behalf.

68. 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: I did not speak with anyone associated with this group and am not aware of anyone having done so on my behalf.

69. 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, or any other such Arabella dark-money fund that is still shrouded.

Response: I did not speak with anyone associated with this group and am not aware of anyone having done so on my behalf.

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

Response: I did not speak with anyone associated with this group and am not aware of anyone having done so on my behalf.

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

Response: I did not speak with anyone associated with this group and am not aware of anyone having done so on my behalf.

72. Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?

Response: No.

a. If yes,

i. Who?

ii. What advice did they give?

iii. Did they suggest that you omit or include any particular case or type of case in your questionnaire?

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

Response: Prior to the 2020 elections, I was invited to submit an application for judicial nomination to Senator Cory Booker's office. I met via Zoom with Senator Booker's judicial selection committee, his senior staff, and then with Senator Booker. I also spoke by telephone with Senator Menendez.

Subsequently, I had further discussions with Senator Booker's staff about potential openings, including in 2023. I was apprised in mid-September 2023 by Senator Booker's office that I was being considered for a position on the Third Circuit Court of Appeals. On September

28, 2023, I met via Zoom with Senator Menendez and members of his staff. I spoke again with Senator Menendez on October 4 and with Senator Booker a few days later.

Since October 4, 2023, I have been in contact with officials from the Office of the White House Counsel, the Department of Justice, and the Office of Legal Policy at the Department of Justice with regard to my potential nomination, my nomination, and then the confirmation process. On November 15, 2023, the President announced his intent to nominate me.

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

Response: I received these written questions on December 20, 2023. I then drafted written responses over the next week. I submitted those draft responses to the Office of Legal Policy and received suggestions on minor areas for clarification, which I then implemented to the extent that I agreed, and finalized the responses. I then provided those responses to the Office of Legal Policy for transmission to the Senate Judiciary Committee.

Senator Mike Lee
Questions for the Record
Adeel Abdullah Mangi, Nominee for Circuit Court Judge for the Third Circuit

1. How would you describe your judicial philosophy?

Response: I believe that litigants before the federal courts should receive consistent adjudication regardless of the judge or panel of judges that happen to be assigned to their case. If I were confirmed, I would approach each case consistent with that philosophy, focusing on the just and fair application of the Constitution, statute, and precedent, and where appropriate in dealing with ambiguous statutes, canons of construction or legislative history, consistent with the methods prescribed by the United States Supreme Court and the United States Court of Appeals for the Third Circuit, while setting aside any personal views. I would keep an open mind, study closely the briefs and arguments of counsel, and work cooperatively with my colleagues on the bench to thoroughly discuss and explore any issues presented. I would endeavor to write opinions that are thorough, well-reasoned, and clear.

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

Response: I would begin by reviewing the language of the statute in question and any Supreme Court or Third Circuit precedent construing it. Where the plain meaning of a federal statute is unambiguous, the inquiry need go no further. I would apply the plain meaning of the statute consistent with any binding precedent. Where a statute is ambiguous, the Supreme Court has relied on other sources to construe the statute, including canons of construction (*Barnhart v. Thomas*, 540 U.S. 20, 26-28 (2003)) and legislative history (*United Steelworkers of America v. Weber*, 443 U.S. 193, 202 (1979)). I would consider resort to these potential sources, while being mindful of the parameters and cautions set forth by the Supreme Court and the Third Circuit, if confronted with an ambiguous statute in a situation where governing precedent does not provide an answer. *See also United States v. Kouevi*, 698 F.3d 126, 133 (3d Cir. 2012) ("Legislative history is only an appropriate aid to statutory interpretation when the disputed statute is ambiguous.").

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

Response: I would rely upon relevant Supreme Court and Third Circuit precedent, and the sources relied upon therein, when interpreting a constitutional provision.

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

Response: If confirmed to the United States Court of Appeals for the Third Circuit, I would diligently apply the interpretive methods for issues of constitutional interpretation prescribed by the United States Supreme Court and the Third Circuit.

The text of constitutional provisions is always of primary importance and there are numerous cases where those courts have prescribed the application of original public meaning. For example, the United States Supreme Court has employed an originalist approach in dealing with several constitutional provisions, such as the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and the Confrontation Clause of the Sixth Amendment in *Crawford v. Washington*, 541 U.S. 36 (2004). The Court has expanded upon these principles in various cases. For example, in *New York State Rifle & Pistol Association v. Bruen*, which dealt with the Second Amendment, the Court applied the original "public understanding" of that constitutional provision and held that "the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry." 597 U.S. 1, 38 (2022). The Court further held that "[a]lthough [the Constitution's] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* at 28.

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

Response: The plain meaning of the text of a statute is of primary importance as set forth in my response to Question 2 above.

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

Response: In *Bostock v. Clayton County*, which dealt with the interpretation of Title VII of the Civil Rights Act of 1964, the Court held that "[t]his Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." 140 S. Ct. 1731, 1738 (2020). "With this in mind, our task is clear. We must determine the ordinary public meaning of Title VII's command . . . ." *Id.* The Court concluded that "[f]rom the ordinary public meaning of the statute's language at the time of the law's adoption, a straightforward rule emerges: An employer violates Title VII when it intentionally fires an individual employee based in part on sex." *Id.* at 1741. The Supreme Court has recognized that, "[a]lthough [a law's] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *N.Y. Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 28 (2022).

7. What are the constitutional requirements for standing?

Response: To establish standing, "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

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

Response: Article I of the Constitution sets out Congress's powers. In *Nat'l Fed'n of Indep. Bus. v. Sebelius*, the Supreme Court noted that "[t]he Federal Government is acknowledged by all to be one of enumerated powers." 567 U.S. 519, 533 (2012). One power granted to Congress in Article I is the necessary and proper clause, art. I, § 8, cl. 18, which affords Congress the power to take actions in furtherance of matters "within the scope" of its Article I powers so long as those actions are not otherwise prohibited by the Constitution. *McCulloch v. Maryland,* 17 U.S. 316, 323 (1819).

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

Response: Where an enacted law does not reference a specific enumerated power, the question of whether that law is constitutional "does not depend on recitals of the power which it undertakes to exercise." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). However, "[i]f no enumerated power authorizes Congress to pass a certain law, that law may not be enacted, even if it would not violate any of the express prohibitions in the Bill of Rights or elsewhere in the Constitution." *Id.* at 535.

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

Response: The Supreme Court has recognized that the Due Process Clause of the Fifth and Fourteenth Amendments guarantee certain fundamental rights "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksburg*, 521 U.S. 702, 721 (1997). The Supreme Court has recognized such rights as including: the right to marry (*Loving v. Virginia*, 388 U.S. 1 (1967); *Obergefell v. Hodges*, 576 U.S. 644 (2015)); the right to engage in intimate consensual conduct (*Lawrence v. Texas*, 539 U.S. 558 (2003)); the right to obtain contraceptives (*Griswold v. Connecticut*, 381 U.S. 479 (1965)); the right to make certain decisions regarding one's children (*Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923)); and the right to bodily autonomy (*Rochin v. California*, 342 U.S. 165 (1952)).

11. What rights are protected under substantive due process?

Response: *See* response to Question 10 above.

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, 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: I would follow the approach set forth by the Supreme Court and the Third Circuit with regard to the identification of the types of rights that are subject to due process protection. The Supreme Court rejected the *Lochner* analysis in *West Coast Hotel v. Parrish*, which recognized a constitutional power to restrict freedom of contract. 300 U.S. 379 (1937). However, the Supreme Court has continued to recognize that the Due Process Clause protects other personal rights notwithstanding that decision. *See, e.g.*, *Dobbs v. Jackson's Women's Health Org.*, 597 U.S. 215 (2022).

13. What are the limits on Congress's power under the Commerce Clause?

Response: The Commerce Clause of the Constitution grants Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, § 8, cl. 3. The Supreme Court has recognized that under the Commerce Clause, "Congress may regulate the channels of interstate commerce, persons or things in interstate commerce, and those activities that substantially affect interstate commerce." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012).

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

Response: The Supreme Court has defined a "suspect class" as one "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). The Supreme Court has held that race, religion, national original, and alienage constitute suspect classes. *See New Orleans v. Dukes*, 427 U.S. 297 (1976); *Graham v. Richardson*, 403 U.S. 365, 372 (1971).

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

Response: The Supreme Court has found that the separation of powers is "intended, in part, to protect each branch of government from incursion by the others," *Bond v. United States*, 564 U.S. 211, 222 (2011), and is "designed to preserve the liberty of all the people," *Collins v. Yellen*, 141 S. Ct. 1761, 1780 (2021).

16. 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 follow Supreme Court and Third Circuit precedent in dealing with any such separation of powers challenge to action by a branch of government. In *I.N.S. v. Chadha*, the Supreme Court stated that "[w]ith all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution." 462 U.S. 919, 959 (1983).

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

Response: The Oxford English Dictionary defines "empathy" as "the ability to understand and appreciate another person's feelings, experience, etc." If confirmed to the Third Circuit, I would make judicial decisions based upon the applicable law and precedent, not upon another person's feelings.

18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Neither outcome is desirable, and I do not have a view of which is worse. If confirmed to the Third Circuit, I would endeavor in each case to come to the correct decision.

19. 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 reasons for any change in the exercise of the power of judicial review by the Supreme Court between the periods identified. If confirmed to the Third Circuit, I would follow binding precedents of the Supreme Court and the Third Circuit when addressing any cases involving the appropriate parameters of judicial review.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial review" as "a court's review of a lower court's or an administrative body's factual or legal findings." It defines "judicial supremacy" as "the doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

21. 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 Chief Justice Marshall declared, "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S.

137, 177 (1803). Thus, "the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). In short, state and federal elected officials must follow duly rendered judicial decisions. However, as exemplified relevant to this question by the citizenship provisions of the Fourteenth Amendment, elected officials have the option to pursue constitutional amendments pursuant to Article V.

22. 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: Judges have a limited and focused role in our constitutional separation of powers scheme under Article III. That role is centered on the dispassionate application of law to facts while setting aside personal preferences in a system that recognizes judicial supremacy as defined in response to Question 20 above.

23. As a circuit court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a circuit 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 circuit court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: It is the obligation of a Circuit Judge to appropriately apply controlling Supreme Court precedent and prior precedent of the Circuit. The Third Circuit has further recognized its obligation to "not idly ignore considered statements the Supreme Court makes in dicta. The Supreme Court uses dicta to help control and influence the many issues it cannot decide because of its limited docket. Appellate courts that dismiss these expressions [in dicta] and strike off on their own increase the disparity among tribunals (for other judges are likely to follow the Supreme Court's marching orders) and frustrate the evenhanded administration of justice by giving litigants an outcome other than the one the Supreme Court would be likely to reach were the case heard there." *In re McDonald*, 205 F.3d 606, 612-13 (2000) (internal quotes omitted) (brackets original). It is the role of the Supreme Court to consider whether to overturn its own prior precedents consistent with the tests that it has set forth. *See Janus v. Amer. Fed'n of State, Cnty., & Mun. Emps.*, 138 S. Ct. 2448 (2018).

24. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: These factors should play no role in sentencing analysis. *See U.S.S.G.* § 5H1.10.

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

Response: I am not familiar with the definition set forth above, nor do I have or utilize any personal definition of this term. Black's Law Dictionary (11th ed. 2019) defines "equity" as "fairness; impartiality; evenhanded dealing."

26. Without citing Black's Law Dictionary, do you believe there is a difference between "equity" and "equality?" If so, what is it?

Response: I do not have or utilize personal definitions of these terms. The Merriam-Webster Dictionary defines "equity" as "justice according to natural law or right," and "equality" as "the quality or state of being equal."

27. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 25)?

Response: The Equal Protection Clause in the Fourteenth Amendment states that "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." I am not aware of any precedent from the Supreme Court or Third Circuit that uses the term "equity" as defined by the Biden Administration per Question 25 in connection with the Equal Protection Clause.

28. Without citing Black's Law Dictionary, how do you define "systemic racism?"

Response: I do not have or utilize a personal definition of the term "systemic racism." The Merriam-Webster Dictionary defines "systemic racism" as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)."

29. Without citing Black's Law Dictionary, how do you define "critical race theory?"

Response: I do not have or utilize a personal definition of the term "critical race theory." The Merriam-Webster Dictionary defines "critical race theory" as "a group of concepts (such as the idea that race . . . is a sociological rather than biological designation, and that racism . . . pervades society and is fostered and perpetuated by the legal system) used for examining the relationship between race and the laws and legal institutions of a country and especially the United States."

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

Response: See responses to Questions 28 and 29.

31. During your Nomination Hearing on December 13, 2023, you testified that you had no prior knowledge of several events hosted by the Center for Security, Race and Rights at Rutgers Law School. These events were widely reported in the media and drew criticism from New Jersey Democratic Congressman Josh Gottheimer. The events included many controversial speakers, including one person who pled guilty to providing material support to terrorists. You served on the advisory board and claimed to have a limited role in the Center. Is it appropriate for a person nominated to serve as a federal Circuit Court of Appeals judge to have a history of working with organizations that provide a platform to anti-Semitic statements and promotion of jihad, like the Center? As an advisory board member, how could you not have known about these widely publicized and criticized events?

Response: I joined the advisory board of the Center for Security, Race and Rights at Rutgers Law School based on its mission to combat bigotry and discrimination and advance religious liberty through academic research at one of New Jersey's preeminent law schools.

My role as a member of the advisory board focused on issues relating to areas for academic research. I participated in a total of four meetings of the advisory board during the four years that I was on it. Academic areas of research that I advised on included the Religious Land Use and Institutional Persons Act, the Religious Freedom Restoration Act, freedom of information, actions under 42 U.S.C. § 1983, employment discrimination, school bullying, appropriate law enforcement approaches when dealing with religious minorities, and national security. At no time during my personal involvement with the Center did I hear anyone express antisemitic views or support terrorism. If I had, I would have challenged such statements and taken further appropriate action given my strong and unequivocal opposition to and condemnation of antisemitism and terrorism.

The advisory board had no role in oversight or governance. My role on the advisory board did not extend to or include approval of speakers or speaker events. I had no involvement in any of the speaker events or symposia arranged by the Center for Security, Race and Rights at Rutgers Law School that were brought to my attention at the Senate Judiciary Committee hearing on December 13, 2023, and was not aware of them before that hearing. Any speaker events organized by the Center were irrelevant to my limited role. I do not follow the statements of Congressman Josh Gottheimer and this public criticism of the Center was not brought to my attention. My interest in and involvement with Rutgers Law School was limited to the goal of combatting bigotry and discrimination and advancing religious liberty through academic research.

I oppose antisemitism and religious discrimination in all its forms. To the extent any speakers at any events hosted by the Center for Security, Race and Rights at Rutgers Law School made statements that were antisemitic, or that condoned or attempted to defend or justify the events of October 7, 2023, or any acts of terrorism, I condemn them.

Perhaps the best assessment responsive to your question, however, comes from Jewish groups who had occasion to watch the Senate Judiciary Committee Hearing on December 13, 2023, and assess the issues relating to my service on this advisory board. The American Jewish Committee recently released a statement noting that I "was questioned aggressively on thin pretext about [my] views on Israel, terrorism, and antisemitism, turning these serious issues into a tool of partisan attack." The statement went on: "American Jewish Committee (AJC) has joined several U.S. Supreme Court briefs led by Mangi and find him to be an able jurist, a person of integrity, champion of pluralism, and adversary of discrimination against any group." *See* American Jewish Congress, *AJC Statement on Questioning of Adeel Mangi at Senate Judiciary Hearing* (Dec. 21, 2023), https://www.ajc.org/news/ajc-statement-on-questioning-of-adeel-mangi-at-senate-judiciary-hearing. AJC describes itself as "the global advocacy organization for the Jewish people. With headquarters in New York, 25 offices across the United States, 14 overseas posts, as well as partnerships with 38 Jewish community organizations worldwide, AJC's mission is to enhance the well-being of the Jewish people and Israel and to advance human rights and democratic values in the United States and around the world." *Id.*

Separately, a collection of 15 Jewish organizations representing more than a million people across the country wrote a letter to Senators on December 18, 2023, after my Senate Judiciary Committee hearing, expressing "strong support" for my nomination. That letter stated that "[i]n Adeel A. Mangi, the Senate has the opportunity to confirm one of the most preeminent lawyers with an impeccable career and credentials that more than prepare him for a lifetime position on our federal courts." The letter concluded that "[h]aving ethical and unbiased judges is ingrained in our Jewish teachings in which we are taught that 'judges need to be people of strength through good deeds.' It is clear to us that Adeel A. Mangi is a person of strength and good deeds, as evidenced by his career, devotion to his community, and commitment to religious freedom and civil rights." That letter was signed by the following 15 Jewish groups: ALEPH: Alliance for Jewish Renewal, Ameinu, Avodah, Bend the Arc: Jewish Action, Carolina Jews for Justice, Jewish Community Action, Jewish Democratic Council of America, Jewish Women International, National Council of Jewish Women, New York Jewish Agenda, Society for Humanistic Judaism, T'ruah: The Rabbinic Call for Human Rights, The Shalom Center, The Workers Circle, and Zioness. *See* Jennifer Bendry, *Jewish Groups Line Up In Support of Biden's Muslim Court Pick Assailed by GOP*, HUFFINGTON POST (Dec. 19, 2023), https://www.huffpost.com/entry/jewish-groups-muslim-judicial-nominee-gop-islamophobia_n_6581e857e4b01d1b95357921.

I am ready and prepared to be held accountable for any statement that I have ever made, any word that I have ever written, or any action that I have ever taken. I have

not been asked, however, about any such statement, word, or action. I am not and should not be held accountable for statements made by people I do not know at events that I was not involved with and only learned about during my appearance before the Senate Judiciary Committee. Moreover, as I did during my hearing and do again here, I condemn antisemitism unequivocally and in the strongest possible terms.

32. The Center for Security, Race and Rights at Rutgers Law School hosted an event on the 20th anniversary of the September 11th terror attacks that killed nearly 3,000 American civilians. The event was named "Whose Narrative? 20 Years since September 11, 2001." This event featured the convicted terrorist conspirator. Do you believe there is a legitimate argument to be made in favor attacking the United States on September 11, 2001, as suggested by the name of the event?

Response: No. Until my hearing on December 13, 2023, I had no knowledge regarding this event, its title, or this speaker. I have worked in New York City for 23 years and was living in Manhattan on September 11, 2001. I saw the horrific attacks on my country that day with my own eyes. To the extent any speakers at any events hosted by the Center for Security, Race and Rights at Rutgers Law School made statements that condoned or attempted to defend or justify the events of September 11, 2001, or any act of terrorism, I condemn them. As I noted at the hearing, it was my city that was attacked. I am ready and prepared to be held accountable for any statement that I have ever made, any word that I have ever written, or any action that I have ever taken. I have not been asked, however, about any such statement, word, or action. I am not and should not be held accountable for statements made by people I do not know at events that I was not involved with and only learned about during my appearance before the Senate Judiciary Committee.

33. The same Rutgers Law School Center for Security, Race and Rights event on September 11, 2021 featured a speaker who has called for an "intifada in the United States." Do you believe there should be an intifada in the United States?

Response: No. Until my hearing on December 13, 2023, I had no knowledge regarding this event, this speaker, or this statement. I do not understand what it means to call "for Intifada in the United States." To the extent the speaker called for any unlawful conduct in the United States, I condemn it. I am ready and prepared to be held accountable for any statement that I have ever made, any word that I have ever written, or any action that I have ever taken. I have not been asked, however, about any such statement, word, or action. I am not and should not be held accountable for statements made by people I do not know at events that I was not involved with and only learned about during my appearance before the Senate Judiciary Committee.

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

Questions for the Record for Adeel Abdullah Mangi nominated to be United States Circuit Judge for the Third Circuit

I. Directions

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

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

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

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

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

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

II. Questions

1. Is racial discrimination wrong?

Response: Yes. The Constitution provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. The Supreme Court has held that racial discrimination by the federal government is similarly prohibited by the due process clause of the Fifth Amendment. *Bolling v. Sharpe*, 347 U.S. 497 (1954). In addition to the protections set forth in the Constitution, a variety of statutes also prohibit racial discrimination, such as Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based upon, among other things, race, color, or national origin.

2. 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 *Washington v. Glucksberg*, the Supreme Court articulated an "established method" to adjudicate claimed rights, which includes assessment of, first, whether claimed fundamental rights are "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," and second, "a careful description of the asserted fundamental liberty interest." 521 U.S. 702, 720-21 (1997). The Third Circuit has adopted and applied this method. *See Holland v. Rosen*, 895 F.3d 272, 292-93 (3d Cir. 2018) (cleaned up). As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from offering an opinion on additional rights that should be recognized under the Due Process Clause because such issues may be presented before me if I am confirmed. I would follow the method prescribed by the Supreme Court in ruling upon any such arguments.

3. 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: I believe that litigants before the federal courts should receive consistent adjudication regardless of the judge or panel of judges that happen to be assigned to their case. If I were confirmed, I would approach each case consistent with that philosophy, focusing on the just and fair application of the Constitution, statute, and precedent, and where appropriate in dealing with ambiguous statutes, canons of construction or legislative history, consistent with the methods prescribed by the Supreme Court and the Third Circuit, while setting aside any personal views. I would keep an open mind, study closely the briefs and arguments of counsel, and work cooperatively with my colleagues on the bench to thoroughly discuss and explore any issues presented. I would endeavor to write opinions that are thorough, well-reasoned, and clear. I am not sufficiently familiar with the judicial philosophies of the Justices who served on the Warren, Burger, Rehnquist, and Roberts Courts to compare them to my own.

4. Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an "originalist"?

Response: Black's Law Dictionary (11th ed. 2019) defines "originalism" as "the doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." I do not ascribe any particular label to my process of decision-making. If confirmed to the Third Circuit, I would diligently apply the interpretive methods prescribed by the Supreme Court and the Third Circuit. The Supreme Court has employed an originalist approach in dealing with several constitutional provisions, such as the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and the Confrontation Clause of the Sixth Amendment in *Crawford v. Washington*, 541 U.S. 36 (2004).

5. 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 (11th ed. 2019) defines "living constitutionalism" as "the doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I do not ascribe any particular label to my process of decision-making. If confirmed to the Third Circuit, I would diligently apply the interpretive methods prescribed by the Supreme Court and the Third Circuit. I am not familiar with any precedents from the Supreme Court or the Third Circuit that require courts to follow "living constitutionalism."

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

Response: If confirmed to the Third Circuit, I would diligently apply the interpretive methods for issues of constitutional interpretation prescribed by the Supreme Court and the Third Circuit, including in areas where those courts have prescribed the investigation and application of original public meaning. For example, the Supreme Court has employed an originalist approach in dealing with several constitutional provisions, such as the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and the Confrontation Clause of the Sixth Amendment in *Crawford v. Washington*, 541 U.S. 36 (2004). The Court recently held that "[a]lthough [the Constitution's] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 28 (2022).

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

Response: If confirmed to the Third Circuit, I would diligently apply the interpretive methods for issues of constitutional interpretation prescribed by the Supreme Court and the Third Circuit, including in areas where those courts have prescribed the application of original public meaning. For example, the Supreme Court has employed an originalist approach in dealing with several constitutional provisions, such as the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and the Confrontation Clause of the Sixth Amendment in *Crawford v. Washington*, 541 U.S. 36 (2004). The Court has expanded upon these principles in cases dealing with both constitutional provisions and statutes. For example, in *New York State Rifle and Pistol Association v. Bruen*, which dealt with the Second Amendment, the Court applied the original "public understanding" of that constitutional provision and held that "the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry." 597 U.S. 1, 38 (2022). The Court further held that "[a]lthough [the Constitution's] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* at 28. In *Bostock v. Clayton County*, which dealt with the interpretation of Title VII of the Civil Rights Act of 1964, the Court held that "[t]his Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." 140 S. Ct. 1731, 1738 (2020). "With this in mind, our task is clear. We must determine the ordinary public meaning of Title VII's command . . . ." *Id.* The Court concluded that "[f]rom the ordinary public meaning of the statute's language at the time of the law's adoption, a straightforward rule emerges: An employer violates Title VII when it intentionally fires an individual employee based in part on sex." *Id.* at 1741.

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

Response: The text of the Constitution is fixed and does not change absent amendment. Chief Justice Marshall stated in *McCulloch v. Maryland* that the Constitution was "intended to endure for ages to come, and, consequently, to be adapted to the various *crises* of human affairs." 17 U.S. 316, 415 (1819) (emphasis original). The Supreme Court more recently held that "[a]lthough [the Constitution's] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 28 (2022).

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

Response: Yes, *Dobbs v. Jackson Women's Health Organization* is binding Supreme Court precedent.

a. Was it correctly decided?

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me,

including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

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

Response: Yes, *New York Rifle & Pistol Association v. Bruen* is binding Supreme Court precedent.

a. Was it correctly decided?

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

11. Is the Supreme Court's ruling in *Brown v. Board of Education* settled law?

Response: Yes, *Brown v. Board of Education* is binding Supreme Court precedent.

a. Was it correctly decided?

Response: Yes. As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, but *Brown v. Board of Education* is one of a small number of cases that addressed issues that are highly unlikely to come before the Third Circuit again. Accordingly, I view it as permissible under the Code of Conduct for United States Judges to state my opinion that it was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

12. Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?

Response: Yes, *Students for Fair Admissions v. Harvard* is binding Supreme Court precedent.

a. Was it correctly decided?

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

13. Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?

Response: Yes, *Gibbons v. Ogden* is binding Supreme Court precedent.

a. Was it correctly decided?

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me, including whether a decision of the Supreme Court was correctly decided. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

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

Response: The Bail Reform Act provides a rebuttable presumption in favor of pre-trial detention to "assure the appearance" of the individual and the safety of the community for cases involving a crime of violence, certain offenses with a maximum sentence of 10 years or more, certain offenses involving minor victims, and certain offenses involving a firearm or other dangerous weapon. 18 U.S.C. § 3142(e)(2)-(3).

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

Response: The Supreme Court discussed the legislative history of the Bail Reform Act in *United States v. Salerno* and recognized that "preventing danger to the community is a legitimate regulatory goal." 481 U.S. 739, 747 (1987).

15. 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: Supreme Court First Amendment precedent provides that government regulations burdening religious practices that are not neutral and generally applicable are subject to strict scrutiny, which requires that the regulation be narrowly tailored to a compelling government interest. *See, e.g.*, *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020); *Tandon v. Newsom*, 593 U.S. 61 (2021). The Religious Freedom Restoration Act, as applied by the Supreme Court, also protects religious liberty by prohibiting the federal government from imposing substantial burdens on a person's exercise of religion unless the government demonstrates that the application of the rule "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 695 (2014).

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

Response: Supreme Court First Amendment precedent provides that government regulations burdening religious practices that are not neutral and generally applicable are subject to strict scrutiny, which requires that the regulation be narrowly tailored to a compelling government interest. *See, e.g.*, *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020); *Tandon v. Newsom*, 593 U.S. 61 (2021). The Religious Freedom Restoration Act, as applied by the Supreme Court, also protects religious

liberty by prohibiting the federal government from imposing substantial burdens on a person's exercise of religion unless the government demonstrates that the application of the rule "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 695 (2014).

17. 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 v. Cuomo*, the Supreme Court granted injunctive relief, preventing the enforcement of COVID-19 restrictions on attendance at religious services. 141 S. Ct. 63 (2020). The Court held that because government regulations treated comparable secular activity more favorably than the religious exercise at issue, that regulation was not neutral and generally applicable and was therefore subject to strict scrutiny. *Id.* at 67. The Court held that the challenged restrictions were not narrowly tailored and that there were other, less restrictive rules available to accomplish the same goal. *Id.*

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

Response: In *Tandon v. Newsom*, the Supreme Court examined California's COVID-19 restrictions on religious exercise and held that the restrictions did not pass strict scrutiny because there were less restrictive means available to accomplish the stated public health goals. 593 U.S. 61 (2021). The Supreme Court found that the regulations at issue were not neutral and generally applicable, and were therefore subject to strict scrutiny. *Id.* The Court further found that the restrictions were not narrowly tailored to the government interest because less restrictive measures were available, such as those precautions available for secular activities. *Id.*

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

Response: Yes, the Free Exercise Clause protects individuals' right "to live out their faiths in daily life" regardless of whether "those expressions take place in a sanctuary or on a field." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421, 2433 (2022) (holding a football coach's prayer on the football field after a game is protected by the Free Exercise and Free Speech Clauses of the First Amendment).

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Supreme Court held that Colorado violated the Free Exercise Clause by imposing sanctions under the Colorado Anti-Discrimination Act against a baker who refused to make a custom wedding cake for a same-sex couple. 138 S. Ct 1719 (2018). The Court considered government officials' hostile comments toward the baker's religious beliefs as evidence of the non-neutral application of the law. *Id.* at 1732.

21. 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: In *Thomas v. Review Board of Indiana Employment Security Division*, the Supreme Court held that "the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect" and those beliefs "need not be acceptable, logical, consistent, or comprehensible to others . . . ." 450 U.S. 707, 714-16 (1981).

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

Response: The Supreme Court has recognized that "it is not within the judicial function and judicial competence to inquire whether [one] correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981). The state may, however, "decide whether the beliefs professed . . . are sincerely held and whether they are . . . religious." *United States v. Seeger*, 380 U.S. 163, 185 (1965).

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

Response: Please see response to Question 21(a) above.

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

Response: I am not familiar with the official position of the Catholic Church on this matter.

22. 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*, the Supreme Court considered whether employment discrimination claims brought by teachers at Catholic

schools fell under the ministerial exception to employment laws. The Court held that the exception applied because the teachers were responsible for providing a religious education at schools with a religious mission; the test does not require the teacher to have the formal title of "minister." 140 S. Ct. 2049, 2063-64, 2069 (2020).

23. 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*, the Supreme Court held that the City violated the Free Exercise Clause of the First Amendment by refusing to renew a contract with Catholic Social Services because that organization would not certify same-sex couples as foster parents based on the organization's religious views. 141 S. Ct. 1868 (2021). The Court applied strict scrutiny because it held that the City's actions were not neutral and generally applicable given that its policy was subject to discretionary individual exemptions, and ultimately found that the government interests at stake were not sufficiently compelling to justify the burden on religious exercise. *Id.* at 1881-82.

24. 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*, the Supreme Court held that the requirement that a secondary school must be "nonsectarian" to participate in Maine's tuition assistance program violated the Free Exercise Clause of the First Amendment. 596 U.S. 767 (2022). The Court examined this program under strict scrutiny and found that otherwise publicly available benefits cannot be withheld solely based on the religious character of an organization, *id.* at 778, and a policy to separate church and state more than is required by the Establishment Clause of the First Amendment is not a compelling interest where that separation infringes on the free exercise of religion, *id.* at 781.

25. 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*, the Supreme Court held that a school district violated the Free Exercise and Free Speech Clauses of the First Amendment by suspending a football coach for praying on the football field after each game. 142 S. Ct. 2407 (2022). The Court found that the school district's action was not neutral and generally applicable because it was directed at religious practice and comparable secular conduct was permitted. *Id.* at 2421-24. The Court further found that the action did not survive strict scrutiny and rejected the school's arguments based on the Establishment Clause. *Id.* at 2432.

26. 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: *Mast v. Fillmore County* involved a challenge by an Amish community under the First Amendment against an ordinance requiring the installation of certain septic systems. The Supreme Court granted certiorari, vacated the lower decision, and remanded the case for further consideration in light of *Fulton v. Philadelphia*. 141 S. Ct. 2430 (2021). Justice Gorsuch concurred, explaining that the Religious Land Use and Institutionalized Persons Act requires the application of strict scrutiny and in so reviewing a regulation, the court must consider the government interest at issue with reference to the specific application of that rule to the particular religious community seeking an accommodation. *Id.* at 2432.

27. 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 judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on the constitutionality of 18 U.S.C. § 1507 with regard to any challenge based on the First Amendment, which may be presented to me in a future litigation.

28. 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;

Response: No.

b. An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;

Response: No.

c. An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or

Response: No.

d. Meritocracy or related values such as work ethic are racist or sexist?

Response: No.

29. 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: Yes.

30. 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.

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

Response: Political appointments are made by officials associated with the executive and/or legislative branches of government consistent with the requirements of the Constitution and any applicable statutes. As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on disputes that may be presented to me in a future litigation.

32. If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?

Response: Under the Equal Protection Clause, "[d]isproportionate impact is not irrelevant, but it is not the sole touchstone of invidious racial discrimination . . . ." *Washington v. Davis*, 426 U.S. 229, 242 (1976). "Proof of racially discriminatory intent is required to show a violation of the Equal Protection Clause." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977).

33. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: The Constitution does not prescribe a set number of justices for the Supreme Court. The number of justices on the Supreme Court is therefore committed as a matter of policy to the legislative and executive branches. It would be inappropriate for me as a judicial nominee to provide an opinion regarding these matters.

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

Response: No.

35. What do you understand to be the original public meaning of the Second Amendment?

Response: In *New York Rifle & Pistol Association v. Bruen*, the Supreme Court held that the Second Amendment protects "an individual right to keep and bear arms for self-defense" and reaffirmed that "individual self-defense is the *central-component* of

the Second Amendment right." 597 U.S. 1, 17, 29 (2022) (citing *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008)) (internal quotes omitted) (emphasis original).

36. 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 *New York Rifle & Pistol Association v. Bruen*, the Supreme Court explained that to determine whether a firearm restriction is consistent with the Second Amendment, a court must "assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." 597 U.S. 1, 26 (2022).

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

Response: The Supreme Court has held that "the Second Amendment conferred an individual right to keep and bear arms," *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), and "the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*," *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010).

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

Response: No. The Supreme Court has stated that "[t]he constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 70 (2022) (quoting *McDonald v. City of Chicago*, 561 U.S. 742 (2010)).

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

Response: No. The Supreme Court has recognized that "[t]he constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 70 (2022) (quoting *McDonald v. City of Chicago*, 561 U.S. 742 (2010)).

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

Response: In *United States v. Texas*, the Supreme Court stated, "Article II of the Constitution assigns the 'executive Power' to the President and provides that the President 'shall take Care that the Laws be faithfully executed.' U.S. Const., Art. II, § 1, cl. 1; § 3. Under Article II, the Executive Branch possesses authority to decide 'how

to prioritize and how aggressively to pursue legal actions against defendants who violate the law.'" 599 U.S. 670, 678 (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021)). Although this discretion is "broad," it is not "unfettered," and the executive's discretion is "subject to constitutional constraints." *Wayte v. United States*, 470 U.S. 598, 608 (1985).

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

Response: "Prosecutorial discretion" is defined in Black's Law Dictionary (11th ed. 2019) as "A prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." A substantive administrative rule change requires appropriate procedures to be followed under the Administrative Procedure Act, 5 U.S.C. § 553.

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

Response: The Constitution does not grant the President the power to abolish laws enacted by Congress. The federal death penalty was enacted by Congress and codified at 18 U.S.C. § 3591 *et seq.*

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. Department of Health and Human Services*, the Supreme Court held that the Centers for Disease Control and Prevention exceeded its statutorily granted authority by imposing a nationwide eviction moratorium after Congress did not renew an earlier and more limited eviction moratorium. 141 S. Ct. 2485 (2021). The Court held that it was up to Congress, not the CDC, to authorize and extend the moratorium. *Id.* at 2490.

47. Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?

Response: Prosecutors must comply with their duty as officers of the court and with all applicable legal and ethical obligations.

48. What day did you resign from your position as Advisory Board Member for the Center for Security, Race and Rights at Rutgers Law School?

Response: I informed the Director of the Center for Security, Race and Rights at Rutgers Law School of my resignation from my position as an advisory board member on June 15, 2023. The Director accepted my resignation and requested that I delay it taking formal effect while she sought to recruit a replacement law firm advisory board member. I agreed it could take effect as of the end of July to allow her time to do so. I

had previously told the Executive Director and advisory board in 2022 that I might leave the advisory board the following year absent developments in the nature of the academic output from the Center.

49. Do you agree or disagree with the Center's Director, Sahar Aziz, that Israel is an "occupying" force in Palestine?

Response: I am not familiar with the statement you reference from Professor Aziz. My role as a member of an advisory board did not extend to oversight of the activities of Professor Aziz. An advisory board, unlike a board of directors, has no governance or oversight role. I note that Israel has been a full member state of the United Nations since 1949 following ratification of Israel's application by the requisite two-thirds majority of United Nations member countries. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit.

50. Are you, like Director Aziz, "in awe of the Palestinian struggle to resist violent occupation, removal, erasure, and the expansion of Israeli settler colonialism?"

Response: I am not familiar with the statement you reference from Professor Aziz. My role as a member of an advisory board did not extend to oversight of the activities of Professor Aziz. An advisory board, unlike a board of directors, has no governance or oversight role. I note that Israel has been a full member state of the United Nations since 1949 following ratification of Israel's application by the requisite two-thirds majority of United Nations member countries. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit.

51. Will you now, today, condemn Director Aziz and the Center for Security, Race and Rights for these irresponsible statements?

Response: I condemn any and all forms of antisemitism. I am not familiar with the statements you reference from Professor Aziz. I joined the advisory board of the Center for Security, Race and Rights based on its mission to combat bigotry and discrimination and advance religious liberty through academic research at one of New Jersey's preeminent law schools. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit.

52. Did you ever speak out against any of Center's events or speakers?

Response: I condemn any and all forms of antisemitism. I joined the advisory board of the Center for Security, Race and Rights based on its mission to combat bigotry and discrimination and advance religious liberty through academic research at one of New

Jersey's preeminent law schools. I participated in a total of four meetings of the advisory board during the four years that I was on it. The advisory board had no role in oversight or governance. My role on the advisory board did not extend to or include approval of speakers or speaker events. I had no involvement in any of the speaker events or symposia arranged by the Center for Security, Race and Rights at Rutgers Law School that were brought to my attention at the Senate Judiciary Committee hearing on December 13, 2023, and was not aware of them before that hearing. I do not have the expertise or factual background to express views regarding the complex history of the conflict in the Middle East, which is irrelevant to my potential work on the United States Court of Appeals for the Third Circuit.

53. Do you think Israel is committing "war crimes and that American officials should be charged with aiding and abetting Israeli war crimes?"

Response: I am not familiar with the quotation you reference and do not know its source. Whether war crimes have been committed by the State of Israel or soldiers associated with its armed forces is a legal determination that can only be made by an appropriate court in Israel or an appropriate international body with jurisdiction on a full evidentiary record. I am not aware of the basis for any suggestion that legal claims should be pursued against American officials here in the United States relating to this conflict. As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from commenting on matters that may come before me. If confirmed, I will faithfully apply all binding precedents from the Supreme Court.

54. Do you think it was appropriate for the Center to host a sympathizer of a terror organization such as Palestinian Islamic Jihad on the twentieth anniversary of September 11th?

Response: My role as a member of the advisory board to the Center for Security, Race and Rights at Rutgers Law School focused on issues relating to areas for academic research. I participated in a total of four meetings of the advisory board during the four years that I was on it. The advisory board had no role in oversight or governance. My role on the advisory board did not extend to or include approval of speakers or speaker events. I had no involvement in any of the speaker events or symposia arranged by the Center for Security, Race and Rights at Rutgers Law School that were brought to my attention at the Senate Judiciary Committee hearing on December 13, 2023, and was not aware of them before that hearing. Specifically, I have no knowledge regarding any event purportedly involving "a sympathizer of a terror organization such as Palestinian Islamic Jihad on the twentieth anniversary of September 11th" and do not know what this is referring to. To the extent any speakers at this event or any event had any involvement with terrorism or terrorist groups I condemn them and do not support providing a platform to any terrorist.

a. Should the Center, on the twentieth anniversary of September 11th, have hosted Rabab Abulhadi as a speaker, given that she had hosted events for Leila Khaled, an actual terrorist who had committed armed hijacking of airplanes?

Response: My role as a member of the advisory board to the Center for Security, Race and Rights at Rutgers Law School focused on issues relating to areas for academic research. I participated in a total of four meetings of the advisory board during the four years that I was on it. The advisory board had no role in oversight or governance. My role on the advisory board did not extend to or include approval of speakers or speaker events. I had no involvement in any of the speaker events or symposia arranged by the Center for Security, Race and Rights at Rutgers Law School that were brought to my attention at the Senate Judiciary Committee hearing on December 13, 2023, and was not aware of them before that hearing. Specifically, I have no knowledge regarding any event purportedly involving any individual named Rabab Abulhadi, do not know that individual, and had never heard of that individual prior to the Senate Judiciary Committee hearing on December 13, 2023. I similarly have no knowledge regarding whether Rabab Abulhadi, in turn, separately "hosted events" for "Leila Khaled, an actual terrorist who had committed armed hijacking of airplanes." I have no knowledge regarding any such event unrelated to Rutgers Law School involving any individual named Leila Khaled, do not know that individual, and had never heard of that individual prior to the Senate Judiciary Committee hearing on December 13, 2023. To the extent any speakers at this event or any event had any involvement with terrorism or terrorist groups I condemn them and do not support providing a platform to any terrorist or terrorist group.

55. Were you aware that another guest of the Center at the 9/11 event, Dr. Hatem Bazian, explicitly called for Intifada in the United States?

Response: No. My role as a member of the advisory board to the Center for Security, Race and Rights at Rutgers Law School focused on issues relating to areas for academic research. I participated in a total of four meetings of the advisory board during the four years that I was on it. The advisory board had no role in oversight or governance. My role on the advisory board did not extend to or include approval of speakers or speaker events. I had no involvement in any of the speaker events or symposia arranged by the Center for Security, Race and Rights at Rutgers Law School that were brought to my attention at the Judiciary Committee hearing on December 13, 2023, and was not aware of them before that hearing. Specifically, I have no knowledge regarding any event purportedly involving any individual named Dr. Hatem Bazian, do not know that individual, and had never heard of that individual prior to the Senate Judiciary Committee hearing on December 13, 2023. To the extent any speakers at this event or any event had any involvement with terrorism or terrorist groups I condemn them and do not support providing a platform to any terrorist or terrorist group.

a. Do you condemn his statement?

Response: I have no knowledge regarding this event, this speaker, or this statement. I do not understand what it means to call "for Intifada in the United States." To the extent the speaker called for any unlawful conduct in or against the United States, I condemn it.

Senator John Kennedy
Questions for the Record

Adeel Abdullah Mangi

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

   Response: The federal death penalty was enacted by Congress and codified at 18 U.S.C. § 3591 *et seq*. That law sets forth the circumstances under which a death sentence may be imposed. If I am confirmed to the Third Circuit, I shall apply 18 U.S.C. § 3591 *et seq.* and any related precedent of the Supreme Court and the Third Circuit.

   a. **Should a judge's opinions on the morality of the death penalty factor into the judge's decision to sentence a criminal defendant to death in accordance with the laws prescribed by Congress and the Eighth Amendment?**

      Response: No. A judge's role is to apply the law as set forth by Congress and in binding precedent.

2. **Is the U.S. Supreme Court a legitimate institution?**

   Response: Yes.

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

   Response: Yes.

4. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: I believe that litigants before the federal courts should receive consistent adjudication regardless of the judge or panel of judges that happen to be assigned to their case. If I were confirmed, I would approach each case consistent with that philosophy, focusing on the just and fair application of the Constitution, statute, and precedent, and where appropriate in dealing with ambiguous statutes, canons of construction or legislative history, consistent with the methods prescribed by the United States Supreme Court and the United States Court of Appeals for the Third Circuit, while setting aside any personal views. I would keep an open mind, study closely the briefs and arguments of counsel, and work cooperatively with my colleagues on the bench to thoroughly discuss and explore any issues presented. I would endeavor to write opinions that are thorough, well-reasoned, and clear.

5. **Is originalism a legitimate method of constitutional interpretation?**

   Response: Yes. Black's Law Dictionary (11th ed. 2019) defines "originalism" as "the doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." The Supreme Court has prescribed such an approach when interpreting a

number of constitutional provisions. For example, the Supreme Court has employed an originalist approach in dealing with the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and the Confrontation Clause of the Sixth Amendment in *Crawford v. Washington*, 541 U.S. 36 (2004). The Court has expanded upon these principles in various cases. For example, in *New York State Rifle & Pistol Association v. Bruen*, which dealt with the Second Amendment, the Court applied the original "public understanding" of that constitutional provision and held that "the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry." 597 U.S. 1, 38 (2022). The Court further held that "[a]lthough [the Constitution's] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id.* at 28.

6. If called on to resolve a constitutional question of first impression with no applicable precedents from either the U.S. Supreme Court or the U.S. Courts of Appeals, to what sources of law would you look for guidance?

Response: In my 23 years of litigation, including several cases involving constitutional claims, I am yet to encounter a case that presents a constitutional question with no applicable precedents of any kind. The Supreme Court has stated that "Constitutional analysis must begin with the language of the instrument, . . . which offers a fixed standard for ascertaining what our founding document means." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 235 (2022). I would begin my analysis there, and then consider any additional information permissible under the interpretative tools authorized by the Supreme Court and the Third Circuit under relevant precedent, including, where applicable, original public meaning, structure, canons of construction, and the interpretation by the Supreme Court or Third Circuit of any other related or comparable provisions.

7. Is textualism a legitimate method of statutory interpretation?

Response: Yes. Black's Law Dictionary (11th ed. 2019) defines "textualism" as "the 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." The Supreme Court held in *Bostock v. Clayton County* that where a statute is unambiguous, the text controls according to "the ordinary public meaning of its terms at the time of its enactment." 140 S. Ct. 1731, 1737-38 (2020).

8. When is it appropriate for a judge to look beyond textual sources when determining the meaning of a statute or provision?

Response: In *Bostock v. Clayton County*, the Supreme Court held that where a statute is unambiguous, the text controls according to "the ordinary public meaning of its terms at the time of its enactment." 140 S. Ct. 1731, 1737-38 (2020). However, where a statute is ambiguous, the Supreme Court has relied on other sources to construe the law, including statutory context (*N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 299 (2017)), canons of

construction (*Barnhart v. Thomas*, 540 U.S. 20, 26-28 (2003)), and legislative history (*United Steelworkers of America v. Weber*, 443 U.S. 193, 202 (1979)).

9. Does the meaning (rather than the applications) of the U.S. Constitution change over time? If yes, please explain the circumstances under which the U.S. Constitution's meaning changes over time and the relevant constitutional provisions.

Response: The Constitution is an enduring document. The Supreme Court has recognized that, "[a]lthough [the Constitution's] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *N.Y. Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 28 (2022).

10. Please summarize Part II(A) of the U.S. Supreme Court's decision in *Brown v. Davenport*, 596 U.S. 118 (2022).

Response: Part II(A) of the *Brown v. Davenport* decision describes the historical development of federal habeas practice, including from a "jurisdictional defects" analysis to a "constitutional error correction" approach, leading to the increase in state prisoners' habeas petitions. 596 U.S. 118, 125-31 (2022).

11. Please summarize Part IV of the U.S. Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).

Response: In Part IV of the *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* decision, the Court analyzed Harvard College's and the University of North Carolina's admissions systems against the requirements that those systems must comply with strict scrutiny, may never use race as a stereotype or negative, and must end at some point. 600 U.S. 181 (2023). First, the Court was unable to determine whether the interests furthered by the policies were compelling because they could not be sufficiently measured and found that there was not a sufficiently meaningful connection between the ends and means of the policies. *Id.* at 214-18. Second, the Court found that race was a negative factor for certain applicants. *Id.* at 218-21. Third, the Court determined that the admissions programs lack a "logical end point" because "outright racial balancing" is not permitted, and it is not possible to measure whether the benefits of diversity could be achieved without racial consideration in admissions. *Id.* at 221-25. Because the Court found that the admissions systems did not meet these criteria, the Court found that the systems violated the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 230.

12. Please summarize Part III of the U.S. Supreme Court's decision in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

Response: In Part III of the *303 Creative LLC v. Elenis* decision, the Court found that the design of wedding websites constitutes the designer's "pure speech," and as such the state cannot compel the designer to produce speech she disagrees with. 600 U.S. 570, 587-92 (2023). The Court found that, under its precedent, a choice between "speak[ing] as the

State demands or fac[ing] sanctions for expressing her own beliefs" is "an impermissible abridgment of the First Amendment's right to speak freely." *Id.* at 589. The Court further recognized that the government has a compelling interest in eliminating discrimination from public accommodations, *id.* at 590, but found that "no public accommodations law is immune from the demands of the Constitution," *id.* at 592.

13. Please summarize Part II of the U.S. Supreme Court's decision in *Whole Woman's Health v. Jackson*, 595 U.S. 30 (2021).

Response: In Part II of the *Whole Woman's Health v. Jackson* decision, the Court reviewed the District Court's order denying the Texas government's motion to dismiss. First, the Court held that no pre-enforcement action for injunctive relief could be sustained against state court judges and clerks. 595 U.S. 30, 43 (2021). Second, the Court held that it could not enjoin the state attorney general from enforcing the law because the attorney general has no enforcement authority to be enjoined. *Id.* Third, the Court found that the case could continue against individually named defendants with authority to enforce the law at issue under the *Ex parte Young* exception to sovereign immunity. *Id.* at 45. Finally, the Court found that the claims against a private defendant were properly dismissed because there was no injury "fairly traceable" to his conduct. *Id.* at 48.

14. Please summarize Part II of the U.S. Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

Response: In Part II of *New York State Rifle & Pistol Association v. Bruen*, the Supreme Court noted that in the years following *Heller* and *McDonald*, "the Courts of Appeals have coalesced around a 'two-step' framework for analyzing Second Amendment challenges that combines history with means-end scrutiny," but declined to follow that framework. 597 U.S. 1, 20 (2022). Instead, the Supreme Court set forth the relevant test as follows: "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* at 24. Accordingly, the Court concluded, "[t]he test that we set forth in *Heller* and apply today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *Id.* at 26.

15. Please summarize Part II of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2022).

Response: In Part II of *Dobbs v. Jackson Women's Health Organization*, the Court considered whether the Constitution confers a right to abortion. 597 U.S. 215, 234 (2022). The Court stated that to determine whether a right is an aspect of liberty protected by the Due Process Clause, the Court must consider "whether the right is 'deeply rooted in [our] history and tradition' and whether it is essential to our Nation's 'scheme of ordered liberty.'" *Id.* at 237. The Court found that "a right to abortion is not

deeply rooted in the Nation's history and traditions" because it found no support for the right to abortion until shortly before the *Roe* decision, and because abortion was historically subject to criminal punishment. *Id.* at 241-50. Further, the Court held that its precedent concerning liberty interests were inapplicable because none of those precedents "involved the critical moral question posed by abortion." *Id.* at 257. Thus, the Court held "the Fourteenth Amendment does not protect the right to an abortion." *Id.* at 240.

16. Please summarize Part III of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022).

Response: In Part III of *Dobbs v. Jackson Women's Health Organization*, the Court overruled its decisions in *Roe* and *Casey*. 597 U.S. 215, 264 (2022). The Court held that "the nature of their error, the quality of their reasoning, the 'workability' of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance" weighed in favor of overruling these precedents. *Id.* at 268.

17. Please summarize Part III of the U.S. Supreme Court's decision in *West Virginia v. EPA*, 142 S. Ct. 2587 (2022).

Response: In Part III of *West Virginia v. EPA*, the Supreme Court stated that where a statute confers authority on an administrative agency, typical statutory construction canons apply, requiring the text to be "read in their context and with a view to their place in the overall statutory scheme." 142 S. Ct. 2587, 2607 (2022). However, "there are 'extraordinary cases' that call for a different approach—cases in which the 'history and the breadth of the authority that [the agency] has asserted,' and the 'economic and political significance' of that assertion, provide a 'reason to hesitate before concluding that Congress' meant to confer such authority." *Id.* at 2608. In addressing the regulatory scheme at issue, the Court found that the EPA did not have "clear congressional authorization" to adopt its own regulatory scheme, deemed this a "major questions case," and ruled that an ambiguous delegation of power was not sufficient to sustain "a decision of such magnitude and consequence." *Id.* at 2610-16.

18. Please describe the legal rule employed in *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), and explain why the U.S. Supreme Court sided with the Petitioner.

Response: In *Rivas-Villegas v. Cortesluna*, a police officer had "placed his left knee on the left side of [the plaintiff's] back, near where [the plaintiff] had a knife in his pocket" for a period of "no more than eight seconds" while making an arrest. 595 U.S. 1, 4 (2021). The Supreme Court held that Petitioner was entitled to qualified immunity because he was not put on notice that his specific conduct was unlawful. *Id.* at 5. "Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* "A right is clearly established when it is sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Id.* "This inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition." *Id.* The Court found that neither plaintiff nor the Court of

Appeals had "identified any Supreme Court case that addresses facts like the ones at issue here." *Id.* at 6.

19. When is it appropriate to issue a nationwide injunction? Please also explain the legal basis for issuing nationwide injunctions and the relevant factors a judge should consider before issuing one.

Response: Federal Rule of Civil Procedure 65 provides the basis for preliminary injunctions generally. I am not aware of a Supreme Court decision that has directly addressed the legal basis and factors to consider with regard to the issuance of a nationwide injunction.

20. Is there ever a circumstance in which a circuit judge may seek to circumvent a U.S. Supreme Court decision?

Response: No. Supreme Court decisions are binding precedent.

21. If confirmed, please describe what role U.S. Supreme Court dicta would play in your decisions.

Response: The Third Circuit has recognized its obligation to "not idly ignore considered statements the Supreme Court makes in dicta. The Supreme Court uses dicta to help control and influence the many issues it cannot decide because of its limited docket. Appellate courts that dismiss these expressions [in dicta] and strike off on their own increase the disparity among tribunals (for other judges are likely to follow the Supreme Court's marching orders) and frustrate the evenhanded administration of justice by giving litigants an outcome other than the one the Supreme Court would be likely to reach were the case heard there." *In re McDonald*, 205 F.3d 606, 612-13 (2000) (internal quotes omitted) (brackets original).

22. When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race and/or sex of the applicants play in your consideration?

Response: If I am confirmed, I will assess law clerks based on their academic and professional excellence.

23. Please list all social-media accounts you have had during the past 10 years with Twitter/X, Facebook, Reddit, Instagram, Threads, TikTok, and LinkedIn and the approximate time periods during which you had the account. If the account has been deleted, please explain why and the approximate date of deletion.

Response: I have had accounts at various times over the past decade on Twitter/X, Facebook, Instagram, Threads, TikTok, and LinkedIn. I do not recall the specific periods of time each account was active, but with the exception of Facebook, I did not post any content using any of these social media accounts at any time. I had a Facebook account until 2017. I used that account, when I had it, to keep up with friends and family around

the world, but ultimately concluded that social media was an unproductive use of time. My only existing social media accounts are on TikTok and LinkedIn. I have never posted any content on either platform, nor have I created a network or posted a profile on LinkedIn. I use that account only for professional purposes to review other profiles.

24. Did you voluntarily affiliate yourself with the Center for Security, Race and Rights (the Center)?

Response: Yes. I joined the advisory board of the Center for Security, Race and Rights at Rutgers Law School based on its mission to combat bigotry and discrimination and advance religious liberty through academic research at one of New Jersey's preeminent law schools. I participated in four meetings of that advisory board held over the course of four years. Areas of research that I focused on included the Religious Land Use and Institutionalized Persons Act, the Religious Freedom Restoration Act, freedom of information, actions under 42 U.S.C. § 1983, employment discrimination, school bullying, appropriate law enforcement approaches when dealing with religious minorities, and national security.

25. Did you review the activities of the Center or its director before voluntarily affiliating yourself with the Center? If so, please explain your understanding of the activities of the Center. If not, please explain why you voluntarily affiliated yourself with this organization without first familiarizing yourself with its activities and the activities of its director.

Response: Yes. The Center for Security, Race and Rights had been recently established at the time that I was invited to join its advisory board. I therefore relied primarily on the fact that the Center for Security, Race and Rights would be based at Rutgers Law School, which is one of the preeminent law schools in the State of New Jersey, and would be run by a Rutgers professor holding the title of Distinguished Professor of Law who had previously worked at the Department of Homeland Security. I understood that the Center would have faculty affiliates at leading universities around the country. I also focused on the mission of the Center for Security, Race and Rights, which was to fight bigotry and discrimination and advance religious liberty. I have fought throughout my career to oppose all forms of bigotry and discrimination, including prejudice directed at minority groups such as Muslims and Jews, to protect the rights of all people of faith to worship freely, and to ensure that the First Amendment's Free Exercise Clause is protected and effectuated.

26. During your approximately 4 years as an advisory board member for the Center, did you ever review the activities of the Center or its director? If so, please explain how you conducted your review and your understanding of the activities of the Center. If not, please explain why you never familiarized yourself with the activities of the Center or its director while affiliating yourself with the Center.

Response: I focused only on issues relevant to my limited role as a member of the advisory board, which did not include any oversight or governance role in relation to the Center, its events, or the individual activities of its Director or other faculty affiliates.

My role as an advisory board member focused on areas of academic research relevant to my background in civil rights litigation. I had no affiliation with the Center other than serving in that advisory capacity in the hopes of promoting the elimination of bigotry and discrimination and advancing religious liberty by providing high quality academic research to serve as a tool for civil rights litigators. My role on the advisory board did not extend to or include providing advice or approval on the selection of speakers, events, lectures, or workshops, and I had no role in relation to any such events. Because those events had nothing to do with me, I did not endeavor to catalogue or study them. At no time during my personal work on the advisory board did I encounter any antisemitic statements. If I had, I would have challenged such statements and taken further appropriate action given my strong and unequivocal opposition to and condemnation of antisemitism.

27. Please describe the full nature of your involvement with the Center, including but not limited to any contributions made and events attended.

Response: I have fully described my role as a member of the advisory board in response to Questions 24-26 above. I do not recall attending any events at Rutgers Law School other than my participation in four meetings of the advisory board over the course of four years. My role on the advisory board did not extend to or include approval of speakers or speaker events. I had no involvement in any of the speaker events or symposia arranged by the Center for Security, Race and Rights at Rutgers Law School that were brought to my attention at the Senate Judiciary Committee hearing on December 13, 2023, and was not aware of them before that hearing.

My records reflect donations to the Rutgers University Foundation in the amounts of $500 (2018), $2,500 (2019), $1,500 (2020), and $2,000 (2021). Those donations were intended to support the academic research of the Center for Security, Race and Rights at Rutgers Law School to oppose bigotry and discrimination and advance religious liberty.

I also forwarded requests for the support of Law Fellowships for law students at Rutgers Law School to the relevant committees at my law firm for their consideration as set forth in response to Question 32.

28. On the 20th anniversary of the 9/11 terrorist attack, the Center sponsored an event entitled "Whose Narrative? 20 Years since September 11, 2001" that featured individuals with ties to terrorists and terrorist organizations. Representative Josh Gottheimer (D-NJ) condemned the event: "It is unconscionable that a day meant to reflect on the deadliest attack on United States soil was used to provide a platform to those affiliated with Palestinian Islamic Jihad—a foreign terrorist organization designated by the United States." Do you agree with Representative Gottheimer?

Response: I have no knowledge regarding this event, its title, or the referenced speaker or speakers. I cannot address its contents or descriptions about the event by Representative Gottheimer because I know nothing about them. I oppose and condemn terrorism, acts of terrorism, and any defense of acts of terrorism. I have worked in New York City for 23 years and was living in Manhattan on September 11, 2001. I saw the

horrific attacks of that day with my own eyes. As I noted at the hearing, it was my city that was attacked. To the extent any speakers at any events hosted by the Center for Security, Race and Rights at Rutgers Law School or anywhere else have made statements that condoned any acts of terrorism, I condemn them.

29. To the best of your knowledge, please list all events or activities you assisted with or attended that were offered by the Center or sponsored by the Center.

Response: Please see responses to Questions 24-27.

30. Please identify and describe all contributions made or caused to be made by you or on your behalf to the Center.

Response: Please see response to Questions 27.

31. For several years now, the staff page on the Center's website has listed your law firm, Patterson Belknap Webb & Tyler LLP (Patterson Belknap), as one of the Center's "Law Fellow Sponsors." What role did you play in securing this sponsorship for the Center?

Response: Patterson Belknap Webb & Tyler LLP did not sponsor the Center for Security, Race and Rights at Rutgers Law School or any speaker events, lectures, or workshops at the Center for Security, Race and Rights. Patterson Belknap received requests from the Center for Security, Race and Rights to support Law Fellowships to help law students gain professional experience at Rutgers Law School through donations to the Rutgers University Foundation. The decisions to support those Law Fellowships in 2021, 2022, and 2023 were made by Patterson Belknap's Chief Diversity Officer, management committee, and/or senior management. I do not serve and have never served on the firm management committee or in a management role, and I was not present during any discussions of those committees or groups relating to whether to support Law Fellowships. Requests for sponsorship were made either to me, or to me and another partner at the firm, and then directed to the appropriate committees and leadership for consideration. I was informed of the decision after it was made.

32. To the best of your knowledge, did Patterson Belknap provide any funds or services to the Center to receive the "Law Fellow Sponsor" designation? If so, please describe the amount and nature of those contributions.

Response: I understand from having queried the records of Patterson Belknap Webb & Tyler LLP that donations for Law Fellowships were directed to the Rutgers University Foundation in the amounts of $2,000 (2021), $5,000 (2022), and $6,000 (2023). The decisions to sponsor those Law Fellowships were made by Patterson Belknap's Chief Diversity Officer, management committee, and/or senior management. I do not serve and have never served on the firm management committee or in a management role and I was not present during any discussions of those groups relating to whether to sponsor Law Fellowships.

33. Patterson Belknap was designated a "Law Fellow Sponsor" in 2021 when the Center sponsored an event entitled "Whose Narrative? 20 Years since September 11, 2001" that featured individuals with ties to terrorists and terrorist organizations. May any funds provided by Patterson Belknap to the Center have been used for this event?

Response: Patterson Belknap Webb & Tyler LLP did not sponsor the Center for Security, Race and Rights at Rutgers Law School or any speaker events, lectures, or workshops at the Center for Security, Race and Rights. Patterson Belknap provided funding for Law Fellowships through donations to the Rutgers University Foundation.

34. Why should Senator Kennedy support your nomination?

Response: I have reviewed prior judicial nomination hearings where Senator Kennedy has expressed his views regarding appropriate judicial nominations. Senator Kennedy has stated, in substance, that he approaches nominations from a non-partisan perspective and seeks to ensure that nominees have appropriate academic and professional qualifications that will enable them to do the job of a federal judge, and that he opposes nominees that he considers to be activists pursuing a non-judicial agenda. I invite Senator Kennedy to thoroughly review my education, qualifications, and professional record over 23 years as a commercial litigator. If I have understood Senator Kennedy's goals correctly, then he should champion my nomination.

Questions from Senator Thom Tillis
for Adeel Abdullah Mangi nominee to be United States Circuit Judge for the Third Circuit

1. **Given your involvement with the Center for Security, Race and Rights at Rutgers and their activity in support of anti-Israeli and anti-Semitic causes, how can you be seen as a neutral arbitrator of cases involving Jewish organizations?**

   Response: I had no involvement with or responsibility for any of the speaker events at the Center for Security, Race and Rights at Rutgers Law School that I was asked about at the Senate Judiciary Committee hearing on December 13, 2023. I had never even heard of the events, speakers, or statements in question before the hearing. To the extent any person on any speaker panel at Rutgers Law School or anywhere else made antisemitic statements, I condemn those statements. I have had no involvement with or responsibility related to any activity at the Center for Security, Race and Rights since my departure from the advisory board, which predated the horrific events of October 7, 2023.

   I joined the advisory board of the Center for Security, Race and Rights based on its mission to combat bigotry and discrimination and advance religious liberty through academic research at one of New Jersey's preeminent law schools. The advisory board had no role in relation to oversight or governance of the Center—it is not a board of directors. I participated in four meetings of that advisory board held over the course of four years. Academic areas of research that I advised on included the Religious Land Use and Institutionalized Persons Act, the Religious Freedom Restoration Act, freedom of information, actions under 42 U.S.C. § 1983, employment discrimination, school bullying, appropriate law enforcement approaches when dealing with religious minorities, and national security. At no time during my personal work on the advisory board did I encounter any antisemitic statements. If I had, I would have challenged such statements and taken further appropriate action given my strong and unequivocal opposition to and condemnation of antisemitism.

   I am ready and prepared to be held accountable for any statement that I have ever made, any word that I have ever written, or any action that I have ever taken. I have not been asked, however, about any such statement, word, or action. I am not and should not be held accountable for statements made by people I do not know at events that I was not involved with and only learned about during my appearance before the Senate Judiciary Committee. Moreover, as I did during my hearing, and as I do again here, I condemn antisemitism unequivocally and in the strongest possible terms.

   Perhaps the best assessment responsive to your question, however, comes from Jewish groups that had occasion to watch the Senate Judiciary Committee Hearing on December 13, 2023, and assess the issues relating to my service on this advisory board. For example, the American Jewish Committee recently released a statement noting that I "was questioned aggressively on thin pretext about [my] views on Israel, terrorism, and antisemitism, turning these serious issues into a tool of partisan attack." The statement went on: "American Jewish Committee (AJC) has joined several U.S. Supreme Court briefs led by Mangi and find him to be an able jurist, a person of integrity, champion of pluralism, and adversary of discrimination against any group." *See* American Jewish Congress, *AJC Statement on*

Questioning of Adeel Mangi at Senate Judiciary Hearing (Dec. 21, 2023), https://www.ajc.org/news/ajc-statement-on-questioning-of-adeel-mangi-at-senate-judiciary-hearing. AJC describes itself as "the global advocacy organization for the Jewish people. With headquarters in New York, 25 offices across the United States, 14 overseas posts, as well as partnerships with 38 Jewish community organizations worldwide, AJC's mission is to enhance the well-being of the Jewish people and Israel and to advance human rights and democratic values in the United States and around the world." *Id.*

Separately, a collection of 15 Jewish organizations representing more than a million people across the country wrote a letter to Senators on December 18, 2023, expressing "strong support" for me after the same hearing. That letter stated that "[i]n Adeel A. Mangi, the Senate has the opportunity to confirm one of the most preeminent lawyers with an impeccable career and credentials that more than prepare him for a lifetime position on our federal courts." The letter concluded that "[h]aving ethical and unbiased judges is ingrained in our Jewish teachings in which we are taught that 'judges need to be people of strength through good deeds.' It is clear to us that Adeel A. Mangi is a person of strength and good deeds, as evidenced by his career, devotion to his community, and commitment to religious freedom and civil rights." That letter was signed by the following 15 Jewish groups: ALEPH: Alliance for Jewish Renewal, Ameinu, Avodah, Bend the Arc: Jewish Action, Carolina Jews for Justice, Jewish Community Action, Jewish Democratic Council of America, Jewish Women International, National Council of Jewish Women, New York Jewish Agenda, Society for Humanistic Judaism, T'ruah: The Rabbinic Call for Human Rights, The Shalom Center, The Workers Circle, and Zioness. *See* Jennifer Bendry, *Jewish Groups Line Up In Support of Biden's Muslim Court Pick Assailed by GOP*, HUFFINGTON POST (Dec. 19, 2023), https://www.huffpost.com/entry/jewish-groups-muslim-judicial-nominee-gop-islamophobia_n_6581e857e4b01d1b95357921.

This support from Jewish groups around the country, especially at a time of great divide, is a testament to the America that I spoke about at my hearing, where people of different faiths can come together towards common goals. However, as a judge, it will be my obligation to set aside my personal views, including my deep association, close ties, and long history of work with the Jewish community, and act as a neutral judge in all respects.

2. Give your involvement with the Center for Security, Race and Rights at Rutgers and their support of individuals and causes connected to Middle East terrorism, will you commit to recuse yourself from all cases concerning criminal charges of terrorism?

Response: During my personal work on the advisory board of the Center for Security, Race and Rights at Rutgers Law School, I did not encounter any person expressing "support of individuals and causes connected to Middle East terrorism." I condemn all forms of terrorism, terrorists, or defenses of acts of terrorism. In all recusal decisions, I commit to follow the Code of Conduct for United States Judges and the recusal standards set forth at 28 U.S.C. § 455.

3. Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?

Response: A judge's personal views and background should be irrelevant to their role interpreting and applying the law consistent with binding precedent.

4. What is judicial activism? Do you consider judicial activism appropriate?

Response: "Judicial activism" is defined in Black's Law Dictionary (11th ed. 2019) as "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." I do not agree with this approach. As I set forth in response to Question 3, I believe that a judge's personal views and background should be irrelevant to their role interpreting and applying the law consistent with binding precedent.

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

Response: If confirmed, I will faithfully apply all precedents of the United States Supreme Court, including those relating to Second Amendment rights, such as *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022). Citizens are entitled to receive their full measure of fundamental rights guaranteed by the Constitution.

6. 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: I shall follow all binding precedents of the Supreme Court and the Third Circuit in making decisions on issues relating to qualified immunity. The Supreme Court has addressed qualified immunity in a number of cases. For example, in *District of Columbia v. Wesby*, the Supreme Court held that "[u]nder our precedents, officers are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time. Clearly established means that, at the time of the officer's conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful." 583 U.S. 48, 62-63 (2018) (cleaned up).

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

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from expressing an opinion as to whether the existing law set forth in binding precedents of the Supreme Court and the Third Circuit provides sufficient protection for law enforcement officials because such matters may come before me. I shall follow all binding precedents of the Supreme Court and the Third Circuit in making decisions relating to qualified immunity.

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

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from expressing an opinion as to whether the existing law set forth in binding precedents of the Supreme Court and the Third Circuit provides the "proper scope" of qualified immunity protections for law enforcement because such matters may come before me. I shall follow all binding precedents of the Supreme Court and the Third Circuit in making decisions relating to qualified immunity.

9. **What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?**

Response: The framers of the Constitution considered the protection of intellectual property sufficiently important that they addressed it in the Constitution while enumerating the powers of Congress. I have litigated many cases in the course of my 23-year career as a commercial litigator that focus on the protection of intellectual property rights, including cases relating to theft of trade secrets, patents, and trademarks. For example, in a case involving theft of trade secrets, I obtained the largest jury verdict in the history of the Virginia court system and argued to uphold that verdict on appeal.

10. **In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"**

Response: Both the Supreme Court and the Third Circuit have noted concerns about "forum shopping" and "judge shopping" in certain contexts. *See, e.g.*, *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. Of Tex.*, 571 U.S. 49, 65 (2013) (declining to apply rule that could "create or multiply opportunities for forum shopping"); *E.E.O.C. v. Univ. of Pa.*, 850 F.2d 969 (3d Cir. 1988). As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from expressing an opinion as to whether existing law appropriately addresses the issues of "form shopping" or "judge shopping" because such matters may come before me. I shall follow all binding precedents of the Supreme Court and the Third Circuit in dealing with any cases involving such practices.

11. **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 shambles. What are your thoughts regarding the Supreme Court's patent eligibility jurisprudence?**

Response: As a judicial nominee bound by the Code of Conduct for United States Judges, I am prohibited from expressing an opinion as to whether the existing law set forth in binding precedents of the Supreme Court appropriately addresses the area of patent eligibility because such matters may come before me. I shall follow all binding precedents of the Supreme Court and the Third Circuit in dealing with any cases involving patent eligibility, to the extent that any such cases come before me rather than the Federal Circuit.