1   NOMINATIONS

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3   Wednesday, July 14, 2021

4   United States Senate

5   Committee on the Judiciary

6   Washington, D.C.

7   The committee met, pursuant to notice, at 9:59 a.m.,

8   in Room 226, Dirksen Senate Office Building Hon Durbin,

9   presiding.

10   Present: Senators Durbin [presiding], Whitehouse,

11   Klobuchar, Coons, Blumenthal, Booker, Padilla, Ossoff,

12   Grassley, Lee, Cruz, Hawley, Cotton, Kennedy, Tillis, and

13   Blackburn.

14   Also present: Senators Murphy, Menendez, Cardin, Van

15   Hollen, and Schumer.

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1   OPENING STATEMENT OF HON. RICHARD DURBIN, A U.S. SENATOR

2   FROM THE STATE OF ILLINOIS, CHAIRMAN OF THE COMMITTEE

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4   Chairman Durbin. This hearing will come to order.

5   Today, we have five judicial nominees, and one nominee t

6   the Department of Justice. Myrna Perez, nominated to the

7   Second Circuit. Judge Sarah Merriam, nominated to the

8   District of Connecticut. Judge Karen Willi ms, nominated

9   to the District of New Jersey. Two nominees to the D.C.

10 District Court: Jia Cobb and Judge Florence Pan. And Matt

11 Olsen, nominated to serve as Assistan AG for the Justice

12 Department's National Security Division. A number of our

13 colleagues will formally introduce the nominees, but I'd

14 like to make a few observations.

15   First, with these n minees, the Biden administration

16 and the Senate continue to bring diversity and professional

17 balance to the bench. Today's slate includes Myrna Perez,

18 who will be the first Latina to serve on the Second Circuit

19 since Justice Sonia Sotomayor. We will also hear from

20 Fl rence Pan, who will be the first Asian American woman to

21 serve on the D.C. District Court.

22   This slate also includes professional diversity. We

23 have two sitting federal magistrate judges, a judge of the

24 D.C. Superior Court, who was previously an assistant U.S.

25 Attorney, and a former D.C. public defender. And in Mr.

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1   Olsen, we have an accomplished national security expert who

2   spent decades working to protect America from enemies,

3   foreign and domestic. We have a civil rights champion in

4   Ms. Perez, who has devoted her career to protecting and

5   defending America's right to vote. It is a fitting time

6   for her to join the bench, particularly after late rulings

7   by the Supreme Court. I won't go into detail here, in an

8   effort to make sure that we get to the nominees as quickly

9   as possible. But make no mistake, voting rights are a

10   major issue and will continue to be for some time.

11   I'm thankful for President Biden in putting forward

12   nominees like Ms. Perez, who have such extensive

13   experience. She has an impressive career as a litigator

14   and an advocate, and an incredible insight into the impacts

15   that restricted voting laws have on minorities. This type

16   of legal experience is underrepresented on the court, and

17   it's rare to see a voting rights attorney nominated to the

18   federal bench   This perspective will bring diversity to

19   our courts. Ms. Perez's record shows she's driven by her

20   dedication to serving others and the Constitution.

21   Before turning it over to Ranking Member Grassley, I'd

22   like to introduce two of the district court nominees.

23   Eleanor Holmes Norton was unable to make it this morning.

24   Jia Cobb and Judge Florence Pan, both nominated to the D.C.

25   Circuit District Court. Both of these nominees have her

1   support, and she submitted statements for the record.

2   I'm privileged to introduce Ms. Cobb this morning.

3   Not only is she an excellent nominee, but she is an

4   honorary Illinoian, having attended college at

5   Northwestern, and then clerked in Chicago for my friend,

6   Judge Diane Wood on the Seventh Circuit. After graduating

7   Harvard Law, clerking for Judge Wood, Ms. Cobb began her

8   career in D.C. as a public defender, representing indigent

9   defendants charged with criminal offenses   For the past

10   nine years, she has worked as a national civil -- at the

11   national civil rights firm Relman & C lfax, representing

12   plaintiffs in fair housing, disability rights, and

13   employment discrimination claims. Ms. Cobb's extensive

14   courtroom experience has undoubtedly prepared her for roles

15   that await her on the U.S District Court for the District

16   of Columbia.

17   In the p st 15 years, and this is remarkable -- anyone

18   who's practicing law today will know this -- Ms. Cobb has

19   tried more than 30 cases to verdict, both criminal and

20   ci il. And during her six years as a public defender, she

21   handled more than 200 cases, and appeared in the court

22   almost daily. It's an incredible record, and I wish we

23   could look to that for every nominee who's coming before

24   us. Having represented both sides in the courtroom, I

25   understand -- she understands that she needs to be a voice

1   in our nation's court so that the law is applied even-

2   handedly.

3   Next, I'll introduce Judge Florence Pan, also

4   nominated to the D.C. Court here in D.C. After graduating

5   summa cum laude with two bachelor's degrees from the

6   University of Pennsylvania, Judge Pan received her law

7   degree with distinction from Stanford, then clerked for

8   Judge Michael Mukasey, well known to this committee, on the

9   U.S. District Court for the Southern District of New York,

10   and Judge Ralph Winter on the Second Circuit.

11   Before her appointment to the D.C. Superior Court,

12   Judge Pam spent her entire legal career in public service.

13   She was selected for the prestigious Bristow Fellowship in

14   the Office of the Solicitor General. She was an attorney

15   in the appellate section of the Criminal Division at the

16   Justice Department, and the senior advisor in the Treasury

17   Department. Finally, she served as assistant U.S. Attorney

18   for the District of Columbia for a decade, litigating local

19   and federal courts at the trial and appellate level.

20   In 2009, President Obama nominated her to serve on the

21   D.C. Superior Court. She was confirmed by a voice vote.

22   She was also nominated to the D.C. District Court by

23   President Obama, and favorably reported out of this

24   committed by a voice vote in 2016; however, the majority

25   leader at the time refused to hold a floor vote on her

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1   nomination before the end of the 114th Congress. Upon

2   confirmation, Judge Pan will become the first Asian

3   American woman to serve on the District Court for the

4   District of Columbia.

5   With that, I turn to my colleague, Senator Grassley

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1   STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE

2   STATE OF IOWA

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4   Senator Grassley. Congratulations to all the

5   nominees. I'll start by addressing the nominee of Myrna

6   Perez for the Second Circuit, New York. Ms. Perez is a

7   civil rights lawyer, focused on voting rights. I think

8   it's good for the president to look beyond he usual talent

9   pools in picking judges. President Trump for example,

10   nominated a number of civil rights lawyers to the federal

11   bench. Judges like Kyle Duncan of Lo isiana, Matt

12   Kacsmaryk in Texas, and Sarah Pitlyk in Missouri were all

13   civil rights lawyers for significant portions of their

14   careers.

15   Indeed, should Ms. Perez be confirmed to the Second

16   Circuit, she'll join two other civil rights lawyers of

17   color appointed by Trump: Michael Park and Steven Menashi.

18   Judge Park, of course, led the fight to end racial

19   discrimination in higher education, a fight that's

20   unfortunately still ongoing. Judge Menashi, among other

21   things, ended religious discrimination against historically

22   Black colleges at the Department of Education. I think

23   we've seen the court benefit from this diverse perspective,

24   and it all goes to show that civil rights can take many

25   forms.

1   Now that said, my Democratic colleagues all oppose

2   those Trump civil rights lawyers. Perhaps Democrats didn't

3   think that civil rights that they were fighting for. I

4   think the more charitable interpretation is that Democrats

5   disagreed with their judicial philosophy. Yes. They all

6   protected civil rights, but they also believed in

7   textualism and originalism. Ms. Perez seems to be of the

8   opposite of that. A prominent opponent of oter integrity

9   laws, Ms. Perez seems to be very committed to a living

10   Constitution. This obviously concerns me, and I hope to

11   discuss this issue with her today.

12   I'd also like add one more thing about Ms. Perez.

13   Last night, the committee received the supplement from her.

14   It was an article she wrote, which the progressive

15   Christian journal Sojourners had just published, entitled,

16   quote, "The GOP Campaign to Make Elections Less Free." Ms.

17   Perez says th t this article was submitted before she was a

18   nominee, and that she did not see or approve the title of

19   the article before it was published. I expect to have a

20   number of written questions about this, but I would make a

21   few points:

22   First, given the content of the article and the

23   timeline of Ms. Perez' nomination, it's very unlikely that

24   Ms. Perez submitted this inflammatory article while under

25   consideration for this seat.

1   Second, while the authors typically don't choose their

2   titles, I have to image Ms. Perez could have gotten

3   Sojourners, which isn't The New Yorker or The Washington

4   Post, to accommodate a title change that wouldn't be an

5   insult to half of this committee. I'll also note that this

6   article's outrageous sub-title, quote, "Voters are Supposed

7   to Choose Their Politicians, Not the Other Way Around," was

8   written by Ms. Perez.

9   Third, regardless of when it was submitted, Ms. Perez

10   is bound by the Code of Conduct as a judicial nominee, and

11   it's hard to see how publishing this article as a nominee

12   is consistent with Canon V of the Code of Conduct.

13   As to the other nomin es, Ms. Cobb seems to have

14   similar problems, having in the past called for

15   interpreting statutes based upon their social histories

16   other than their texts. And Judge Merriam seems to have

17   gotten -- had a highly partisan political career.

18   On the other hand, I remember Judge Pan from her last

19   time before the committee. She seems extremely well

20   qualified for this position, being well acquainted with the

21   challenges faced by the District of Columbia, both as a

22   prosecutor and a local judge.

23   Judge Williams also seems to be well qualified.

24   Lastly, we have Mr. Olsen. I think it's critical

25   important that the National Security Division focuses on

1 protecting us from the security threats and not focus on

2 domestic politics. I hope that Mr. Olsen agrees with me on

3 that.

4   Thank you, Mr. Chairman.

5   Chairman Durbin. Thank you very much, Senator

6 Grassley. We have some introductions. And I note my

7 colleague, Senator Booker is here, and I believe you are

8 prepared to introduce one of the nominees.

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STATEMENT OF HON. CORY A. BOOKER, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

        Senator Booker. I am, Mr. Chairman. I know you always get very excited when there is a New Jersey nomin e.

        Chairman Durbin. Always.

        Senator Booker. Always. And as does Ranking Member Grassley. I am excited. I think all of Ne Jersey is especially excited, especially around the city of Camden, New Jersey, that I have the opportunity to introduce one of President Biden's nominees to serve as a district judge on the United States District Court for the District of New Jersey, Karen Williams.

        Judge Williams is currently serving her second term as a United States magistra e judge, where she has handled thousands of cases and demonstrated her incredible skill as a jurist, and her commitment to justice and law. She is, in many ways through many eyes, a local hero. She is a light to many in our community as someone who is showing ho to conduct yourself with professional excellence, with dignity, honor, and a deep empathy for all of humanity.

        As part of her many duties, including handling both criminal and civil cases, Judge Williams also presides over the District of New Jersey's Re-Entry Court. Renew Camden, which works to assist formerly incarcerated people with

1   their re-entry into the community is yet another testimony

2   that she is living what a great American author, another

3   African American woman, wrote that, "We are each other's

4   harvest. We are each other's business. We are each

5   other's magnitude and bond." Judge Williams recognizes the

6   bonds we have to each other that "love your neighbor" does

7   not have conditions. She lives a life of great magnitude.

8   Judge Williams is ready to serve as a ederal judge.

9   She has experience. She has skill. She has

10   qualifications. She has empathy. And she has a life that

11   is a testimony to the qualities we want on the bench.

12   The American Bar Association just recently unanimously

13   rated her as well qualified to be a district judge. She

14   has also the full-throated support of the New Jersey Bar

15   Association, the Garden State Bar Association, and the

16   Association of the Federal Bar of New Jersey.

17   And when, God willing, she is confirmed, Judge

18   Williams will be the first Black woman to serve as a United

19   States District Court Judge in the Camden, New Jersey,

20   federal courthouse. She is a trailblazer and a history-

21   maker, should she be confirmed.

22   I am grateful for her commitment to the law. I'm

23   grateful for her commitment to service. I am grateful for

24   her commitment to her fellow humans. And I urge my

25   colleagues to advance Judge Karen Williams's nomination to

1   serve as a federal judge.

2   I just want to take a moment, though, if I can. And I

3   know I'm stepping out of my lane here, but President

4   Biden's nominee to serve on the Second Circuit Court of

5   Appeals, Myrna Perez, is an extraordinary candidate. I

6   have read about her, and I just want to celebrate her

7   presence here. And I'm grateful that she is someone who

8   has been advocating, tirelessly and relentlessly for our

9   democracy's most sacred ideals, which are voting rights.

10   I'm excited about her nomination, and I will vote in favor

11   of her to be another federal circuit judge.

12   Chairman Durbin. Thank you very much, Senator Booker.

13   We are in a semi-awkward situation. This is the first time

14   that we are officially gathering in person instead of

15   Zooming in our comments, which was extraordinarily

16   convenient, but disjointed in its presentation. We're

17   trying to get everybody back in attendance. So some of the

18   members are on their way, I am told. It leaves me in a

19   situation where I could give a long speech, but I won't. I

20   hope my friend won't either. I don't think he will.

21   Senator Booker. Would you like me to say more about

22   Judge Williams?

23   [Laughter.]

24   Chairman Durbin. I think you've really done a fine

25   job.

1   Senator Booker. Thank you.

2   Chairman Durbin. Don't risk it. Senator Blumenthal

3 is on the way?

4   Okay. So there you are. To the rescue, Senator

5 Richard Blumenthal of Connecticut has arrived in time to

6 say a few words about his nominee.

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1   STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S. SENATOR FROM

2   THE STATE OF CONNECTICUT

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4   Senator Blumenthal. Thanks, Mr. Chairman. And thanks

5   for giving me this opportunity. I'm enormously honored nd

6   proud to be introducing Sarah Merriam today. Sarah Merriam

7   is the lawyer we all want to grow up to be after we

8   graduate from Yale Law School, and I say th t as a dad of a

9   daughter who has just graduated from Yale Law School, and

10   would do well to emulate her extraordinary career in the

11   law and in community service.

12   Senator Murphy and I recommended Judge Merriam to the

13   White House, and I am grat ful to President Biden that he

14   has agreed with our recommendation.

15   She received her BA from Georgetown University in

16   1993, and her JD from Yale Law School in 2000.

17   I spent good deal of my career, several decades, as

18   a litigator in the federal courts, and I have a particular

19   allegiance to the values and ethos of the very highest

20   quality that we should be seeking, as well as diversity in

21   our federal judiciary. Judge Merriam fulfills those

22   qualifications, and expectations, and much, much more.

23   Her work in the courtroom began long before she joined

24   the bench. After graduating from Yale Law School, she

25   clerked for two federal judges, both I admire greatly:

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1   Judge Alvin Thompson in the District of Connecticut, and

2   Judge Thomas Meskill on the Second Circuit. She was in

3   private practice. She became an assistant federal defender

4   in the District of Connecticut from 2007 until she took the

5   bench in 2015.

6   And I am really just thrilled that federal prosecutors

7   agree with Senator Murphy and myself. Their statement is

8   in the record. So do members of the privat bar   Their

9   statements are in accord. And I will just say that Judge

10   Merriam really embodies the highest ideals and traditions

11   of our federal district court in Conn cticut.

12   As a former United States Attorney and attorney

13   general for our state, I'm very proud to recommend her to

14   this committee.

15   And thank you, Mr. Chairman.

16   Chairman Durbin. Thanks, Senator Blumenthal. Senator

17   Murphy?

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1   STATEMENT OF HON. CHRISTOPHER MURPHY, A U.S. SENATOR FROM

2   THE STATE OF CONNECTICUT

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4   Senator Murphy. Thank you very much, Mr. Chairman. I

5   know you have a busy agenda ahead of you, and a number of

6   our colleagues who want to introduce the nominees.

7   Let me just associate myself with the remarks of

8   Senator Blumenthal. I don't know that you' e going to see

9   a nominee before this committee who has, I think, a more

10   important breadth of experience in the legal field than

11   Judge Merriam.

12   She has been an advocate for working people. She has

13   been a very capable lawyer in private practice, as

14   mentioned. She spent the bulk of her career as a federal

15   public defender, and now she has been a very well-regarded

16   federal magistrate, someone who comes to this hearing with

17   deep experience in the federal court system. So I think

18   her resume and her testimony will speak for itself.

19   I come to you today as someone who has known Judge

20   Merriam for 20 years, both professionally and personally.

21   I will tell you candidly that when I began my time in

22   public service, Sarah was someone that modeled just a

23   unique combination of joy, and compassion, hardheadedness,

24   common sense, that to me, caused me to choose to pursue a

25   life in the service of the people of Connecticut.

1   All of us, I think, have one or two of those people

2   that we were able to interact with early in our career that

3   inspired us to decide to pursue a life in public. And

4   Judge Merriam is one of those people for me.

5   And so from a very personal standpoint, I am

6   incredibly humbled to be able to stand here today and to

7   recommend my friend, to recommend one of Connecticut's

8   brightest legal minds to this committee.

9   Lastly, I'm just so glad that she's here with many of

10   her family members that others are watching from home. As

11   she will mention, they are a big part of the reason why she

12   is here today. They are all good and close friends of

13   mine. And so I welcome th extended Merriam family to this

14   meeting today.

15   So again, a busy me ting ahead of you. Very, very

16   pleased to add my words of introduction to those of Senator

17   Blumenthal.

18   Chairman Durbin. Thanks, Senator Murphy. Senator

19   Menendez?

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1   STATEMENT OF HON. ROBERT MENENDEZ, A U.S SENATOR FROM THE

2   STATE OF NEW JERSEY

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4   Senator Menendez. Well, thank you, Mr. Chairman, Mr.

5   Ranking Member, and distinguished members. It's my

6   pleasure to join my colleague, Senator Booker, a

7   distinguished member of this committee, to introduce Karen

8   Williams, an exceptionally qualified nomine for the U.S.

9   District Court for the District of New Jersey, where she

10   has served as a U.S. magistrate judge for more than a

11   decade.

12   If confirmed, she would be the first Senate confirmed

13   African American federal j dge to sit in the District of

14   New Jersey's Camden Courthouse. Yet it is the breadth and

15   diversity of her experience in the field of law that makes

16   her such an incredibly strong nominee.

17   Originally from Long Island, Judge Williams attended

18   Penn State University on a track scholarship, and she's

19   never looked back. And started out her career as a wage

20   analyst at the New York University Medical Center. And

21   fter her mother took a job managing labor relations for

22   the Golden Nugget Casino in Atlantic City, she relocated to

23   Egg Harbor Township, and earned her JD from Temple

24   University Beasley School of Law in Philadelphia, and she

25   has called South Jersey home ever since.

1   Prior to her appointment as a U.S magistrate judge,

2   she spent 17 years practicing employment and labor law at

3   the firm of Jasinski and Williams. There, she defended

4   workers' rights, negotiated collective bargaining

5   agreements between unions and local municipalities, and led

6   litigation before state and federal courts.

7   In 1998, Judge Williams successfully argued on behalf

8   of Atlantic City before the New Jersey Supreme Court in a

9   case that affirmed the local fire department s ability to

10   discipline a firefighter for hurling racial epithets at a

11   police officer.

12   Since her appointment as a U.S. magistrate judge in

13   2009, Judge Williams has displayed an unyielding commitment

14   to the fair administration of justice, to equal rights

15   under the law, to a deference to precedent, and to the

16   safety of our communities. Indeed, two of the most notable

17   cases she has presided over involve threats to public

18   safety. One case concerning an individual accused of

19   planning attacks on synagogues. And another involving a

20   defendant who advocated for rioting and looting during

21   protests against police brutality during the death of

22   George Floyd.

23   In addition, Judge Williams has also served as an

24   adjunct professor at Rowan University, where her classes on

25   law and justice have undoubtedly inspired many students to

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1   pursue the legal profession.

2   Judge Williams may have been born in New York, but she

3   represents the best of New Jersey. I have complete

4   confidence in her judgment, her values, her intellect, and

5   her capacity to serve as a U.S. District Court Judge for

6   the District of New Jersey. And as you know, Mr. Chairman,

7   and I appreciate this committee and your leadership in

8   dealing with the emergency of judicial vacancies that exist

9   in New Jersey that have been declared a national emergency.

10   The committee has been moving through nominees. I urge the

11   committee's support for her nomination as well to help us

12   meet that challenge.

13   Chairman Durbin. Thanks, Senator Menendez. And I

14   might say to you and Senator Murphy. I know you have a

15   busy schedule, and if yo would like to leave at this

16   point, it's perfectly acceptable.

17   We now turn to Senator Cardin from Maryland.

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1   STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM

2   THE STATE OF MARYLAND

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4   Senator Cardin. Thank you, Chairman Durbin, and

5   Ranking Member Grassley. Thank you for giving Senator V n

6   Hollen and I the opportunity to introduce a proud

7   Marylander, President Obama's nominee for -- President

8   Biden's nominee for assistant attorney gene al for National

9   Security Division.

10   Mr. Matt Olsen is a proud Marylander. He hails from

11   Kensington, which is also the home of our distinguished

12   senator, Senator Van Hollen, and we're very proud of his

13   appointment.

14   Matt Olsen has tremendous experience at the

15   intersection of law enforcement and intelligence community

16   at exactly the point where the National Security Division

17   straddles these two distinct government functions. Mr.

18   Olsen has nearly two decades of experience in a wide

19   variety of roles at the justice and intelligence community.

20   Mr Olsen received his BA from the University of

21   Virginia, and his JD from Harvard Law School. He served as

22   a judicial law clerk for the Honorable Norma Holloway

23   Johnson, the first Black woman to serve on the D.C.

24   Circuit. Judge Holloway became Mr. Olsen's lifelong

25   mentor.

1   After completing his clerkship, he joined the Justice

2   Department's Civil Rights Division, where he enforced the

3   Voting Rights Act. He also joined the U.S. Attorney's

4   Office for the District of Columbia, where he supervised

5   the investigation and prosecution of domestic terrorism,

6   espionage, and export violation cases. Mr. Olsen has

7   prosecuted homicide cases, RICO cases, and drug and gang

8   related offenses. I understand that it was Mr. Olsen's

9   work as a U.S. Attorney that led him to serve as special

10   counsel to then FBI Director Mueller, where he supported

11   the FBI's national security and count rterrorism work.

12   After departing the U.S Attorney's Office and the

13   FBI, Mr. Olsen helped crea e the National Security

14   Division, and served as one of its first officials as both

15   acting assistant attorney general and a deputy assistant

16   attorney general. He oversaw 125 career professionals, and

17   managed intelligence and surveillance operations and

18   oversight activities. In this role, he worked closely with

19   the intelligence community.

20   At the National Security Division, Mr. Olsen led the

21   Justice Department's participation in the interagency

22   Guantanamo Review Task Force created by President Obama to

23   evaluate the status of individuals detained at Gitmo Bay,

24   which as we all know, is an extremely difficult assignment.

25   In 2010, he was appointed as general counsel to the

1 National Security Agency, which is headquartered in Fort

2 Meade in Maryland. As NSA's chief legal officer, he played

3 a critical role in supporting the agency's operation

4 mission.

5   Mr. Chairman, I could go on and on. He has incredible

6 experience in the intelligence community, and justice, and

7 law enforcement. He has the whole package. I want to

8 thank him for his willingness to continue t serve the

9 public, and thank his family for their willingness to allow

10 him to continue. I'm very proud to recommend his

11 nomination to this committee, and I urge you to consider

12 his nomination.

13   Thank you, Mr. Chairm n,

14   Chairman Durbin. Thanks Senator Cardin. Senator Van

15 Hollen?

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1   STATEMENT OF HON. CHRIS VAN HOLLEN, A U.S. SENATOR FROM THE

2   STATE OF MARYLAND

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4   Senator Van Hollen. Thank you, Chairman Durbin,

5   Ranking Member Grassley, and members of this distinguish d

6   committee. I'm very proud to have the opportunity to also

7   join my colleague, Senator Cardin, in introducing the

8   president's nomination to serve as assistan attorney

9   general for national security at the Justice Department,

10 Matt Olsen. And I would like to also welcome his family:

11 his wife, Fern, and their three children, Elizabeth, Nate,

12 and Will, who are here today

13   President Biden has s lected wisely in picking a

14 nominee who has the experience, the expertise, and the

15 sound judgment for this very important position. And he

16 has very wisely selected a Marylander as well.

17   I'm not going to cover all the details because Senator

18 Cardin went over his very distinguished career, but I would

19 point out that he has 20 years of experience in exactly the

20 relevant areas for the position for which he's been

21 nominated, national security, counterterrorism, and civil

22 rights.

23   I do want to highlight a couple of the areas where he

24 served, including the Department of Justice, first in the

25 Civil Rights Division, and then as acting assistant

1   secretary for national security, where Senator Cardin said

2   he helped establish the National Security Division at DOJ.

3   His service as general counsel at the National

4   Security Agency, covering issues like cybersecurity and

5   surveillance law will also prove very important in his n w

6   position, if confirmed. In his most recent government

7   post, Mr. Olsen served as the director of the National

8   Counterterrorism Center, where he worked ti elessly at the

9   helm of the nation's efforts to combat terrorism at home

10   and abroad by integrating terrorism intelligence and

11   connecting the dots to deter, detect, and disrupt terrorist

12   plots. In short, his work has helped save American lives.

13   Each of these experiences prepare him very well for

14   the skills that he will need to serve in this role. And

15   there is no question in my mind, members of the committee,

16   that Matt Olsen is ready to take on the important

17   responsibilities as assistant AG for National Security.

18   I was delighted to see that just yesterday, 80 former

19   senior officials of the United States Department of

20   Justice, who have served under administrations of both

21   parties, wrote to this committee, expressing their, quote,

22   "unqualified and enthusiastic support for Mr. Olsen's

23   nomination."

24   On a personal note, I can testify to Matt Olsen's good

25   character, because I also know him as a good neighbor in

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1   Kensington, Maryland. My wife, Katherine, and I frequently

2   encounter Matt, Fern, and their children, walking in the

3   neighborhood. And the only family who is not with them

4   today is their dog, Kenie, who is a playmate of our dog.

5   Chairman Durbin, Ranking Member Grassley, members of

6   this committee, I am absolutely confident that, if

7   confirmed, Matt Olsen will serve our country with honor and

8   distinction. And I urge you support his no ination for

9   this important post.

10   Chairman Durbin. Thank you very much, Senator Van

11 Hollen. And I thank both you and Senator Cardin. And of

12 course, you can go about your business if you wish. We'll

13 continue here.

14   We are going to pause momentarily, waiting for the

15 arrival of Senator Schum r, who's going to introduce the

16 nominee for the first panel. So if everyone would please

17 relax.

18   [Recess]

19   Chairman Durbin. Welcome, Senator Schumer. The floor

20 is yours.

21

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1 STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM

2 THE STATE OF NEW YORK

3

4   Senator Schumer. Thank you, Mr. Chairman. And I want

5 to thank you and my colleagues on the Senate Judiciary

6 Committee. It's always a pleasure to be back here where I

7 served many happy years. In fact, if you add up my time on

8 the House Judiciary Committee and the Senat Judiciary

9 Committee, it's 1982 to 2016. That's a lot of years. So

10 it's glad to be back.

11   And it's particularly glad to be back for the reason

12 I'm here today. It's my honor, my true honor, to introduce

13 a nominee to the committee for the Second Circuit of New

14 York, Myrna Perez, an experienced litigator, one of the

15 foremost election lawyers in the country whom I was so, so

16 proud to recommend to President Biden.

17   Myrna Perez's life is a quintessentially American

18 story. The daughter of Mexican immigrants, Myrna grew up

19 in San Antonio, not quite Brooklyn, where her dad served in

20 th Air Force, and her mom worked as a waitress and then at

21 the post office.

22   As she will tell you, her upbringing was steeped in

23 the immigrant experience of many first-generation

24 Americans. There was a constant struggle against racial,

25 social, and language barriers as the Perez family found its

1   place in America.

2   In fact, when Myrna was a kid, her aunt would take her

3   to the polls on Election Day. Even in her early years, she

4   saw first-hand to how cultural differences and byzantine

5   rules made it immensely difficult for Americans like her to

6   engage in the political process, foreshadowing a career

7   dedicated to the defense of voting rights and equal

8   representation for all Americans.

9   And make no mistake about it -- and it was no mistake,

10   rather, that she chose the legal profession as a means to

11   achieve that noble goal. Myrna's family will tell you the

12   story of how once, as a kid, she protested that her cousin

13   tried to keep a fish he caught that was technically below

14   the legal size for catch-and-keep. Do you remember what

15   kind of fish it was? A rout. A trout. We have those in

16   New York too.

17   It was the innate appreciation for the rule of law

18   that propelled Myrna through Yale, Harvard, and eventually

19   Columbia Law School. The first in her family to graduate

20   fr m college. I hear these stories, and it gives me such

21   faith in America. But such a strong desire to create

22   greater and more equal justice in this country. We have so

23   much potential. We have such a wonderful country; we just

24   have to live up to it. And with a nomination like this, we

25   are.

1   After two clerkships on the federal bench, Myrna

2   worked as a civil rights fellow in private practice before

3   joining the Brennan Center for Justice at NYU, of course

4   named after the great Justice Brennan. It was at the

5   Brennan Center that Myrna established a reputation as on

6   of the top voting rights and election lawyers in the entire

7   country. For the last 15 years, she's been involved in

8   election-related litigation. Everything fr m voter roll

9   purges, discriminatory voter ID laws, the voting rights of

10   formally incarcerated people, and protecting the ballot

11   from unlawful rejection.

12   My colleagues, the federal bench has long been

13   occupied by former prosecu ors and corporate lawyers.

14   While many of these people, many of whom I proudly

15   recommended, have served admirably, it's past time that the

16   federal bench reflect more accurately the true depth, and

17   breadth, and talent that the legal profession has to offer.

18   It's about time that civil rights attorneys, federal

19   defenders, and voting rights experts like Myrna Perez join

20   th ranks. Especially now, when our democracy in many ways

21   is in peril, it's crucial that we elevate someone like Ms.

22   Perez to the bench. Someone we can trust to faithfully and

23   equally apply the law to preserve our great democracy.

24   But it's not only about her experience as a voting

25   rights litigator. After all, she's going to hear all kinds

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1   of cases on the Second Circuit. What makes Ms. Perez so

2   qualified for this job is not merely her experience, but

3   her legal excellence. Just listen to what a few of her

4   colleagues have to say about her: "Brilliant," one fellow

5   attorney wrote, quite succinctly. "A force of nature,"

6   another said. Another colleague rated her legal skills as

7   simply, quote, "off the charts."

8   I would add one additional note to the e well-deserved

9   praises: Ms. Perez will serve as the first Latina to sit

10   on the Second Circuit Court of Appeals since then Judge,

11   now Justice, Sonia Sotomayor, whom I had the great honor of

12   recommending to President Obama for a seat on the highest

13   court.

14   And let me just say, when I met Ms. Perez, she just

15   knocked my socks off. Y s. She was brilliant, amazing.

16   Yes. She had real compassion and depth of experience. And

17   she had a scintillating personality that I'm sure will help

18   her persuade fellow members of the Second Circuit to the

19   righteousness of the causes that she will follow. So, I

20   can think of no one, no one more fitting to carry on

21   Justice Sotomayor's legacy on the Second Circuit than Myrna

22   Perez. She's amazing. I'm so proud to nominate her. She

23   carries my highest, highest, highest recommendation.

24   Chairman Durbin. Thank you very much, Senator

25   Schumer. We appreciate your remarks.

1   And at this point, we're going to ask the staff to

2 prepare for the questioning of nominees. The first panel

3 will be -- Ms. Perez, who is seeking a spot on the circuit

4 court, will be before the committee.

5   And then the second panel will include the other

6 nominees.

7   Senator Schumer is working this like a high school

8 graduation.

9   [Laughter.]

10   Chairman Durbin. And he's attended many.

11   Senator Schumer. I've spoken at over 100 of them

12 virtually this year. Graduations.

13   Chairman Durbin. I'm sure virtuously too. Ms. Perez,

14 why don't we ask you to please stand to be sworn? Please

15 raise your right hand.

16   [Witness sworn]

17   Chairman Durbin. Thank you. Please proceed with your

18 opening remarks.

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1   TESTIMONY OF MYRNA PEREZ, TO BE UNITED STATES CIRCUIT JUDGE

2   FOR THE SECOND CIRCUIT

3

4   Ms. Perez. Thank you, Chairman Durbin, Ranking Member

5   Grassley, and members of the committee for considering my

6   nomination today. Thank you, Senator Schumer and Senator

7   Gillibrand for your support, and Senator Schumer for your

8   kind words of introduction. I also want to thank President

9   Biden for this nomination. It is the honor of my

10   professional life.

11   I first want to thank my judges, the Honorable Anita

12   Brody of the Eastern District of Pennsylvania, and the

13   Honorable Julio Fuentes of the Third Circuit. While they

14   were appointed by presidents from different political

15   parties, they had a shar d commitment for the rule of law

16   and impartial adjudication.

17   I want to thank my friends and colleagues. It is not

18   possible to enumerate the many ways in which you enrich me.

19   The support you have shown me has meant more than you know.

20   I want to thank my church family: Saint Matthews

21   Evangelical Lutheran Church, my extended church family of

22   Crossroads Prison Ministry, and Grace Van Vorst Episcopal

23   Church for all of their prayers. They availeth much.

24   In the hearing room is my cousin, Hector Perez,

25   standing in for my many wonderful cousins on the Perez and

1   Garza side of my family. And of course, I want to thank my

2   many aunts and uncles who played such a big part of my life

3   during my formative years. To my cousins, my aunts and my

4   uncles, my brother, my nieces and my nephews, thank you for

5   the love from afar.

6   My husband, Mark Muntzel is here. He is a devoted

7   father and a really good sport about going along with my

8   various community projects. Mark also gift d me with a

9   bonus family who welcomed me with open arms.

10   My parents, Myrna Perez and Victor Perez, Junior, came

11   in from Texas to be here today. They immigrated from

12   Mexico to the United States as children. And while I never

13   heard any complaints, I never heard the words

14   discrimination or poverty, even as a young child, I knew

15   that much of their life was very challenging and full of

16   hardships.

17   But to their credit, they never communicated anything

18   but gratefulness for what they had. They taught me to be

19   resilient. They taught me to be resourceful. They taught

20   me to be independent. They taught me to be self-reliant.

21   And they taught me to set high standards for myself, and to

22   work very hard to achieve them. But most importantly, they

23   taught me that on my worst day, I am still better off than

24   most of the world on their best.

25   And finally, in the room is my beloved son. He is my

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1   greatest source of strength, joy, and inspiration.

2   Thank you so much, members, for giving me a moment to

3   thank all the people who got me here today. I look forward

4   to your questions.

5   [The prepared statement of Ms. Perez appears in the

6   appendix.]

7   / COMMITTEE INSERT

8   Chairman Durbin. Thank you very much, Ms. Perez. Let

9   me, before we go into a few questions, say a few words

10   about the disclosure yesterday of the article that was

11   published in Sojourners Magazine. Le me tell you that I

12   have taken a look at the standards of the committee, and

13   believe that you are in to al compliance, both with the

14   letter and spirit of the rules and law.

15   You submitted to th committee and article, which had

16   been submitted for publication in May of this year, before

17   your nomination to the Second Circuit. And that article

18   was published online yesterday. We have the letter of

19   transmittal from you with the article in a timely fashion.

20   Question 12(a) of the Senate Judiciary Questionnaire

21   requires nominees to provide all published materials,

22   including materials published on the internet, to the

23   committee. The question does not, however, require

24   nominees to produce unpublished materials. So you complied

25   completely, as soon as it was published.

 1   I might also say that I read it. And having read it,

 2   some may take exception, I certainly believe they will. I

 3   would gladly give your article as a speech from me

 4   personally on the floor of the Senate any day of the week.

 5   I agree with what you said to the letter. And I would also

 6   say that it is factually correct in every aspect that I'm

 7   aware of. So we may disagree on policy, that's the nature

 8   of this United States Senate and our body p litic. But in

 9   terms of the article itself, as I said, I believe that it's

10   accurate and I would embrace it.

11   The only reference to the Republican Party was in the

12   title, and that, you said, was not your choice, but the

13   editor's choice. It speaks of issues in state legislatures

14   without any partisan identification on that.

15   But let's go further with this. You've worked with

16   the Brennan Center. And Senator Grassley raised a point

17   which is entirely valid. We raise this point all the time.

18   Do you come to this, really, awesome responsibility with a

19   bias?

20   You know, I think the world of Justice Brennan, and

21   what he did on the Supreme Court -- as a matter of fact, I

22   think there's a quote in here. Let me find it, because

23   it's worth remembering. There's a quote that said that

24   Justice Brennan was -- Justice William Brennan was probably

25   the most influential justice of the century. And the

1   source of that quote was Antonin Scalia. So Brennan

2   himself was a well-respected man, and I have turned to the

3   Brennan Center many times when there are questions of

4   policy that they have looked into.

5   What would you say of your own philosophy?

6   Textualist? Originalist? I don't know all the terminology

7   of the Constitution. Please, the floor is yours.

8   Ms. Perez. Certainly, Chairman Durbin Thank you so

9   much. I think the first place you start when examining the

10   Constitution or a statute is with the text. It is the most

11   probative example of how it should be interpreted. I think

12   if, on its face, the text is not clear, you would then look

13   to precedent. And if confirmed, I would be looking to

14   precedent both from the Supreme Court and the Second

15   Circuit. If that still doesn't answer the question, you

16   look to canons of construction. You perhaps approach a

17   legislative history, but there is more than 230 years of

18   jurisprudence in this country, and there is relevant and

19   probative jurisprudence on quite a number of issues. But

20   yo start with the text, sir.

21   Chairman Durbin. Members of the Senate and many

22   others swear allegiance to that Constitution. To defend

23   it, people have given their lives in defense of that

24   Constitution. And yet, I would say, in my own personal

25   opinion, as great a document as it is, and it is great, it

1   is not perfect. Its treatment of African Americans, women,

2   and others reflected the mores and standards when the

3   Constitution was written. So I would just say, and you

4   don't have to comment, that I am not a literalist when it

5   comes to characterizing African Americans as two-thirds f

6   a citizen or not including women in the right to vote.

7   That, to me, is a reflection of the times, and thank

8   goodness those times have changed.

9   Speak to me, if you will, though, about the right to

10   vote. That is the central issue that we're discussing in

11   so many aspects. A group of Texas legislators decided to

12   come to Washington so that they wouldn't make a quorum in

13   Texas over controversy inv lving the voting rights law.

14   People feel very intensely about it. Comment on that, if

15   you would.

16   Ms. Perez Senator, the right to vote keeps us free.

17   It protects us from tyranny. It is preservative of all

18   other rights   And as an advocate, I have been duty-bound

19   to ensure that the promises this Constitution makes about

20   being able to participate in your own self-governance is

21   ctualized.

22   The position before you I seek is one of a different

23   role, one in which I would not be involved in questions of

24   policy, but merely evaluating the laws that were put before

25   me alongside the record that the parties put in. But the

1   fundamental core of what is great about our country, the

2   Constitution and the promises that it makes that we all

3   deserve a free, fair, and accessible vote, is something

4   that is timeless and something that is bipartisan.

5   Chairman Durbin. I know the answer to the question

6   I'm about to give is very simply a yes, but I'm going to

7   ask you if you would expound on the notion. Have we had

8   any difficulty in the history of this nation in providing

9   the right to vote to all Americans?

10   Ms. Perez. Yes, sir. There are times where we have

11   not lived up to the great ideals of the Constitution, and I

12   am very proud to say that we are improving on that, but it

13   requires vigilance, and it requires all of us Americans

14   being part of the "We the People," in order to make and

15   continue to make our uni n more perfect.

16   Chairman Durbin. Thank you. Senator Grassley.

17   Senator Grassley. Thank you, and congratulations on

18   your appointment. I want to talk generally about the

19   approach of this administration. So many names, not just

20   yo rs, but others that we've already dealt with, about

21   these nominees refusing to even admit that they have a

22   judicial philosophy, let alone talk about what their own

23   judicial philosophy is. Even Judge Gelpi, who literally

24   wrote a book on the Constitution didn't seem to want to

25   talk about it.

1   But I think you're uniquely suited to answer these

2   questions because you've spoken many times about the living

3   Constitution concept in connection with your work at the

4   Brennan Center. What does the living Constitution concept

5   mean to you? You obviously agree with a living

6   Constitution as a method of Constitutional interpretation.

7   Ms. Perez. Senator, Justice Brennan made famous and

8   popular the idea of a living Constitution. Obviously, I've

9   never spoken to him about what it meant or what his

10   interpretation meant. I do think, as a nominee, I believe,

11   and I'm comfortable saying, that the Constitution is an

12   enduring document. Its great values of incredibly

13   important things like equa justice under the law, liberty,

14   the right to free exercise, all of those important

15   attributes of the American experience are still relevant

16   and guiding us today. And if they continue to guide us, we

17   will continue to be the greatest country in the world.

18   Senator Grassley. Thank you for your willingness to

19   express that. Others haven't been quite that outcoming.

20   On May 27, 2021, you spoke on a virtual panel

21   entitled, "Voting Rights in America: Ensuring Fair and Full

22   Voting for All." During your introduction, you spoke about

23   Justice Brennan and his judicial philosophy. You also went

24   on to say, quote, "If you're one of these people who think

25   that we were at our best when our country was first founded

1   and didn't include women, or people of color, or people

2   without property in the electoral process, this is probably

3   not the conversation for you," end of quote. Who were you

4   describing in that description?

5   Ms. Perez. Senator, I do speak a lot, so I'm not 100

6   percent confident that I remember the conversation. If it

7   is the conversation I remember, I was getting a lot of

8   hostile, inappropriate comments in the chat and I was

9   worried that it was distracting the audience and

10   frustrating the organizers. And so I was trying to explain

11   to the audience members that I was asked to speak on a

12   particular topic, and I intended to speak on that topic as

13   opposed to engaging with n meless, anonymous people via

14   chat.

15   Senator Grassley.   kay. Let me follow up. Is it

16   your view that originalists think America was, quote-

17   unquote, "at its best when people of color couldn't vote?"

18   Ms. Perez. Senator, I think labels that get thrown

19   around a lot, like originalist, are inchoate and constantly

20   shifting, and so they're too broad and they're not

21   particularly helpful in terms of answering questions.

22   I will say that I -- the people I have encountered

23   that call themselves originalists, I do believe that our

24   country that is inclusive is preferable than the

25   restrictions we saw when the country was first founded.

1   Senator Grassley. Can you name any originalists who

2 might hold that view?

3   Ms. Perez. I'm sorry?

4   Senator Grassley. Could you name any originalist who

5 might hold that view?

6   Ms. Perez. Who holds what view? The idea that the

7 country has improved when we can all include? We are all

8 inclusive.

9   Senator Grassley. Okay. Then, let me go on to my

10 last question. This deals with recusal. In your

11 questionnaire, you said you would rec se yourself in

12 matters which the Brennan Center was a party or represented

13 a party. Does this also include matters which you or the

14 Brennan Center advocated a policy position on? Let me

15 follow up that question with, you have spoken about New

16 York election laws and pending voting legislation in

17 Congress, and your positions on those bills are quite

18 clear. Can you comment today to recusing yourself from

19 litigation involving that legislation?

20   Ms Perez. Senator, I am very comfortable committing

21 to consulting the Statute of 28 USC 455 for recusals, and

22 talking to the administrative office, and proceeding in

23 accordance with those dictates.

24   Senator Grassley. Thank you very much.

25   Ms. Perez. Thank you so much.

1   Chairman Durbin. Senator Whitehouse.

2   Senator Whitehouse. Thank you, Chairman. Welcome --

3   Ms. Perez. Good morning.

4   Senator Whitehouse. -- Ms. Perez. I am delighted

5   that you are here, and I look forward to supporting your

6   confirmation.

7   I want to ask you a question regarding the Voting

8   Rights Act. There has been some criticism f your

9   nomination that you have dwelt unduly on issues of race

10   with respect to the Voting Rights Act. Could you let us

11   know why, with respect to the voting rights law, that is

12   actually a necessary thing to consider?

13   Ms. Perez. Thank you Senator. For the past 15 years

14   or so, I have been an advocate on behalf of an organization

15   and on behalf of clients who seek a free, fair, and

16   accessible vote. As a civil rights litigator, I am duty-

17   bound to be hyper-sensitive and attuned to issues of

18   disparity and racism, and to protect and guard against any

19   threats to a free, fair, and accessible vote. And as such,

20   I have been vigilant about monitoring, and watching, and

21   resourcing, and researching potential threats to a fair

22   vote.

23   Senator Whitehouse. And in fact, Section 2 of the

24   Voting Rights Act makes it actionable to deny or abridge

25   the right of any citizen of the United States to vote on

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1   account of race or color, does it not?

2   Ms. Perez. That is correct, sir.

3   Senator Whitehouse. So that's actually in --

4   Ms. Perez. Part of --

5   Senator Whitehouse. -- the law.

6   Ms. Perez. Part of my job, sir. Right now.

7   Senator Whitehouse. Part of your job. And it's a

8   part of your job because it's part of the law.

9   Ms. Perez. That is correct, sir.

10   Senator Whitehouse. Yeah. I'm actually, I think,

11   more to your side than to the originalist side with regards

12   to the Constitution. I like your use of the word enduring.

13   I think we do have an enduring Constitution, and we do have

14   principles in it that endure, but that have to adapt to

15   changing circumstances in society, whether it's new means

16   of communication, or new economic realities. And I think

17   too often, originalism is used as a device to try to impose

18   value judgments rather than principle.

19   I think it was William F. Buckley who, years ago,

20   said, "The purpose of conservatism is to stand athwart

21   history, yelling, 'Stop.'" And I don't think the

22   Constitution is designed that way. So I just want to say I

23   appreciate your perspective. I tend to share it. And I

24   think your use of the word enduring is a very appropriate

25   one. I don't know if you want to elaborate on that in any

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1   respect, but thank you for saying that.

2   Ms. Perez. I would say, Senator, that I love the

3   Constitution. I love the principles it sets out. I love

4   that under the Constitution, we are all equal under the

5   law, that we all have a right to life, liberty, and the

6   pursuit of happiness. I love that we all have the right to

7   free exercise.

8   And I am entirely persuaded in the wis om of the

9   frameworks it sets up. Things like the rule of law,

10   separation of powers, and an independent judiciary and

11   federalism. As part of those frameworks, it allows us as

12   Americans to live up to our ideals. So those frameworks

13   improve our values, and th se values guide our framework.

14   And I think together, the country is getting stronger and

15   can get stronger.

16   Senator Whitehouse. In the context of frameworks, let

17   me ask a final question here that I ask of a great many of

18   the nominees who come before us, because in the framework

19   of the United States Constitution is the jury. Criminal

20   jury and the civil jury. And the importance of the jury

21   was something that was really evident to the founders. It

22   was part of the casus belli of the Revolution. It was

23   mentioned in our founding documents. And I think many

24   historians see it as a way for popular expression of

25   governance by local communities.

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1   And so, it's been with some degree of distress and

2   dismay that I've watched jury trials more and more

3   evaporate in the federal system. A lot of it has to do

4   with Supreme Court decisions that have made it easier for

5   big and powerful interests to get out of cases before th y,

6   in some cases, even have to properly answer discovery. In

7   other cases, it's been allowing big powerful interests to

8   divert people away from juries and into man atory

9   arbitration, for instance, which is very often a rigged

10 game. Would you say a word about the historic role of the

11 jury, and whether you have any hesita ion about protecting

12 and defending the institution of the jury, as contemplated

13 in the Constitution?

14   Ms. Perez. Senator, the jury is an important bedrock

15 position in our judicial system. Certainly, as an

16 appellate court judge, I would not be interacting with

17 juries, but I certainly would apply all the standards of

18 deference and reverence for the decisions issued by juries.

19   Chairman Durbin. Thanks, Senator Whitehouse. Senator

20 Tillis

21   Senator Tillis. I'll defer to Senator Kennedy.

22   Senator Kennedy. I'm sorry, Mr. Senator. No. You go

23 ahead. Well, that's very kind of you.

24   Chairman Durbin. I could ask you to do it jointly.

25   [Laughter.]

1   Senator Tillis. That gives us 10 minutes?

2   Senator Kennedy. Yeah. Really.

3   Chairman Durbin. But you have to fight over the 10

4   minutes.

5   Senator Kennedy. I'll try not to take my whole time

6   here. Thank you, Mr. Chairman. Counselor, how are you?

7   Good morning. Congratulations.

8   Ms. Perez. Thank you so much.

9   Senator Kennedy. Do you think the Constitution should

10   be used to create new rights?

11   Ms. Perez. Senator, I think the Constitution is an

12   enduring document, and that the --

13   Senator Kennedy. Yeah. I agree with you. It's been

14   around a long time. It's enduring. And I'm fond of it.

15   You love it. I'm fond of it too. But do you think it

16   aught to be used to create new rights?

17   Ms. Perez. Senator, I think it is constantly being

18   interpreted, and the Supreme Court has, through the 230

19   years of jurisprudence, has found rights in it.

20   Senator Kennedy. Yeah.

21   Ms. Perez. And if I am confirmed as an appellate

22   judge, I would faithfully apply Supreme Court precedent.

23   Senator Kennedy. Yeah. But are you going to use to

24   try to create new rights?

25   Ms. Perez. Senator, appellate court judges don't

1   create new rights. They take the record --

2   Senator Kennedy. Sure they do.

3   Ms. Perez. -- below them --

4   Senator Kennedy. Sure they do, Counselor. We've been

5   -- we both have been at this a long time. They do it all

6   the time. And then it goes up to the Supreme Court, and

7   the Supreme Court says yea or nay. Or sometimes they don't

8   say anything.

9   Let me ask you this, what barometer should we use to

10 decide whether a federal judge ought to create a new right,

11 or the people's elected representativ s through a Congress

12 or a legislature? What's the standard you use there?

13   Ms. Perez. Senator, we have co-equal branches of

14 government. The legislature does the policymaking. The

15 judiciary --

16   Senator Kennedy. Yeah. But what's the standard --

17 I'm sorry to interrupt you. But we had this problem in the

18 last administration, and we have it in this administration.

19 If you could just answer my question because five minutes

20 just goes like that. What standard do you use, personally,

21 to decide whether a new right ought to be created by a

22 federal judge or by the United States Congress, if it's a

23 federal right?

24   Ms. Perez. Senator, I would be applying precedent,

25 and precedent has standard --

1   Senator Kennedy. I stipulate that you're going to

2   apply precedent. I stipulate that. So let's take that off

3   the table. What standard should be used to determine

4   whether a new right ought to be created by a court, a

5   federal judge, unelected, appointed for life, or a United

6   States Congress?

7   Ms. Perez. Senator, appellate courts have standards

8   of review when looking toward lower court decisions, and I

9   would apply that standard --

10   Senator Kennedy. Come on, Counselor. You're not

11   answering my question. It's a real simple question, and

12   you're very smart, and you know what I'm asking. You

13   believe in a living Constitution. Okay. I get that.

14   That's a legitimate point of view.

15   You say you don't understand what an originalist is,

16   but I think -- I don't think you're being candid there.

17   But this is what my -- let me ask my question again. What

18   standard should be used to decide if you're going to create

19   a new right in the Constitution, whether that right ought

20   to be created by a federal judge or the people's elected

21   representative? Very simple.

22   Ms. Perez. Senator, the federal courts are of limited

23   jurisdiction. The appellate courts sit in between a

24   Supreme Court and --

25   Senator Kennedy. Okay. You're not going to answer

 1   it. I get it. When you were at the Brennan Center --

 2   you're still there. Right?

 3   Ms. Perez. I am on leave, sir.

 4   Senator Kennedy. Okay. But when you were there, did

 5   you advocate federal courts to create new rights under the

 6   Constitution?

 7   Ms. Perez. No, sir.

 8   Senator Kennedy. You never did?

 9   Ms. Perez. No, sir.

10   Senator Kennedy. Okay. When you --

11   Ms. Perez. The right to vote is protected in the

12   Constitution, and it's protected --

13   Senator Kennedy. So you never asked for new rights.

14   You just said they're already there.

15   Ms. Perez. Yes, sir

16   Senator Kennedy. Okay. How do you know a right's

17   already there if it's not explicit?

18   Ms. Perez. In the case of Boding --

19   Senator Kennedy. No. No. Just in general. If I

20   read your resume, and it's not -- something's on there --

21   well, that's a bad example.

22   If you look at the Constitution, and it doesn't -

23   - let's just say -- let's say reparations. Okay. And it

24   doesn't talk about reparations. How do you know whether a

25   right should be granted if it's not there? That's what I

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1   understand you to be saying with the living Constitution.

2   Ms. Perez. Senator, again, a case would not come

3   before an appellate court unless parties presented an

4   argument.

5   Senator Kennedy. I get that. I understand how a

6   lawsuit's tried. How -- let me ask you again, how do you

7   know if a right's not explicit in the U.S. Constitution

8   that it's really there? It's hiding. It's lurking, and we

9   just have never seen it.

10   Ms. Perez. Senator, in Marbury v. Madison, the

11   Supreme Court said that the Supreme C urt interprets the

12   Constitution.

13   Senator Kennedy. Right.

14   Ms. Perez. I would look to precedent. I would look

15   to see if what --

16   Senator Kennedy. What if there's no precedent?

17   Ms. Perez. There's always some precedent. I --

18   Senator Kennedy. See, here's my problem, Counselor.

19   This is where I think you're headed. I think what you want

20   to do on the federal bench is advance a social agenda and

21   rewrite the Constitution every other Thursday to advance a

22   social agenda that you can't get by the voters through

23   their elected representatives.

24   Ms. Perez. Senator --

25   Senator Kennedy. Now that's a legitimate thing to be

1   for. This is America. You can believe what you want. But

2   you spent your whole career doing that. And it bothers me

3   that you're not defending that here, that you're dodging my

4   questions.

5   Ms. Perez. Senator --

6   Senator Kennedy. You're not the only nominee who's

7   done that. It happened under the prior administration. It

8   must be something in the water at the White House. But I'd

9   respect you a lot more if you just upfront said it.

10   Ms. Perez. Senator, I believe in the value of

11 precedent. I think it makes our syst m --

12   Senator Kennedy. So do I, but that's got nothing to

13 do with our discussion. W both know that. And I

14 understand that you've been advised to say precedent,

15 precedent, precedent. When in doubt. Is it raining

16 outside? Precedent   But it inhibits our ability to have a

17 rational discussion.

18   Thank ou, Mr. Chairman.

19   Chairman Durbin. Do you want to complete your answer,

20 Ms Perez?

21   Ms. Perez. I'm fine. Thank you.

22   Chairman Durbin. Thank you. Senator Tillis. I'm

23 sorry. Senator Coons.

24   Senator Coons. Thank you, Chairman Durbin. Great to

25 be with you, Ms. Perez. The committee received a number of

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1   glowing letters in support of your nomination. I was

2   struck by one in particular, a letter that I reviewed

3   closely from Reverend Canon Dr. Allison DeFoor of the

4   Episcopal Diocese of Florida. Before his service as a

5   faith leader, Reverend DeFoor practiced law, serving as

6   county judge, a circuit judge, a prosecutor, a sheriff of

7   Monroe County, and a public defender. He also sought

8   elected offices for the Republican nominee or Lieutenant

9   Governor.

10   And he emphasized his heartfelt letter of support for

11   you, and I quote, "Myrna is, as a lawyer and individual, a

12   person of the highest integrity   She's thoughtful and

13   sound in her judgment and committed to principles of

14   justice that transcend politics. She embodies the true

15   meaning of public servic and would be an exceptional

16   federal judge " He adds, "This is an informed opinion,"

17   something many of us in the Senate would benefit from

18   adding on occasion, if it were true.

19   Given this informed opinion that I assume is rooted in

20   yo r close work together, I'd just be interested in

21   learning more about your work with the reverend, and former

22   judge, and sheriff on criminal justice issues. What

23   motivated you to engage in that work? And what lessons

24   have you taken from that work which you might apply in your

25   future service?

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1   Ms. Perez. Certainly, sir. The Brennan Center takes

2   the position that all Americans who are living and working

3   in the community should be able to have the right to vote.

4   And I have been very fortunate to work with people from all

5   kinds of backgrounds to try and work in the legislative

6   branch, primarily to make that so.

7   Reverend Allison is one of the many different kinds of

8   people that I have worked with on this issu   There are a

9   quite a number, and I think it is really encouraging that

10 there are still some issues in which we can get bipartisan

11 support for.

12   Senator Coons. We've managed to get bipartisan

13 support for criminal justice reform, even on this

14 committee, with the leadership of our Chairman.

15   Ms. Perez, I was also struck that your work has

16 included extensive litigation experience, both at the

17 district and ppellate level, and I'd like to give you a

18 chance to talk about your litigation experience, and its

19 relevance to your service, should you be confirmed in the

20 position for which you've been nominated. How would your

21 experience with complex litigation inform your service as a

22 judge, if confirmed?

23   Ms. Perez. I would give me a very strong appreciation

24 for what it is that district courts have to do. It would

25 make me be very faithful to the standards of review. It

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1   would remind me every day that the parties are the masters

2   of their lawsuits. And it would also bring to me almost

3   two decades of experience, analyzing constitutional and

4   statutory claims, voluminous documents, a massive amount of

5   motions practice, and would allow me to make sure that I am

6   aware of exactly what it is that parties are doing when

7   they are arguing and prosecuting their cases.

8   Senator Coons. That's great. Thank y u very much. I

9   appreciate your testimony before this co mittee today. No

10   further questions. Thank you, Mr. Chairman

11   Chairman Durbin. Thanks, Senator Coons. Senator

12   Tillis.

13   Senator Tillis. Thank you, Mr. Chairman. Ms. Perez,

14   thank you for being here. Congratulations on the honor of

15   --

16   Ms. Perez   Thank you, sir.

17   Senator Tillis. -- being nominated, and to your

18   family.

19   Ms. Perez. Thank you.

20   Senator Tillis. And what's your son's name?

21   Ms. Perez. His name is Diego Isaias.

22   Senator Tillis. Welcome. I've got a quick -- just a

23   couple of quick questions. I was speaker of the house down

24   in North Carolina when we passed voter ID laws in the

25   state. And you know, I feel like -- it's difficult for me

1   to understand. I think we have different views about this.

2   But when we try to do everything we could to make sure that

3   anyone who wanted -- that needed an ID in order to vote,

4   that we would even pay for it. That we would make sure

5   that we gave people not only the opportunity to vote, but

6   fully participate in civil society.

7   When I went through the TSA, I had to present an ID.

8   When I checked into a hotel two weeks ago,   had to present

9   an ID. When I got prepped for my surgery about two months

10   ago for prostate cancer, I had to submit an ID to be

11   admitted into the hospital.

12   And it just seems to me that -- I'd like for us to get

13   to a point to understand that if we want every American to

14   fully participate in every aspect of society, that an ID is

15   a pretty important part f that. I'm not going to ask you.

16   I know where you are on it, so we'll agree to disagree on

17   that.

18   But I did want to ask you about something I think you

19   argued in -- there was a ballot harvesting case in the

20   Ninth District, down in North Carolina. And in that

21   particular case, it was a Republican candidate, so I

22   appreciate again, your consistency on the issue. But give

23   me an idea on a state like North Carolina, where ballot

24   harvesting is not allowed, why you think that that is a

25   suppression -- a voter suppression measure?

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1   Ms. Perez. Certainly, Senator. I am happy to answer

2   your question. I would, again, recognize that if I am

3   confirmed, I would be taking on a different role, and you

4   are referencing work that I did as an advocate.

5   We examined the issue in North Carolina and found that

6   there was a disadvantage that was occurring because of the

7   illegal activity that happened there. And we responded --

8   Senator Tillis. For those whose ballo s were

9   harvested?

10   Ms. Perez. Those whose ballots were tampered with and

11   thrown away. And as an advocate, I was duty-bound to call

12   that attention to the public to ensure that I could do

13   everything within my role, that those voting rights of the

14   impacted voters would be vindicated.

15   Senator Tillis. Do you -- just on a broader question.

16   Again, I understand the limits that you have because of

17   matters that may come before you. But wouldn't it also

18   follow, then that the same rationale for saying that those

19   votes had been suppressed because they had been tampered

20   wi h opens up ballot harvesting to potential fraud?

21   Ms. Perez. Senator, the striking the balance between

22   how much restrictions you need to ensure fraud doesn't

23   happen is something that's better suited for the

24   legislature. If I am confirmed, I would merely be

25   evaluating the law and the precedent before me, as applied

1   to the facts and the record that the parties put before me.

2   Senator Tillis. Thank you. Thank you, Mr. Chair.

3   And congratulations, again, to the family, and the story of

4   your family. Thank you.

5   Ms. Perez. Thank you.

6   Chairman Durbin. Senator Hawley.

7   Senator Hawley. Thank you, Mr. Chairman. Thank you,

8   Ms. Perez, for being here. Congratulations on your

9   nomination.

10   I just want to pick back up where Senator Tillis left

11 off when it comes to ballot harvesting   This is an issue

12 that the United States Supreme Court has recently taken up

13 in the Brnovich case. You ve had quite a lot to say about

14 the Brnovich case. You've had quite a lot to say in quite

15 a number of the Supreme Court's precedents, which you will

16 be called upon to apply.

17   So I'd like to get your views on those. You seem to

18 be fine and perfectly willing to characterize Supreme Court

19 precedent, so I look forward to your testimony here under

20 oa h. You said that the Brnovich case was a clear-cut

21 case. The Supreme Court ruled, and you actually

22 characterized that some of the arguments in the case made

23 by Brnovich and made by various amici in support of Arizona

24 as outrageous and harmful, including a brief filed by my

25 colleague, Senator Cruz. So I take it you think the

1   Brnovich case was wrongly decided?

2   Ms. Perez.   Senator, my views on the Brnovich case are

3   immaterial because, if confirmed, I would be duty-bound to

4   apply it, and I would do so without reservation.

5   Senator Hawley.   Oh, I think they're quite material to

6   get at your judicial philosophy.   So let's try again.   Do

7   you think the Brnovich case was wrongly decided?   You said

8   that the case was clear-cut.   The Supreme Court ruled

9   differently than you thought.   So I take it you think it

10   was wrongly decided.

11   Ms. Perez.   Senator, I would apply the precedent

12   without reservation.

13   Senator Hawley.   Do you think the Brnovich case was

14   rightly decided?

15   Ms. Perez.   Senator, I would apply the Brnovich case

16   without reservation   It is the law of the land.   The

17   country that I care so much about depends upon stare

18   decisis and the application of precedent.

19   Senator Hawley.   Well, that's not what I'm asking you.

20   I m asking you about your comments on a Supreme Court case,

21   which you will, indeed, be duty-bound to apply.   But I

22   think understanding your view on that case is relevant.

23   Let's try a different one.   Shelby County.   You said

24   that the Shelby County case gutted voting rights.   So you

25   think that case was wrongly decided.   Will you be able to

1   apply that case faithfully?

2   Ms. Perez.   Without reservation.

3   Senator Hawley.   Do you think that the Heller case was

4   wrongly decided?

5   Ms. Perez.   Senator, Heller is the law of the land, as

6   is its application through the states of McDonald.   I would

7   apply it without reservation.

8   Senator Hawley.   Do you think Brown v. Board was

9   wrongly decided?

10   Ms. Perez.   Senator, I would apply Brown v. Board

11   without reservation.

12   Senator Hawley.   Do you think Brown v. Board was

13   rightly decided?

14   Ms. Perez.   Senator, I think there -- it was

15   rightfully decided, and it --

16   Senator Hawley   It was rightly decided.   Shelby

17   County was wrongly decided, you say.   But you won't say

18   about the Brnovich case.   You won't say about Heller.

19   What's the line, here?   How am I to adjudge how you are

20   going to apply the law if you won't be frank with the

21   committee about what you've said in the past and about your

22   own views now?

23   I mean, you've been an activist for quite some time.

24   You've commented on many laws.   You've called voter ID

25   laws, like we have in my state of Missouri, which by the

1   way, the voters of my state passed directly. The voters

2   passed. You've criticized those as Jim Crow-type laws.

3   That's an extraordinary statement for a judge, someone who

4   wants to be a federal judge. Not an activist. Not a

5   constitutional lawyer. A federal judge. You've called the

6   precedent of the United States Supreme Court, you've talked

7   about them gutting voting rights. You've criticized them

8   in the harshest of terms. You've done this repeatedly.

9   So I think it's fair game to ask about your view of

10 precedent. So how are we going to know? I mean, let's

11 come back to the Heller case, the McD nald case, that

12 followed on from Heller. Was that rightly decided?

13   Ms. Perez. Senator, I would apply it without

14 reservation. And if I may say, I for the last 15 years,

15 have been an advocate wh n under our system requires

16 zealously pursuing the interests of my clients.

17   A judge plays a completely different role, and by

18 accepting this nomination, I am pledging to this body, to

19 the American public, before my God, that I would faithfully

20 discharge my duties under the Constitution, which require

21 me to put aside any personal policy viewpoints I have, and

22 examine what the matter is before me, and apply the

23 precedent of the Supreme Court and the Second Circuit. And

24 I do this without reservation. I am willing and able to

25 serve my country in this way.

1   Senator Hawley. Do you still think the Shelby County

2   case gutted voting rights?

3   Ms. Perez. Senator, as an academic, as a researcher,

4   as an advocate, I have done a number of research where I

5   have been able to lift out and identify instances in which

6   policies that passed that were not likely to have passed,

7   had it not been for Shelby County. But Shelby County is

8   the law of the land, and I would apply it w thout

9   reservation.

10   Senator Hawley. Let's talk just a little bit about

11   your broader judicial philosophy. Yo 've been an advocate

12   of living constitutionalism. You said in 2021 that if you

13   were one of those people who think that we are at our best

14   when our country was first founded and didn't include

15   women, or people of color or people without property in

16   the electoral process, then this conversation about living

17   constitutionalism is probably not for you. I take that to

18   be a disparagement of originalism.

19   You've also said that the Constitution is not static

20   or frozen in time, but it has to evolve and be dynamic in

21   order to actualize its principles. So is this the judicial

22   philosophy you would follow in cases of first impression

23   when you don't have a controlling precedent on point and

24   you have to construe the Constitution, you would look to

25   dynamic and evolving principles?

        Ms. Perez. Senator, I believe in the conversation

1 that you are speaking of, I was talking about Justice

2 Brennan's definition of a living Constitution --

3

4   Senator Hawley. What would be yours?

5   Ms. Perez. I believe that we have a Constitution that

6 is enduring. I think its great values are applicable, and

7 relevant, and can guide us today. I think they're

8 timeless. And I believe that they make our country strong.

9   Senator Hawley. Do you consider yourself a living

10 Constitutionalist?

11   Ms. Perez. I don't think those kinds of statements

12 are helpful in explaining the approach that I would take,

13 which would be first examining the text, then examining the

14 precedent. And if I needed to go beyond that, I would be

15 looking at the canons of construction, the legislative

16 history, the structure of what was at issue, and more

17 importantly, I would be bound by the record of the parties

18 that presented the case to me.

19   Senator Hawley. Well, my time has expired. So, thank

20 yo   Mr Chairman, for your indulgence on this. I'll just

21 say that Ms. Perez, in conclusion, I want to echo Senator

22 Kennedy's remarks that I think given your very lengthy

23 record -- your very lengthy record of statements about

24 Supreme Court precedent, about many court precedents, I

25 think to come to this committee and refuse to answer

1   questions about those, to refuse to explain your

2   statements, to say you're not going to comment about

3   decisions. You have commented frequently about decisions.

4   I just think that, with all due respect, that's not candid.

5   I think it's frankly not transparent with this committee,

6   and I won't be able to support your nomination.

7   Thank you, Mr. Chairman.

8   Chairman Durbin. And I might add to my friend from

9   Missouri and others, it is not unprecedented. Trump

10   nominees came before this committee for four straight

11   years, and with the exception of Brown v. Board of

12   Education, which they acknowledged starting around 2019,

13   they refused to say to a p rson whether other cases were,

14   particularly recent cases, correctly decided.

15   It is a question of en asked by the other party in

16   this committee, and the answers you have given are ones

17   we've heard before. And I don't think it should come as a

18   surprise to my colleagues. Senator Padilla.

19   Senator Padilla. Thank you, Mr. Chairman. And I

20   appreciate the context and background. Ms. Perez, how are

21   you?

22   Ms. Perez. Great to see you, sir.

23   Senator Padilla. Great to see you. You have spent

24   virtually your entire career advocating for greater access

25   to the ballot and stronger protections for our fundamental

1 right to vote. In the course of that work, clearly you

2 have litigated cases in court. You've advocated for policy

3 changes in states around the country as well as right here

4 in Congress. And you and I have worked together in my

5 prior capacity as the chief elections officer for the St te

6 of California, so I know how important advocacy on behalf

7 of the right to vote is. Simply put, we are a stronger

8 democracy when every eligible citizen is able to vote,

9 particularly free of harassment, intimidation, and without

10 any unnecessary obstacles or barriers.

11   I have sort of a bigger picture question in why voting

12 rights? Why have you decided to dedicate your career to

13 the defense of our right t vote, number one? And I think

14 more specifically, and for purposes of this committee, how

15 your views on policy, which we're entitled to have, but how

16 would they affect your rulings as a judge?

17   Ms. Perez. Thank you, Senator. I think the right to

18 vote keeps us free. I think it protects us from tyranny.

19 I think it is preservative of all other rights. And as an

20 ad ocate, I have been privileged to work alongside with all

21 sorts of Americans from all sorts of backgrounds to make

22 sure that our ability to govern ourselves is able to happen

23 because we all have a free, fair, and accessible vote.

24   With respect to policy, that is a role that is an

25 active part of my docket. But by accepting this

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1   nomination, I am pledging to no longer participate in

2   policy disputes. And instead, I will impartially and

3   objectively review the law, apply it to the record before

4   me, and be faithful to the precedent both of the Supreme

5   Court and the Second Circuit.

6   Senator Padilla. Good. I appreciate that answer

7   And I thank you for your clarity. I thank you for your

8   commitment. And I thank you for your willingness to serve

9   in this capacity, should you be confirmed

10   I do have another question, and sadly, very timely.

11   At the end of the last election cycle, we saw the rule of

12   law tested when President Trump and his enablers filed over

13   60 post-election lawsuits. Not even counting those that

14   came prior to the election. 60 post-election lawsuits,

15   challenging the outcome f the election. Thankfully, court

16   after court rejected President Trump's frivolous

17   challenges.

18   But there is no question that the system was strained

19   by the former president's unfounded assault. As a voting

20   rights lawyer, you saw this abuse of our judiciary up

21   close. Can you speak to the importance of the rule of law

22   and how you believe that judges can help exemplify and

23   uplift it?

24   Ms. Perez. Thank you, Senator. The rule of law is a

25   foundational principle. It is all over the way that our

1   country works, in addition to things like an independent

2   judiciary and separation of powers. I think it's one of

3   the genius of our Constitution, and part of the reason why

4   I am very comfortable that I will be able to set aside my

5   past role as an advocate and accept the role of a judge, if

6   I am lucky enough to be confirmed, is because our system

7   requires an independent judiciary.

8   I know that when I'm a litigant in cou t, I want to be

9   able to go before a judge that allows me to make the

10 arguments, allows me to make the case, and sets aside

11 whatever personal viewpoints. Our system does not work

12 unless judges do that. I am ready to do that. The country

13 that I love so much depends upon it.

14   Senator Padilla. Thank you. Thank you for your

15 responses. And thank yo   Mr. Chair.

16   Chairman Durbin. Thanks, Senator Padilla. Senator

17 Lee.

18   Senator Lee. Thank you, Mr. Chairman. I'd like to

19 follow up on one of the questions that Senator Hawley

20 raised with you. Now, you said that you were referring, in

21 those discussions about a living Constitution, to Justice

22 Brennan's interpretive style. Is that correct?

23   Ms. Perez. That is what I believe the quote he was

24 referring to was referring to.

25   Senator Lee. Okay. Is this the quote in which you

1   said while you were discussing -- I think this was in a

2   panel of discussion just a couple of months ago that

3   Senator Hawley was asking about in which you said, "If

4   you're one of those people who think that we were at our

5   best when our country was first founded and didn't include

6   women, or people of color, or people without property in

7   the electoral process, this is probably not the

8   conversation for you." What I'd like to kn w, first, what

9   conversation is that? I want to understand the context?

10   What you mean? What conversation isn't for -- are you

11   characterizing people who believe in riginalism as

12   believing that we were at our best as a country when we

13   didn't include women or pe ple of color?

14   Ms. Perez. Senator Lee, as I indicated to Senator

15   Grassley, I do speak a l t. But if I remember that

16   conversation correctly, I was getting a lot of hostile and

17   inappropriate comments in the chat. And it was causing a

18   disruption to the organizers and the planners who seemed to

19   think that I would be engaging in some conversation with

20   th m. And so, I was trying to set expectations for what

21   the conversation would be like.

22   Senator Lee. I understand that. It's good to know.

23   But I'd still like to know what you were referring to.

24   Ms. Perez. I was trying -- if again that was the

25   conversation that I recall, and I believe that it was, it

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1   was me attempting to deescalate some people who believed

2   that that conversation was a source of a -- or was a

3   potential for a back-and-forth over chat, which I was not

4   going to let it devolve into.

5   Senator Lee. Okay. Do you believe that's a fair

6   characterization of originalists?

7   Ms. Perez. I do not believe that that is a fair

8   characterization of originalist. And I, ag in, if this is

9   the right conversation that I'm recalling was trying to

10   deescalate folks who were disrupting a conversation via

11   chat.

12   Senator Lee. Now in response to Senator Hawley's

13   questions a moment ago, yo said you were referring -- when

14   referring to the living Constitution, you were referring to

15   Justice Brennan's approa h to interpreting the

16   Constitution. And then you said that that would not

17   necessarily be your approach. Did I understand your

18   response to his question correctly?

19   Ms. Perez. Senator, I am not a judge. I don't have a

20   judicial philosophy yet. But my approach would be to first

21   look at the text, then look at precedent, look at the

22   canons of construction, and keep myself limited to what the

23   parties in the matter presented before me.

24   Senator Lee. Okay. Insofar as you were

25   characterizing Justice Brennan's approach to constitutional

1   interpretation, how would you characterize that approach

2   today? What is his approach? What was his approach?

3   Ms. Perez. Again, I've never spoken to Justice

4   Brennan. I didn't have the pleasure of meeting him.

5   Senator Lee. But you said a moment ago you were

6   trying to characterize his approach.

7   Ms. Perez. He has had quotes about the Constitution

8   not being static, as has Justice John Marsh ll, in

9   McCulloch v. Maryland. What I believe is true, and I

10   believe it's a truism, is that our Constitution is

11   enduring, that it has great values that are universal and

12   timeless, and that those values make our country stronger.

13   Values like freedom of religion. Values like liberty.

14   Values like equal justice under the law.

15   Senator Lee. Okay. So if you were confirmed, are you

16   saying you would not adopt a living Constitution approach?

17   Ms. Perez. Senator, if I'm confirmed, the first place

18   I would look when evaluating a constitution or a statute

19   would be at its text. That is the most probative offering

20   of what a piece of writing means. If required, I would

21   look to precedent from both the Supreme Court and the

22   Second Circuit. If that still didn't answer the question,

23   I would look to the canons of construction, the --

24   Senator Lee. Okay.

25   Ms. Perez. -- the structure --

1   Senator Lee. All right. I understand. Back in 2014,

2 you described new voter integrity laws, including, as I

3 understand it, voter ID laws, as representing, quote, "the

4 biggest voting rights rollback since the Jim Crow area."

5 Now personally, I think it's an insult to the brave

6 Americans who engaged in the Civil Rights Movement to draw

7 any comparison between the heinous, race-motivated

8 requirements imposed by the Democratic Party under the Ku

9 Klux Klan's influence, to compare those to today's

10 commonsense race-neutral and often bipartisan election

11 security measures, which according to some polls are

12 supported by a majority of African American voters. Do you

13 stand by that statement today, that voter ID laws are the

14 biggest voting rights rollback since the Jim Crow area?

15   Ms. Perez. Senator, I understand and very much

16 believe in the importance of election integrity. Elections

17 are how we resolve our political differences peacefully.

18   The Supreme Court has spoken and provided standards

19 for assessing voter ID in the Crawford case. If I am lucky

20 en ugh to be confirmed, I would be duty-bound to apply that

21 precedent to any case in controversy that came before me,

22 and I would do so without hesitation or reservation.

23   Senator Lee. I understand that. But I am asking

24 about a statement that you, in fact, made. Do you stand by

25 your statement that it's the biggest voting rights rollback

1   since the Jim Crow era?

2   Ms. Perez. Senator, if that is the statement that I

3   recall, it was occurring alongside a great number of pieces

4   of legislation across the country that, as an empirical

5   matter, looked different than what we had seen since

6   earlier times. And that was what the reference was to

7   Senator Lee. So you were not referring to voter ID

8   laws?

9   Ms. Perez. I -- again, if I remember correctly, it

10   was a wide array of laws that would have included voter ID

11   laws, because around the time period hat you're talking

12   about, we saw a number of them introduced. But again, the

13   Supreme Court has said tha , within certain confines, the

14   voter ID laws are acceptable. The Fifth Circuit en banc

15   also said that there are times when voter ID laws cross the

16   line.

17   If I am   judge, I would be required to look at all

18   the relevant precedent and examine any law that was before

19   me to figure out if unlawful discrimination was present.

20   Senator Lee. Okay. I see my time's expired. I do

21   find it concerning that the witness still hasn't distanced

22   herself. I understand sometimes people say things and

23   later regret them. But she hasn't distanced herself from

24   statements made to that effect a few years ago, and I think

25   that's significant. Thank you.

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1   Chairman Durbin. Thank you, Senator Lee. Senator

2   Cruz.

3   Senator Cruz. Thank you, Mr. Chairman. Ms. Perez, as

4   I look at your career, I see the career of someone who has

5   been an activist, and I believe a radical activist. You

6   have waged litigation campaigns and opposed voter ID laws.

7   You have opposed voter integrity laws. You have opposed

8   prohibitions on ballot harvesting. You hav advocated for

9   felons being able to vote. As I look at your record, year

10 after year after year of being an extreme partisan

11 advocate, I'm left with the very likely conclusion that if

12 you were confirmed to the bench, you would likewise be a

13 radical activist on the bench.

14   Voter ID laws, as Senator Lee just pointed out, you

15 described as the greates rollback of voting rights in this

16 country. 80 of Americans support voter ID laws. 60

17 percent of African Americans support voter ID laws. Do you

18 believe voter ID laws are constitutional?

19   Ms. Perez. Senator Cruz, the Supreme Court has said

20 that there are no per se restrictions against voter ID

21 laws. In Crawford --

22   Senator Cruz. I asked what you believe. I was one of

23 the parties litigating in Crawford, so I'm very well

24 familiar with that case, and led a coalition of states

25 defending voter ID laws. And Justice Stephens wrote the

1   majority opinion, upholding Indiana's voter ID law. My

2   question to you is, do you believe voter ID laws are

3   constitutional?

4   Ms. Perez. Senator, I believe they are

5   constitutional. I believe that they can be constitution l

6   because the Supreme Court has said they can be

7   constitutional. And in Marbury v. Madison, the Supreme

8   Court gets to decide.

9   That is what our system depends on. We have a concept

10   of vertical stare decisis. We have rules of law. We have

11   precedent --

12   Senator Cruz. Ms. Perez, just a couple of months ago,

13   in March of 2021, you said that the voter ID laws that have

14   been passed were due to, I m going to quote you to get your

15   words right, "anxiety ov r the browning of America. And

16   people having anxiety of the fact that certain folks in

17   power are not going to be able to stay in power." Do you

18   believe the 80 percent of Americans who support voter ID

19   laws and the 60 percent of African Americans who support

20   vo er ID laws are doing so because they're concerned about

21   the browning of America?

22   Ms. Perez. Senator, that quote is clearly referring

23   to politicians. It's not referring to African Americans --

24   Senator Cruz. Which politicians here do you believe

25   are concerned about the browning of America?

1   Ms. Perez. Senator, that context was with respect to

2   state politicians. And --

3   Senator Cruz. So it's only state politicians.

4   Ms. Perez. Senator, that context that I'm on record

5   for were referring to state politicians.

6   Senator Cruz. All right. Well, let's talk about

7   politicians here, in this body. As you know, I filed an

8   amicus brief on behalf of 11 Senators in th Brnovich case.

9   You made a comment that the brief that I filed was

10 outrageous and harmful. Do you stand by that

11 characterization?

12   Ms. Perez. Senator, the Supreme Court, as you know,

13 issued its decision in the Brnovich case and struck down --

14 I'm sorry, and upheld the restrictions on Arizona.

15 Brnovich is law --

16   Senator Cruz. Okay. I'd like you to answer my

17 question.

18   Ms. Perez. Brnovich --

19   Senator Cruz. Do you stand by the characterization

20 that the amicus brief that I filed on behalf of 11 Senators

21 was, quote, "outrageous and harmful"? That's how you

22 characterized it.

23   Ms. Perez. Senator, the Supreme Court has issued its

24 ruling on --

25   Senator Cruz. I'm going to try again. Do you stand

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1   by your characterization? I'm not asking you what the

2   Supreme Court did. You described an amicus brief filed on

3   behalf of 11 Senators as outrageous and harmful. Do you

4   stand by what you said just a few months ago?

5   Ms. Perez. Senator, what I said as an advocate when

6   it was pending before the Court is not relevant to the

7   issue before you --

8   Senator Cruz. Do you stand by it or d you retract

9   it? You have a choice.

10   Ms. Perez. Senator, as an advocate, I pursued --

11   Senator Cruz. Okay. You're going to refuse to answer

12   me on that. I assume you also believe the Supreme Court 6-

13   3 decision, agreeing with he position advocated in my

14   amicus brief, I assume you believe that decision was also

15   outrageous and harmful, because that's the language you

16   used.

17   Ms. Perez. Senator, the Brnovich case is the law of

18   the land.   It has been settled.

19   Senator Cruz. So you're not going to answer that

20   ei her?

21   Ms. Perez. The law of the land has been settled.

22   What I am going to say, Senator, is that I am pledging to

23   apply precedent.

24   Senator Cruz. So at the time, you discussed the brief

25   filed by a number of senators on this committee as

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1   outrageous and harmful. At that time, had you any

2   discussions with the Biden administration about being

3   nominated to be a judge?

4   Ms. Perez. I would need to remember the timing a

5   little bit. That --

6   Senator Cruz. When was the first discussion you had

7   with the Biden administration about being nominated to be a

8   judge?

9   Ms. Perez. I need to -- can -- I would need to

10   reference my Senate Judiciary Questionnaire because that's

11   where I recorded it. I don't have it committed to memory.

12   Senator Cruz. So you have advocated that felons

13   should be able to vote. D you believe all felons should

14   vote?

15   Ms. Perez. Senator, my work in advocacy has been on

16   behalf of persons who are living and working in the

17   community.

18   Senator Cruz. Do you believe currently incarcerated

19   prisoners, in jail, should be allowed to vote?

20   Ms Perez. Senator, I have been advocating on behalf

21   on people who are --

22   Senator Cruz. You're not answering my question.

23   Ms. Perez. Senator --

24   Senator Cruz. I didn't ask what you've advocated in

25   the past. I'm asking what you believe.

1   Ms. Perez. Senator, the Canons of Judicial Ethics

2   preclude me from answering that question because a

3   situation may come before me.

4   Senator Cruz. So let me ask you this. You have

5   advocated in favor of a living Constitution. And indeed,

6   as both Senator Hawley and Senator Lee asked you about, you

7   have disparaged those who believe in originalism as

8   essentially racist and bigots. How do you hink you will

9   be able to serve with colleagues on the Court of Appeals if

10   you have disparaged their constitutional interpretation as

11   racist and bigoted?

12   And secondly, why is it that when you advocate a,

13   quote, "living Constitution," that somehow the livingness

14   of it always makes the Constitution agree with the policy

15   positions you happen to mbrace? How is that consistent

16   with democracy, to have a judge able to implement whatever

17   policy positions you believe in?

18   Ms. Perez. Senator, we have had more than two dozen

19   amendments added to the Constitution since it was ratified

20   in 1788

21   Senator Cruz. But that's not what a living

22   Constitution is.

23   Ms. Perez. Women --

24   Senator Cruz. A living Constitution means you as a

25   judge, if you're a judge, can change it to whatever you

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1   want, and that the voters don't get to speak on it, isn't

2   that right?

3   Ms. Perez.   Senator, women now have the right to vote.

4   African --

5   Senator Cruz.   We passed an amendment for that.

6   That's a terrific victory, and it was done the right way

7   through an amendment.   A living Constitution is judges

8   changing it.   Why are judges changing the C nstitution to

9   meet their policy preferences consistent with any respect

10   for the democratic process and the ability of voters to

11   decide policy issues?

12   Ms. Perez.   Senator, it is clear that our great

13   Constitution is one that is enduring.   It is clear with

14   things like Brown v. Board overruling Plessy v. Ferguson

15   that evolution happens.

16   It is also clear that our great Constitution

17   establishes separation of powers.   There are bodies, like

18   this one, that engage in policymaking.   There are judges

19   that review the cases and controversies that are put before

20   th m.

21   I am pledging, by accepting this nomination, that I am

22   going to cease being an advocate, and I would impartially,

23   without reservation, objectively apply the law to the facts

24   of the case and controversy before me.

25   Senator Cruz.   Well, your record is overwhelmingly to

1   the contrary.

2   Chairman Durbin. Thank you, Senator Cruz. Senator

3   Blumenthal.

4   Senator Blumenthal. Thanks, Mr. Chairman. The simple

5   fact of the matter is you haven't been a judge before, have

6   you?

7   Ms. Perez. That is correct, sir.

8   Senator Blumenthal. So when my colleague, Senator

9   Cruz, says your record is overwhelming to the contrary, I'm

10   not sure what he is referring to. You have been an

11   advocate, correct?

12   Ms. Perez. That is correct sir.

13   Senator Blumenthal. And tell me how you view the role

14   of advocate as being different from a jurist?

15   Ms. Perez. Thank y u. In the great genius of our

16   Constitution, people play different roles. Advocates

17   zealously argue on behalf of their clients in as many fora

18   as they can. I have had the privilege and pleasure of

19   doing that.

20   Judges take on a different role. They are limited in

21   what they have jurisdiction over. They are limited in the

22   cases that come before them. And they are limited to the

23   arguments what parties put before them. And they are

24   limited to binding precedent.

25   I believe that the most important thing a judge can

1   do, and must do, is in fact, duty-bound to do, is to

2   impartially and objectively apply existing precedent to the

3   facts and the record of the case before them.

4   Senator Blumenthal. As an advocate, you've had strong

5   beliefs, and you have strong values, and you've advocated

6   causes strongly. I take it, as a member of the Court of

7   Appeals for the Second Circuit, you would be able to put

8   those beliefs, and values, and positions as de, and look at

9   the law, specifically the Constitution and the statutes of

10 the United States of America, correct?

11   Ms. Perez. Not only would I be apable, sir, I must.

12 The country that I care so deeply about depends upon people

13 playing their roles. And I, if given the chance to serve

14 this country, would not betray its values of an independent

15 judiciary. I would faithfully, to the best of my ability,

16 uphold my duty under the constitution, which would be to

17 fairly and impartially evaluate the cases and controversies

18 before me.

19   Senator Blumenthal. And in fact, all of us who have

20 be n advocates, and I've argued cases in the Court of

21 Appeals that I expect you'll soon join, as well as the

22 District Court and United States Supreme Court, as well as

23 state courts in Connecticut, like you. As an advocate, you

24 don't want to be an objective, neutral, arbitrator. You

25 want to be on the side of your client, and your cause.

1   That's your record.

2   And if you were, in fact, acting as a judicial

3   official while being an advocate, you'd be betraying your

4   client and your cause, wouldn't you?

5   Ms. Perez. That is correct, sir.

6   Senator Blumenthal. So, when Senator Cruz tries to

7   argue you shouldn't be a judge because you were a good

8   advocate, in effect -- and I know he -- I think he

9   understands the point I'm making. Your record, in fact,

10   exemplifies your faithfulness to the role that you have

11   been playing as an advocate because o r whole system is

12   designed to have fierce and ferocious advocacy on the basis

13   of the law and the facts. In fact, sometimes arguing that

14   courts should expand the law by an expansive

15   interpretation.

16   But whatever you have argued as a lawyer and an

17   advocate, you would have -- you accept the fact, in fact, I

18   sense you embrace it, that you would have a different role

19   as a member of the United States Court of Appeals for the

20   Se ond Circuit.

21   Ms. Perez. That is correct, sir.

22   Senator Blumenthal. Thank you.

23   Ms. Perez. Thank you, sir.

24   Senator Blumenthal. Thanks, Mr. Chairman.

25   Chairman Durbin. Thanks, Senator Blumenthal. Senator

1   Blackburn.

2   Senator Blackburn. Thank you, Mr. Chairman. Welcome.

3   Ms. Perez. Good morning, Senator.

4   Senator Blackburn. And congratulations --

5   Ms. Perez. Thank you.

6   Senator Blackburn. -- to you. I just want to be sure

7   I'm understanding some of the comments --

8   Ms. Perez. Yes, ma'am.

9   Senator Blackburn. -- that you have made. And

10   basically, you're saying as you move to the role of a

11   judge, you would set aside all of your previous opinions?

12   Ms. Perez. They would not make its way to into any

13   courtroom that was sitting in.

14   Senator Blackburn. So basically, you're saying you

15   would erase all of this activism from your past?

16   Ms. Perez   What I'm saying, Senator, is that I would

17   apply the precedent of the Supreme Court --

18   Senator Blackburn. So you're going to say what you're

19   going to do is basically, when it comes to your philosophy

20   of the law and your philosophy of the governmental

21   structure, you are going to hit the reset button, and you

22   will be a neutral and blank slate. Is that what you're

23   telling us?

24   Ms. Perez. I will be an impartial and objective

25   adjudicator, limited to the subject matter and personal

1   jurisdiction of the case before me, and the arguments --

2   Senator Blackburn. Okay. Let's --

3   Ms. Perez. -- that the parties have put in front of

4   me.

5   Senator Blackburn. Let's do this, then. Let's go n

6   to the issue of voter ID. Because this is something that

7   causes not only me, but a lot of people in Tennessee who

8   are viewing your nomination, they're really unhappy about

9   your nomination. Because most Americans, as you've heard

10   from others today, they support voter ID laws. They also

11   support the fact that it is up to the state to tend to

12   this. And they're very concerned about where you would go.

13   And you know what? They really don't want activist

14   judges. What they want is someone who is going to be an

15   originalist, who is going to look at the text of the

16   Constitution and look at precedent. Things you've said

17   you're going to do, but the answers to your question do not

18   indicate that that is going to be what you're going to do.

19   I get this funny feeling that you're trying to hedge

20   us, that you've rehearsed your answers, that you're

21   spouting out what you think will not get you into trouble

22   so that you can go through the confirmation process. And

23   then do the happy dance and get on the court, and then go

24   back to your activist ways. That is what is coming across,

25   ma'am. That is what I'm perceiving.

1   So talk to me just a little bit about what your view

2   is of the elections clause. And then, do you agree that

3   the states have the right to conduct the elections in their

4   state in the manner that they see fit?

5   Ms. Perez. Senator, states play the primary role in

6   election administration.

7   Senator Blackburn. It is their prerogative, correct?

8   Ms. Perez. We have a system of federalism within

9   certain bounds, pursuant to the election clause and the

10 statutes of -- that this body has created. States play the

11 primary role in the administration of elections.

12   Senator Blackburn. So your previous work in election

13 law and voter ID would not preference any of the decisions

14 that you're going to make?

15   Ms. Perez. I would very strictly adhere to the

16 precedent of the Supreme Court --

17   Senator Blackburn. But you cannot give me a yes or no

18 to that?

19   Ms. Perez. Yes. I guess -- if you don't mind

20 rephrasing the question, I'd like to if I can.

21   Senator Blackburn. I said your prior work in election

22 law, that will not influence your decision-making in

23 election law, electoral cases.

24   Ms. Perez. If what you're asking, Senator, is whether

25 prior policy positions as an advocate --

1   Senator Blackburn. Your prior work. That's right.

2   Ms. Perez. My -- I am pledging to you that if I am

3   confirmed, that I will set aside any personal views I have

4   as to the merits of policy and apply the country's

5   precedent, which includes cases like Crawford, which as we

6   have indicated before, says that voter ID laws are not per

7   se unconstitutional, and I would apply Crawford and any

8   other relevant Supreme Court or Second Circ it precedent on

9   any matter involving a photo ID law that came before me.

10   Senator Blackburn. Okay. I'm going to send to you a

11   question for an answer in writing, be ause I will not have

12   enough time for you to give a fulsome answer. But it deals

13   with felon enfranchisement on voting and the positions that

14   you have taken in that previously. And you did not answer

15   Senator Cruz' question about felons having the right to

16   vote. And you were opposite of Governor DeSantis in having

17   them pay all their fines. So, I will send that question to

18   you in writing for a written answer.

19   And then, I'm also going to send to you a question

20   dealing with your qualifications.

21   Mr. Chairman, thank you. I yield back.

22   [The information appears in the appendix:]

23   / COMMITTEE INSERT

24   Chairman Durbin. Thank you, Senator Blackburn.

25   Senator Cotton.

1   Senator Cotton. Thank you, Mr. Chairman. Ms. Perez,

2   I watched some of the hearing on television earlier. I

3   apologize I missed Senator Hawley's question because I was

4   on the floor voting. I was just wondering if you'd return

5   to some of the things he said. My crack staff gave me a

6   summary, but I assume it must be incorrect.

7   Was it your testimony that Brown v. Board was

8   correctly decided?

9   Ms. Perez. Yes.

10   Senator Cotton. Was it your testimony that you cannot

11   say whether Shelby County and Brnovich are correctly

12   decided?

13   Ms. Perez. Senator, here's an important distinction

14   that if you will give a moment of your time, I'd be happy

15   to explain, but that is accurate.

16   Senator Cotton   So was Roe v. Wade correctly decided?

17   Ms. Perez. Senator, it is the law of the land, and I

18   would apply it.

19   Senator Cotton. Was Lochner correctly decided?

20   Ms Perez. Senator, it is not really the law of the

21   land anymore, but if I had been confirmed during that

22   period, I would have applied it.

23   Senator Cotton. Was Dred Scott correctly decided?

24   Ms. Perez. Senator, it is --

25   Senator Cotton. Surely, you can say Dred Scott was

1   incorrectly decided.

2   Ms. Perez. Senator, it was incorrectly decided.

3   Senator Cotton. So what's the distinguishing line of

4   cases you will say were correctly decided and cases you

5   won't say? Because it seems like you're willing to say

6   that they're correctly decided if you like them. But if

7   you don't like them, you can't comment on it.

8   Ms. Perez. Senator, I do appreciate the question, and

9   I think it is important, and I want to clarify this. As a

10   judicial nominee, I am bound by the code of ethics to

11   ensure that any prospective litigant before me knows that

12   they are getting an impartial and fair hearing where they

13   will not be pre-judged, wh re they will be given the

14   opportunity to present their case.

15   I think that it will not happen that a case of the

16   permissibility of de jure, segregation in schools, would

17   make its way before me. And as such, I am comfortable that

18   I would not be violating my code of ethics by commenting on

19   it. There are a handful --

20   Senator Cotton. Well, that --

21   Ms. Perez. -- of other cases that that may be true.

22   Loving is probably one of them. Marbury v. Madison.

23   Everything else, I would be very, very reluctant to give a

24   potential litigant the wrong impression that they will not

25   get a fair day in court.

1   Senator Cotton. What about abortion? That's a live

2 issue in the courts.

3   Ms. Perez. And I am not --

4   Senator Cotton. You're not going to say whether Roe

5 v. Wade was correctly decided.

6   Ms. Perez. That is correct.

7   Senator Cotton. Okay. Well, you've certainly had a

8 lot of harsh things to say in the past abou cases like

9 Shelby and Brnovich, and some of the issues that were

10 adjudicated there. In fact, we just got notice last night

11 about this article that just was published that you wrote.

12 The title of it is, "The GOP Campaign to Make Elections

13 Less Free."

14   You noted in the letter you sent with the article that

15 you did not see or approve of the title before it was

16 published --

17   Ms. Perez. That is correct, Senator.

18   Senator Cotton. -- which I can understand. Authors

19 don t choose their own titles. I understand that. You

20 didn't say whether you agree with it. Do you believe that

21 GOP is campaigning to make elections less free?

22   Ms. Perez. Senator, the entire piece does not mention

23 any political party, and that is because I am an advocate

24 for the right to vote. And I would criticize any

25 politician who would impede that right, irrespective of

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1   their political party.

2   Senator Cotton. Do you think requiring voter ID is an

3   impediment to vote and shouldn't be permitted?

4   Ms. Perez. Senator, the Supreme Court in Crawford

5   said that voter ID laws were not per se unconstitutional

6   However, a Fifth Circuit en banc said that a particular

7   voter ID law was illegal. This is a case-by-case inquiry

8   where we are fortunate enough to have prece ent on,

9   precedent that I would apply faithfully and without

10   reservation.

11   Senator Cotton. Another -- I think Senator Durbin

12   said that this article sounded like a speech he would give

13   on the Senator floor. I agree. I don't think it proves

14   the point you may have been trying to prove though, Senator

15   Durbin. Ms. Perez, you live in the New York City area?

16   Ms. Perez   I live in Jersey City.

17   Senator Cotton. Okay. How did you get down here?

18   Ms. Perez. I took an Amtrak.

19   Senator Cotton. Okay. Did you have to show an ID to

20   ge your ticket or get on the Amtrak?

21   Ms. Perez. I don't believe so, sir.

22   Senator Cotton. Okay. Last time you flew, did you

23   have to show an ID?

24   Ms. Perez. I did, sir.

25   Senator Cotton. Do you think that's an unfair

1   restriction on your ability to travel?

2   Ms. Perez. That is the policy, and I am a rule-

3   follower, and I'm happy to abide by it because I can.

4   Senator Cotton. Okay. If someone commits a murder,

5   do you think it's fair to call them a murderer?

6   Ms. Perez. If someone has been convicted --

7   Senator Cotton. Yeah. Convicted.

8   Ms. Perez. -- for murder --

9   Senator Cotton. Yes.

10   Ms. Perez. -- under -- yes.

11   Senator Cotton. If they commit rape, do you think

12   it's fair to call them a rapist?

13   Ms. Perez. Have they been convicted?

14   Senator Cotton. Yes.

15   Ms. Perez. Yes.

16   Senator Cotton   Convicted.

17   Ms. Perez. Yes.

18   Senator Cotton. So, if they commit a felony, do you

19   think it's fair to call them a felon?

20   Ms Perez. I think that that is a bit different

21   because there's a temporal issue. And I think that there's

22   a raging policy debate on that.

23   Senator Cotton. Because in the past, you've said that

24   you don't like to use that word. In fact, you said, "I

25   don't use words like 'felons' to describe people. I mean,

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1   we don't describe people by a mistake that they made."

2   Ms. Perez. I don't. I believe that every person is a

3   child of God, capable of being redeemed. And I never look

4   at anybody and see the worst thing that they've ever done.

5   Senator Cotton. But those convicted murders or

6   rapists get released from prison, often under misguided

7   policies. Do you think it's still fair to call them a

8   murderer or rapist?

9   Ms. Perez. Irrespective of what their label was, sir,

10   I would be on record as an advocate of trying to advocate

11   for their right to vote if the criminal justice system had

12   deemed them to be fit to be living amongst us.

13   Senator Cotton. All right. Thanks for your

14   testimony.

15   Chairman Durbin. W ll, thank you very much, Ms.

16   Perez, for appearing before the committee. You may receive

17   some written questions, which we hope you will provide

18   timely answers to.

19   Ms. Perez. I will do so, sir. Thank you.

20   Chairman Durbin. Thank you very much. I'd like to

21   let the staff prepare for the second panel and ask them to

22   please step forward.

23   I'm going to ask Senator Coons to take over while I go

24   vote and return.

25   [Recess.]

1   Senator Coons. [Presiding]. Please be seated, if you

2   would. I look forward to hearing from our -- I'm sorry.

3   We're all just going to have to stand back up to take the

4   oath, so please don't be seated. I look forward to hearing

5   from our next five nominees.

6   Before making your opening statements, would the

7   nominees please stand to be sworn in?

8   [Witnesses sworn.]

9   Senator Coons. Thank you. Please be seated. And Ms.

10 Cobb, you may begin with your opening statement.

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1   TESTIMONY OF JIA M. COBB, TO BE UNITED STATES DISTRICT

2   JUDGE FOR THE DISTRICT OF COLUMBIA

3

4   Ms. Cobb. Thank you so much, Senator Coons, and to

5   all the Senators here, to Chairman Durbin for that

6   wonderful introduction, to Ranking Member Grassley. I'd

7   also like to --

8   Senator Coons. Ms. Cobb, your mic, pl ase. Your mic,

9   please. Sorry, Ms. Cobb.

10   Ms. Cobb. Thanks. That's much better   I'd also like

11   to thank Representative Norton for re ommending me, and for

12   President Biden for nominating me.

13   I have been drawn to   career in the law for as long

14   as I can remember. My father's an attorney. I have such a

15   great respect for the role of our courts in our democracy

16   to interpret the laws.

17   And I do want to take some time to introduce family

18   members who I have here today. First, my parents, James

19   and Anita Cobb, who drove up from Michigan to be here with

20   me to support me, as they always do. Now that I'm a

21   parent, I understand the significant sacrifices that they

22   made to ensure that me and my sister had an education and

23   opportunity. I would not be here but for their support.

24   My sister, Jenna Cobb, is also here, who has been a

25   best friend and an enduring source of support and

1 encouragement. She is here with my brother-in-law, Keith

2 Farrugia, who has just been a wonderful addition to our

3 family.

4   I want to thank all of my friends and colleagues for

5 their support.

6   And then, last but not least, my son, Ricky, is here.

7 He is missing Slip 'N Slide day at camp to support me here

8 today. Everything that I do is to be an ex mple for him.

9 I'm so thankful that he has an opportunity to have a first-

10 row seat to see how our great democracy works.

11   I look forward to answering the questions today.

12 Thank you.

13   [The prepared statement of Ms. Cobb appears in the

14 appendix.]

15   / COMMITTEE INSERT

16   Senator Coons. Thank you so much, Ms. Cobb. And my

17 thanks to your family and to Ricky in particular. This

18 will be a riveting and hopefully painless session during

19 which your mother will answer some important questions.

20   Your Honor, Ms. Merriam, if you would please, proceed

21 with your opening statement.

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1   TESTIMONY OF SARAH A.L. MERRIAM, TO BE UNITED STATES

2   CIRCUIT JUDGE FOR THE DISTRICT OF CONNECTICUT

3

4   Ms. Merriam. Thank you, Senator Coons. And thank you

5   to the committee for holding this hearing, and frankly, ll

6   these hearings. I do want to thank President Biden for the

7   great honor of this nomination. And I want to thank both

8   Senators Blumenthal and Murphy for their support in this

9   process and for their very kind introductions.

10   Four of my favorite people are here with us today: my

11   mother, Anne; my stepfather, Michael; my best friend, Paul;

12   and one of my closest friends for over 30 years now, Jenny.

13   My father, Dwight; my litt e brothers, Jonathan and

14   Alexander, who are not so littler anymore; and my baby

15   sister, Lucy, could not be here in person, but I'm

16   confident they're with us through the miracle of streaming

17   video.

18   There are many others I want to acknowledge who have

19   supported me both throughout this process and throughout my

20   career   My extended family, scores of aunts, and uncles,

21   nd cousins all over the country, from Alaska, to Oregon,

22   to Colorado, to Virginia, to Massachusetts, and just about

23   everywhere in between. And I'm thinking especially of my

24   Uncle Ross, down in Florida today.

25   I am blessed with an incredible court family in the

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1   District of Connecticut, which we believe to be the oldest

2   operating federal court in the country.   My phenomenal

3   career clerk, Samantha; my term clerk, Annie; and my

4   courtroom deputy, Andrew, make everything work.   And I

5   especially want to acknowledge my fellow magistrate judg s

6   who serve our court and our country with such skill and

7   dedication.

8   And finally, my friends from every stage of my life

9   from New Haven, from New South, from the district, from

10   Edgewood School to law school, who have become like family

11   to me so much so that their kids call me auntie, and I love

12   them like my own.

13   So, I appreciate the pportunity to speak to you

14   today.

15   [The prepared statement of Ms. Merriam appears in the

16   appendix.]

17   / COMMITTEE INSERT

18   Senator Coons.   Thank you, Your Honor.   Judge Pan.

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1   TESTIMONY OF FLORENCE Y. PAN, TO BE UNITED STATES DISTRICT

2   JUDGE FOR THE DISTRICT OF COLUMBIA

3

4   Ms. Pan. Thank you, Senator Coons. I want to thank

5   Chairman Durbin and Ranking Member Grassley for the

6   opportunity to appear at this hearing today. I want to

7   thank President Biden for the tremendous honor of this

8   nomination. And Congresswoman Eleanor Holm s Norton for

9   recommending me to the President. I also want to thank

10   Chairman Durbin for his kind introduction today.

11   I am the daughter of immigrants from China. My

12   parents, Wu Ching and Felicia came to the United States in

13   1961 to pursue graduate degrees in New York City. They

14   chose to remain here because they recognized that this

15   country offered the best opportunities for their children,

16   my sister Gloria and me.

17   Both of my parents became American citizens. After

18   naturalization ceremonies, each of them took an oath of

19   allegiance before a United States district judge. When

20   th y took those oaths, they never imagined that one of

21   their children might one day be nominated to assume a

22   position of such trust and responsibility. I think it's

23   fair to say that my presence before this committee is a

24   fulfillment of the hopes and dreams that my parents held

25   when they chose to make their lives here in the United

1   States.

2   My parents can't be here today, but they're watching

3   these proceedings from their home in Virginia with my

4   sister, Gloria. I want to thank them for the sacrifices

5   and the choices that they made which allowed me to becom

6   the person that I am today.

7   With me in the hearing room are my wonderful husband,

8   Max Stier; our son, Zachary, who's 16, and probably will be

9   asking all the members of the committee for their

10 autographs after this hearing.

11   [Laughter.]

12   Ms. Pan. Also, I'm pleased to have with me, my

13 brother-in-law, John Neuff r. My younger son, Noah, who is

14 15, can't be here today because he's in Sewanee, Tennessee,

15 at the Sewanee Summer Music Festival.

16   I also want to acknowledge and thank other family

17 members who are supporting me from afar. My cousins, Pearl

18 Wong, Sanchez Chi, Stephanie Chi, and Debbie Wen are

19 watching from the great state of New Jersey, which is where

20 I grew up. And my in-laws, Serena Stier and Steven Burton,

21   re watching from the great state of Iowa.

22   Thank you, and I look forward to answering any

23 questions from the committee.

24   [The prepared statement of Ms. Pan appears in the

25 appendix.]

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1   / COMMITTEE INSERT

2   Senator Coons.   Thank you, Your Honor.   Judge

3   Williams.

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1 TESTIMONY OF KAREN McGLASHAN WILLIAMS, TO BE UNITED STATES

2 DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

3

4   Ms. Williams. Good morning. Thank you, Chairman

5 Durbin, Ranking Member Grassley, and -- I'm sorry. Senator

6 Coons for holding this hearing today and the honor of

7 appearing before this body.

8   Senator Booker, I believe our ancestor are indeed

9 smiling down on us this morning. Senator Menendez, thank

10 you for your ever so kind words.

11   I have many thanks -- many to thank for the journey

12 that finds me here today. My village is strong, and the

13 list is long, but I will b quick.

14   My family here with me. Jim, my husband of 32 years,

15 thank you for all that y u do and all that you have done.

16 Our daughter, Danielle, who works in elementary education.

17 Our son, Justin, who works with Hope Scholars. My mother,

18 Millicent Tate, who transitioned from this life in 2004,

19 was the strongest, most resilient woman I have ever known,

20 and the first person to tell me that I was enough. And she

21 showed me and prepared me for the grind. My dad, Norman

22 Tate, who is here with me. The man brave enough to marry a

23 divorced mother of four, thank you for lighting a new path

24 for all of us.

25   Eton Carver White, also known as Uncle Jimmy, and his

1   family. Uncle Jimmy, thank you for your service to this

2   country and our family. My siblings, Michelle, Diane,

3   Patrick, and Julian, their spouses, and my nieces and

4   nephews. To the Lewis family and all of those born

5   McGlashan, all of the cousins who started out on West

6   Street in Jamaica, came through Brooklyn, and landed all

7   over this country. To my in-laws, Jackie, Bonnie, Judy,

8   Andre, Cathy, little Jimmy. My sis, Lisa, nd her family.

9   To the sisterhood -- my sisterhood, known as Alpha

10 Kappa Alpha Sorority, Incorporated, for its service to all

11 mankind and instilling that purpose in me. David Jasinski

12 for allowing me the room to develop as an attorney.

13 Finally, the District of N w Jersey, my federal family. My

14 court family, my courthouse family, my chamber staff,

15 Nicole, Tiana, and Cara.

16   Shout-out to Camden. Shout-out to the seven

17 southernmost counties of New Jersey, especially Atlantic

18 County, where I put down my first legal roots.

19   My village is strong. My list is long. I appreciate

20 th patience of this body for allowing me this time.

21   [The prepared statement of Ms. Williams appears in the

22 appendix.]

23   / COMMITTEE INSERT

24   Senator Coons. Thank you. And finally, Mr. Olsen.

25

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1 TESTIMONY OF MATTHEW G. OLSEN, TO BE AN ASSISTANT ATTORNEY

2 GENERAL, NATIONAL SECURITY DIVISION

3

4   Mr. Olsen. Thank you. Thank you, Senator Coons and

5 members of the committee. I am so honored to appear before

6 you today as the nominee to be the assistant attorney

7 general for National Security. I am grateful to the

8 President for his confidence in nominating e for this

9 position. And I would also like to thank Senator Cardin

10 and Senator Van Hollen for those very kind introductions.

11   I am joined here today by my family: my wife, Fern; my

12 three children, Elizabeth, Nate, and Will. I would not be

13 here without their love and support.

14   I would also just like to take a moment to remember my

15 parents, Myrna and Van. I was born in North Dakota. I

16 moved here as a young kid because my dad got a job with a

17 member of the House of Representatives from North Dakota.

18 We were going to move back to North Dakota in two years,

19 and we ended up staying here for my entire life. My mom

20 was a school nurse. Public service was the -- is the most

21 noble calling in my family.

22   Congress established the National Security Division

23 after 9/11 and charged it with carrying out the Department

24 of Justice's most important priority, and that is to

25 protect the nation from terrorism and other threats to our

1   national security by pursuing justice through law. The

2   threats we face today are diverse and complex. And the

3   National Security Division plays a vital role in protecting

4   the nation.

5   I believe that our greatest strength in defending the

6   nation comes from our career public servants. They are

7   dedicated to securing our country with fidelity to our

8   founding values.

9   And if confirmed, it would be my absolute honor to

10 lead and support the extraordinary workforce of the

11 National Security Division. We will onfront domestic and

12 international terrorism. We will counter threats to our

13 cyberinfrastructure. We will protect our nation from

14 espionage and foreign adversaries. And we will work to

15 foster trust of the work of the intelligence community.

16   I believe that my experience has prepared me to take

17 on this critical responsibility. I began my career in the

18 Department of Justice in the Civil Rights Division as a

19 trial attorney. As an assistant United States Attorney, as

20 a federal prosecutor in Washington, D.C., for over a

21 decade, I prosecuted crimes at the state and the federal

22 level. Those included murders, homicides, complex

23 conspiracies, and public corruption cases.

24   I learned to pursue justice based on the evidence and

25 based on the law. And I learned to protect both the public

1   safety and the rights of the accused and all Americans

2   under our Constitution.

3   The terrorist attacks on September 11, changed the

4   course of my career. It led me to shift my focus to

5   national security. I first worked at the FBI as special

6   counsel to Director Mueller, helping to support the

7   transformation of the FBI after 9/11.

8   In 2006, I returned to Main Justice to help establish

9   the new National Security Division. I was responsible for

10 overseeing the Department's intelligence work, including

11 the implementation of Congress's landmark changes to the

12 Foreign Intelligence Surveillance Act. I was the general

13 counsel of the National Security Agency, and from 2011 to

14 2014, I served as the director of the National

15 Counterterrorism Center, which Congress established to

16 unify and coordinate our counterterrorism efforts.

17   At every stage of my career, I have been guided by the

18 values of the Department of Justice, devotion to the

19 Constitution, to the search for the truth and to the

20 pursuit of equal justice under the law.

21   If I am confirmed, I will follow the facts and I will

22 follow the law. And I will work relentlessly to advance

23 the security of the nation.

24   I look forward to answering your questions. Thank

25 you.

1   [The prepared statement of Mr. Olsen appears in the

2   appendix.]

3   / COMMITTEE INSERT

4   Senator Coons. Thank you. Thank you to all of our

5   five witnesses of this panel for your opening statements

6   We're now going to proceed to five-minute rounds of

7   questioning. As you all know, the Senate is currently in

8   the middle of a vote series, thus senators ill come in and

9   out, and I presume that the chairman will return, and I

10 will go for a second vote.

11   But let me begin. If I could, Mr Olsen, from your

12 opening statement, it's clear you're no stranger to the

13 critical work of the National Security Division. I'd be

14 interested in having you just elaborate a little bit on the

15 time you spent working there previously. And can you

16 explain the critical role that office plays in supporting

17 our national security? And then, just elaborate a little

18 bit more on your service, working for the U.S. Attorney's

19 Office in the Bush administration, and how that experience

20 pr pared you for your service in the subsequent Obama

21   dministration.

22   Mr. Olsen. Yes. Yes. Absolutely. And thank you,

23 Senator. I -- you know, I was there at the very beginning

24 of the National Security Division. I was there at the very

25 beginning of the National Security Division.

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1   It was established by Congress because of a

2   recognition that the Department of Justice's various

3   elements that worked on national security, whether that's

4   the Foreign Intelligence Surveillance Act, or

5   counterterrorism, or counterespionage, were not

6   sufficiently unified. The decision was made to create the

7   first new division in several decades, the National

8   Security Division, which like a number of o her parts of

9   the government, were reformed in response to the attacks of

10   9/11.

11   In my judgment, the division has been an unqualified

12   success. Bringing together intelligence professionals,

13   attorneys who work on applications to the FISA court, along

14   with the prosecutors who handle and oversee

15   counterterrorism cases and counterespionage cases, and

16   really been part of the broader national security

17   reformation following the attacks of 9/11.

18   But I should add that it's continued to evolve since I

19   left a decade ago. I left in 2009, and it has changed to

20   ev lve to meet the threats we face today, whether those

21   threats are from cyber actors, from those that would seek

22   to steal our intellectual property. It has continued to

23   grow and evolve as the threats that we face have grown and

24   evolved. And again, to continue to represent the

25   intelligence community very effectively.

1   Senator Coons. Thank you, Mr. Olsen. I think based

2   on your broad and deep service and experience, we're lucky

3   to have you nominated to continue your public service in

4   this role.

5   Ms. Williams, if I might -- Judge Williams. Forgiv

6   me. You've served as a magistrate judge, I think, for a

7   dozen years. How has that role and experience prepared you

8   for an Article III judgeship? And what asp cts of that new

9   role for which you've been nominated are you most excited

10   about, if confirmed?

11   Ms. Williams. So, thank you, Senator. For the past

12   12 years, I have served the District of New Jersey as a

13   magistrate judge, and I am lucky to be in the District of

14   New Jersey, which has delegated quite a bit of authority to

15   magistrate judges in our district. And so, most of my work

16   is managing cases and preparing them for disposition by the

17   Article III judges.

18   And so, how my work as a magistrate judge has prepared

19   me is to understand the process of judging, and justice,

20   and to ensure that everyone who appears before me as a

21   magistrate judge or, if confirmed, as a district court

22   judge, is privy to a fair, impartial process.

23   Senator Coons. Thank you, Your Honor. Judge Pan,

24   during your tenure as a magistrate judge, if I understand

25   correctly, you've presided over more than 650 trials. That

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1   is an astonishing body of work. You've spent your entire

2   career in public service. President Obama noted your

3   unwavering commitment to justice and integrity upon your

4   initial nomination. I just would be interested in how your

5   experience as a magistrate judge, and your long public

6   service dedication will inform your service in the federal

7   judiciary as an Article III judge, should you be confirmed?

8   Ms. Pan. Thank you, Senator Coons, fo that question.

9   For the last 12 years, I've served as a judge on the

10   District of Columbia Superior Court, the local court of

11   general jurisdiction in the District f Columbia. And I've

12   served in the Criminal Division, the Civil Division, and

13   the Family Court. Before hat, I was an assistant United

14   States Attorney for 10 years.

15   And so, I have devo ed the last 22 years to serving

16   the citizens and residents of the District of Columbia.

17   Senator Coons. It didn't seem that long at the time,

18   but when you say it, it seems like a long time, doesn't it?

19   Ms. Pan. Yes. Well, it's been an honor and a

20   privilege. And I would be honored to continue my service

21   to this same community in this new capacity as an Article

22   III judge to consider issues of Constitutional and federal

23   importance, and to continue my service in that regard.

24   Senator Coons. Thank you very much. My five minutes

25   are up. Senator Cotton.

1   Senator Cotton. Thank you, Mr. Acting Chairman.

2   Congratulations to you all. Mr. Olsen, I remember when you

3   used to come brief Congress as the Director of NCTC, and I

4   always found you to be a sober, reasonable, national

5   security professional. I guess when Joe Biden nominated

6   you to this position, I thought it was one of his better

7   choices.

8   But then, I started looking at what yo 've been up to

9   for the last four years, and I have questions about which

10 Matt Olsen we're getting. In 2017, you wrote an op-ed,

11 entitled, "The Electoral College, a National Security

12 Threat." I want to repeat that   "The Electoral College is

13 a National Security Threat " Do you believe that -- still

14 believe that the Electoral College is a national security

15 threat?

16   Mr. Olsen   Senator, let me begin by thanking you for

17 your initial comments about my time as the National

18 Counterterrorism Center Director. And I spent a better

19 part of my career as a government public servant,

20 pr tecting the country.

21   I left the government in 2014 and entered the private

22 sector. I wanted to stay -- remain engaged on the issues

23 that I thought were important. And as a private citizen,

24 of course, I expressed some views, including that article

25 you're referring to, in a way that I wouldn't and haven't

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1   expressed as a public -- as a public or government servant.

2   That view, yes. There are aspects, in context, if I

3   may explain. There are aspects of the way in which the

4   Electoral College allowed -- or could allow nefarious cyber

5   actors to pinpoint their efforts to influence an election.

6   There are ways in which the Electoral College makes us more

7   vulnerable to nefarious, particularly nation-state cyber

8   actors to influence elections. And that's -

9   Senator Cotton. That's what I --

10   Mr. Olsen. -- what I was seeking to highlight.

11   Senator Cotton. I'm sorry Our time --

12   Mr. Olsen. No. Of course

13   Senator Cotton. Our ime is very limited here. So,

14   you still think the Electoral College is a national

15   security threat?

16   Mr. Olsen   I stand by the content of the article that

17   I wrote.

18   Senator Cotton. Okay.

19   Mr. Olsen. Yes.

20   Senator Cotton. Should the Department of Justice ever

21   bring a lawsuit to try to force states to, say, adopt the

22   National Popular Voter Compact?

23   Mr. Olsen. Senator, I'm not familiar with any --

24   Senator Cotton. Right.

25   Mr. Olsen. -- statutory provisions or proposals along

1   those lines.

2   Senator Cotton. Last year, in the middle of riots

3   that caused billions of dollars of damage, and had murders

4   spiking at rates not seen in a generation, you described

5   the situation as "mostly peaceful protests." Do you think

6   the rioting we saw last year was mostly peaceful protests?

7   Mr. Olsen. I think that -- I'm not sure exactly the

8   comment you're referring to. But I --

9   Senator Cotton. You signed a public letter last June

10   saying that.

11   Ms. Olsen. Yeah. I will say this, Senator. If I am

12   confirmed and have the opportunity to lead the National

13   Security Division, the thr at that we face from the types

14   of violence that we've seen in the past several years,

15   particularly any type of domestic terrorism, I would be

16   responsible for enforcing our laws and enforcing those

17   laws, regardless of ideology, and enforcing them fairly and

18   impartially. And that would be my pledge.

19   Senator Cotton. You once wrote that, "ISIS supports

20   Donald Trump." Do you think that ISIS supported Donald

21   Trump?

22   Mr. Olsen. I appreciate again, Senator, the content -

23   - the article you're referring to, again -- I -- as a

24   private citizen, I tried to stay engaged on the national

25   security issues that I had worked on. And I will answer

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1   your question directly.

2   The article I wrote was based on statements that I had

3   seen that I was very concerned about from a propaganda

4   standpoint. In 2016, when I wrote that article, ISIS had

5   risen and was using its propaganda machine to influence

6   people in the United States, and they were using the

7   language, the words, of then Candidate Donald Trump to

8   advance their propaganda machine. And so, was referring

9   to their exact words in making that statement.

10   And I stand by the article. I was concerned about the

11   ways in which ISIS was using that -- hose comments to

12   recruit and mobilize people in the United States.

13   Senator Cotton. If i 's true that ISIS supported

14   Donald Trump, do you think Abu Bakr al-Baghdadi thinks he

15   made a bad bet?

16   Mr. Olsen   I m very supportive of the nature in which

17   we prosecuted -- and the way the Trump administration took

18   the fight to ISIS over the past several years.

19   Senator Cotton. Okay. So, Mr. Olsen, I'll just say

20   again, I had a lot of respect for the medals, in what we

21   saw as the NCTC director. But I feel like something has

22   changed here just in the last four years. To review what

23   we've covered today, you've said ISIS supports Donald

24   Trump. You referred to rioting last summer as mostly

25   peaceful protests. You've said the Electoral College is a

1   national security threat.

2   It's one thing to leave the government and comment on

3   public affairs, and be partisan, to give money to

4   candidates of your choice and to campaign for them. But I

5   feel like something about Donald Trump's presidency in the

6   last four years sent you a little bit around the bend. So

7   it makes me wonder which Matt Olsen we're going to be

8   getting at the Department of Justice.

9   My time's expired.

10   Senator Coons. Thank you, Senator Cotton. Senator

11   Blumenthal.

12   Senator Blumenthal. Thanks Mr Chairman. You know,

13   I want to put in the record, first of all, a letter from

14   more than 20 former prosecutors in Connecticut, including 3

15   of my successors, maybe more, as U.S. Attorney Derick

16   Dailey, Chris Crowley, and Stan Twardy. All of them among

17   the most distinguished lawyers, but also former prosecutors

18   in Connecticut. A rather extraordinary letter, attesting

19   to the integrity and intellect of Judge Merriam. If

20   th re s no objection, I ask that it be put in the record,

21   Mr. Chair.

22   Senator Coons. Without objection.

23   [The information appears in the appendix:]

24   / COMMITTEE INSERT

25   Senator Blumenthal. Thank you. The reason I focus on

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1   this letter is, Judge, because your career has been on the

2   other side of the courtroom from them. And all the members

3   of this panel who have been in the trenches of litigation,

4   particularly in the criminal area, know how heated and

5   contentious it can sometimes be. So to have this kind of

6   extraordinary vote of confidence in your integrity and

7   credibility, I think, says far more than I could about the

8   qualifications that you bring to this position.

9   And there are a lot of things going on here today here

10 in the Capitol. The president's going to visit. We have

11 potentially an infrastructure agreement. But for all of us

12 in Connecticut, your appearance here is one of the more

13 consequential events of th day and of this year because

14 you will serve on the bench for decades, God willing.

15   You may well hear cases of students who are now in law

16 school. And every one of you who will serve on the bench

17 are the voice and face of justice to everyday Americans.

18 Most litigants simply don't have the wherewithal, or the

19 time, or resources to appeal to the Second Circuit Court of

20 Appeals And for them, the decisions in the district court

21   re justice in America.

22   So this position is so profoundly important to our

23 nation. And to have someone who, as has been stated by

24 those lawyers I mentioned, has, quote, "brought an

25 evenhanded and accessible approach to the federal bench,"

1   end quote, and "applied the law fairly and properly,

2   without regard to personal preference," end quote, is an

3   extraordinary gift to the people of Connecticut and our

4   country.

5   Maybe, if you don't mind, could you tell me a littl

6   bit about how your experience as a federal defender has

7   informed your work as a magistrate judge, and the approach

8   that you will take on the United States District Court

9   Bench?

10   Ms. Merriam. Thank you, Senator, for those very kind

11 words. Connecticut has the great benefit of being a fairly

12 small federal court. And it is collegial, and people know

13 each other, and they respect each other. And I felt that

14 as a defender. I felt that as a law clerk. I felt it in

15 private practice. And I feel it now, as a magistrate

16 judge.

17   And in the 18 months in which I was appointed as a

18 magistrate judge, two others were appointed in close

19 succession: one a career prosecutor and one a career civil

20 li igator. And over the past four and a half years, almost

21 five years, the three of us have worked as magistrate

22 judges together, asked for each other's advice, shared our

23 ideas for how to better the system, and to better the

24 experience of people that come in front of us. Because as

25 magistrate judges, we are the first person a litigant

1   usually sees. And likewise for a public defender, you're

2   the first person a defendant turns to when they are caught

3   up in a system that can be very scary.

4   But at the end of the day, I think my experience there

5   helped me to see all sides of the system and to understand

6   that when people come to court, it's because something has

7   gone terribly wrong, and we need to help them get through

8   that crisis with respect.

9   Senator Blumenthal. Thank you. Mr Olsen, you and I

10   spoke about the 9/11 families when we had an opportunity to

11   talk privately. And I emphasized to you my concern about

12   the government, in effect, withholding evidence and

13   information that they need to pursue their case against the

14   government of Saudi Arabia. And I think the failure to

15   provide that evidence and information is absolutely

16   unconscionable from what I know.

17   I have purposely rejected opportunities to look at the

18   classified information, because I want to talk as publicly

19   as I can about what I do know without any threat or hint

20   that I'm violating the rules of classification. But I

21   think the American people deserve an explanation as to why

22   our government is, in effect, withholding or concealing

23   evidence that would aid the 9/11 families in pursuing

24   justice against the government of Saudi Arabia, which may

25   well have aided and abetted the attackers on 9/11 that

1   caused the deaths of their loved ones.

2   And I have written, along with my colleagues, Senators

3   Gillibrand and Menendez, to the Attorney General Merrick

4   Garland and Director Wray as recently as two weeks ago.

5   Over the past couple of years, I've sent several letters

6   with different groups of colleagues on and off this

7   committee concerning the department's and the FBI's

8   invocation of the state secrets privilege, till without

9   any explanation.

10   I asked Director Wray about this issue in 2019, and

11   I've asked Attorney General Garland and Helaine Greenfeld

12   about it earlier this year. The administration, so far,

13   has provided no explanation or the evidence that the 9/11

14   families are seeking.

15   We are approaching he 20th anniversary of that

16   insidious, unspeakable act of horror, an attack on our

17   nation. And the American people deserve to know, 20 years

18   later, why that information still needs to be withheld.

19   You and I talked about it. I know you're not in the

20   job right now, but I would like a commitment from you that

21   you will review this matter, and you'll consider whether

22   the privilege has been properly invoked and provide an

23   explanation to the American people.

24   Mr. Olsen. Senator, thank you. And thank you for the

25   opportunity to discuss this issue with you. As I

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1   mentioned, I am in this work of national security because

2   of 9/11, and you have my commitment that, if confirmed, I

3   will work with the Attorney General to review this matter

4   closely.

5   Senator Blumenthal. Thank you. And by the way, on

6   the Electoral College, I agree with you. Thank you.

7   Chairman Durbin. [Presiding.] Senator Grassley.

8   Senator Grassley. Ms. Cobb, as a law tudent in 2004,

9   you wrote an article on federal statutes and regulations.

10   You argued that social history should be used in statutory

11   interpretation, a position that led y u to criticize a

12   dissent by Justice Thomas. In criticizing Justice Thomas,

13   you wrote about, quote, "the utility of looking at the

14   social and legislative histories in tandem to garner a

15   complete understanding of both the purpose and the meaning

16   of the legislation," end of quote. Do you think that the

17   words in a st tute can change meaning based on social

18   events?

19   Ms. Cobb. No, Senator. And if I could just put that

20   in context? I believe you're referring to an article I

21   wrote when I was maybe 23 or 24 years old. I had never had

22   a client before, never been in court.

23   My role as a judge is obviously different than my

24   academic pursuits when I was in my 20s. I believe that you

25   start with the text. I have never used --

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1   Senator Grassley. I think you've answered my

2 question.

3   Ms. Cobb. Thank you.

4   Senator Grassley. You bet. And I thank you for up

5 front saying, no. Second, do you agree with Justice

6 Kavanaugh that courts should phase out the statutory term

7 "alien" in favor of "noncitizen" because of the perceived

8 social history of those terms?

9   Ms. Cobb. I don't have a position on that, Senator.

10 I have not considered that.

11   Senator Grassley. In January of this year, you were a

12 panelist for the Metropolitan and Washington Employment

13 Lawyer Association. You spoke at a webinar entitled,

14 quote, "Litigating Race Discrimination and Employment in

15 the BLM Era." My unders anding -- that's the end of the

16 quote. My understanding is that you talked about both

17 racial discrimination and sexual harassment.

18   Will you please explain for us how litigation has

19 impacted or changed by the Black Lives Matter era? In

20 other words, I wouldn't think that that movement would

21 change anything from what it would be previous to that.

22 But I'll wait for your opinion.

23   Ms. Cobb. Senator, yes. I didn't choose that title,

24 and I don't know that it actually captured what was

25 discussed at that informal luncheon discussion. I think a

1   better title, if I were choosing it, would be, "Litigating

2   Cases or Current Considerations for Litigating Cases."

3   I think that there is a lot more discussion about

4   race. And whether you want to attribute that to the Black

5   Lives Matter movement or anything else, I think people are

6   more in tune to it.

7   And there are certain considerations as litigators.

8   For example, one thing that came up that I ecall from that

9   informal discussion was just talking about voir dire. You

10   have jurors that have, you know, exposure to what they're

11   seeing on the news, and may have opinions that litigants

12   need to flesh out to make sure that we're getting fair and

13   impartial jurors. So, I think a better title would be,

14   "Current Considerations for Litigating Race Discrimination

15   and Sexual Harassment Cases."

16   Senator Grassley. Okay. Mr. Olsen, as the head of

17   the National Security Division, you will supervise the

18   counterterrorism section. I'm deeply concerned, given

19   recent events, that the current administration does not

20   take an evenhanded approach to domestic terrorism. For

21   example, we know that the FBI is currently investigating

22   500 domestic terrorism cases of primarily anarchist

23   extremists that were open during the 2020 riots. These

24   cases constitute 25 percent of the FBI's current domestic

25   terrorism investigations, yet they are not mentioned in the

1   administration's domestic terrorism strategy.

2   Two questions. Will you commit to pursuing left-wing

3   domestic terrorism cases in addition to right-wing ones?

4   Mr. Olsen. Thank you, Senator Grassley. And

5   absolutely. I will pursue all acts of violence, all acts

6   of domestic terrorism, regardless of ideology. That's the

7   commitment that I make. That's the commitment the attorney

8   general has made.

9   Senator Grassley. Specifically, how do you plan to

10   ensure that your division is prosecuting left-wing domestic

11   terrorism cases at the same rate and pace as right-wing

12   cases?

13   Mr. Olsen. Senator, I was a prosecutor here in

14   Washington, D.C., for 10 years. I worked as a career

15   public servant on national security matters for another

16   decade. My entire career has been based on following the

17   facts and following the law, applying the law to those

18   facts.

19   If I'm confirmed, in the National Security Division,

20   that's exactly what I will do. I will follow the facts,

21   investigate every case that falls within my purview without

22   regard to ideology.

23   Senator Grassley. My last question is to Judge

24   Merriam. At your investiture, Judge Alvin Thompson said,

25   quote, "I believe that in both her professional life and

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1 her personal life, she lives out the ideals of justice and

2 fairness expressed by John Rawls in a publication, A Theory

3 of Justice." What does A Theory of Justice mean to you?

4   Ms. Merriam. Thank you, Senator Grassley. I'm afraid

5 I have not read it, and I'm not familiar with what Judge

6 Thompson was referring to.

7   Senator Grassley. As a magistrate judge, how does the

8 concept of justice as fairness affect your job, if at all?

9   Ms. Merriam. Every day, Senator. Every day, it is my

10 job to make sure that every party that comes in front of me

11 is treated completely fairly.

12   Senator Grassley. Do you think an effort to achieve

13 justice from Rawls -- well I guess you can't comment on

14 that. So I won't ask that question.

15   Ms. Merriam. Thank you, Senator.

16   Chairman Durbin. I'll get you a copy of that book,

17 Senator. This is a transition period. We're going live,

18 as they say, except a couple of the senators are in a

19 remote virtual situation. We're going to see if they're

20 tuned in.

21   Senator Klobuchar. Thank you.

22   Chairman Durbin. From the great state of Minnesota,

23 Senator Klobuchar.

24   Senator Klobuchar. Thank you. I am -- I'm not in an

25 undisclosed position here. I am in the Capitol, but thank

1   you very much, Chairman Durbin. And thank you to our panel

2   of witnesses, and I should say nominees.

3   I want to welcome you, Judge Pan, especially back to

4   the Senate with another opportunity to be considered. I

5   know you got out of the committee by voice vote last tim

6   back in 2016, and then sadly wasn't considered by the full

7   Senate.

8   But in the years since you appeared be ore the

9   committee, you have continued to serve as a judge on the

10   D.C. Superior Court. Could you talk a little bit about the

11   last question from Senator Grassley? How do you ensure

12   that those who appear before you believe that the court can

13   reach a fair and just decision?

14   I think it's very important right now for judges to

15   think about this because over the last four years, we had

16   some politicization from the White House of the judiciary.

17   And to me, th t all citizens feel that judges can be fair

18   in their decision-making process is really important.

19   Ms. Pan. Thank you, Senator Klobuchar. As a judge on

20   th D.C Superior Court for the past 12 years, I have tried

21   every day to make sure that every litigant, every party,

22   every witness, everyone that comes into my courtroom

23   receives fair treatment, open-minded decision-making, and

24   prompt decision-making from the court. I think that that's

25   what they're entitled to from our system of justice. And

1   I'm deeply committed to ensuring that everyone who enters

2   my courtroom receives the highest quality of justice and

3   fair treatment. And we've received training from my court

4   to make sure that this happens. And I try to do it every

5   day. Thank you.

6   Senator Klobuchar. Well, thank you. And at a time

7   where we've seen this horrific violence against the Asian

8   American community, it's critical that our nstitutions

9   reflect the diversity of our country. And if confirmed,

10   you would actually be -- I was surprised by this, the first

11   Asian American woman to serve on the District Court for the

12   District of Columbia. Can you take a moment to tell us

13   what that would mean to yo personally, to your family, and

14   to the community?

15   Ms. Pan. Thank you, Senator Klobuchar. I think

16   diversity on the bench is important because it contributes

17   and promotes confidence in our judiciary for the community

18   to see that the judiciary actually reflects the membership

19   of the community as well. I also think it performs an

20   important role model function for members of the bar who

21   re people of color, or from groups that are not

22   traditionally, or haven't been nominated to the bench in

23   large numbers. And so I think that that is important.

24   I'm deeply honored to be honored -- to be nominated by

25   the president. I was the first Asian Pacific American

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1   judge in the District of Columbia. And it would be a

2   tremendous honor to become the first female Asian Pacific

3   American judge on the United States District Court in this

4   jurisdiction.

5   Senator Klobuchar. Very good. Thank you very much

6   Mr. Olsen, I enjoyed our discussion, and I want to welcome

7   you as an honorary Minnesotan since you were born in Fargo.

8   But you've spent summers in our great state in Detroit

9   Lakes.

10   You spent more than two decades in government service

11   and national security, in numerous leadership roles under

12   both President Bush and Obama. How has your experience in

13   national security from acr ss government, and having served

14   presidents of both parties, prepared you for your role?

15   And then, if you could j st comment a little bit about what

16   we talked about the other day, the cybersecurity and

17   elections? So thank you.

18   Mr. Olsen. Thank you very much for that, Senator

19   Klobuchar. I came up on working in national security

20   during a time when the Bush administration was in office.

21   And in fact, some of the most consequential work I did, in

22   my own view, on national security took place during the

23   Bush administration.

24   The transformation of the FBI, the passage of the

25   landmark changes to the Foreign Intelligence Surveillance

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1   Act.   These were priorities of the Bush administration.

2   I stayed on as a career national security official

3   into the Obama administration. And I think one of the

4   enduring lessons of that experience was that national

5   security really transcends political or partisan

6   considerations. And that's true, not just in my own

7   experience, it is absolutely true of the people that I

8   worked with, whether they were in the intelligence

9   community or at the Justice Department. That people who

10   worked on national security cared about protecting the

11   country. They were not influenced, and they refuse to be

12   influenced by political or partisan concerns.

13   That would be the way I would proceed if I am

14   fortunate enough to be confirmed, is to continue to lead

15   the National Security Division according to that ideal of

16   nonpartisan a-political commitment to national security.

17   And that's wh t I learned from that experience.

18   On the second part of your question, Senator, you

19   know, cybersecurity has been an issue for a number of

20   years. But it has really taken prominence in the past

21   several years as a national security threat. And I would

22   be committed to continuing the great work that the National

23   Security Division has done in prosecuting cybercriminals,

24   people who are engaged in nefarious cyber activity that

25   threatens our national security, particularly our critical

1   infrastructure. There are nation-states, particularly the

2   Chinese -- or China, that is involved in stealing our

3   intellectual property, carrying out espionage through

4   cyber.

5   And the National Security Division plays a critical

6   role in countering that activity. And that's something I

7   think that's going to continue to be a priority going

8   forward, and I look forward to, if confirme   being able to

9   work on that further.

10   Senator Klobuchar. Thank you. Thank you to all the

11   nominees.

12   Chairman Durbin. Thank you Senator Klobuchar. Is

13   Senator Ossoff with us?

14   Senator Ossoff. Yes, I am. Thank you, Mr. Chairman.

15   Chairman Durbin. Take it away.

16   Senator Ossoff   Thank you. And congratulations to

17   these nominees on your nominations. Mr. Olsen, my first

18   question is for you, please. Despite serious problems

19   documented in the FISA application process by the

20   Department of Justice Inspector General, among others, the

21   Foreign Intelligence Surveillance Court approved electronic

22   collection activity in response to all 459 of the final

23   filed government applications requesting such authority in

24   2020.

25   Given the deficiencies that have been identified by

1   DOJ's Inspector General in the FISA application process,

2   are you open to and will you work with this committee to

3   develop possible legislative fixes to ensure the integrity

4   of the process?

5   Ms. Olsen. Senator, the answer -- direct answer to

6   your question is yes. I look forward to working with this

7   committee in continuing to improve the Foreign Intelligence

8   Surveillance Act and its implementation.

9   If I may just say, it is a landmark law. It has

10   provided as a tool, indispensable intelligence to our -- to

11   protect our country. At the same tim   I was very

12   concerned by the findings of the inspector general in its

13   recent report on the deficiency in the way that the law has

14   been implemented. And I am absolutely committed. It would

15   be, in fact, a priority, if I'm confirmed, to continue to

16   work to address those deficiencies and to improve the

17   process because the trust of the American people depends on

18   their confidence in the way that law is implemented.

19   Senator Ossoff. And you acknowledge that the remedy

20   to those documented flaws may include legislative fixes.

21   And you're willing to engage, in good faith, with this

22   committee to consider such fixes?

23   Mr. Olsen. Yes. Of course. Working with the rest of

24   the Justice Department and the intelligence community with

25   this committee and Congress to implement those changes.

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1   I've done that in the past, and I would do so again.

2   Senator Ossoff. Thank you, Mr. Olsen. And in your

3   position, you will have responsibility for reviewing all

4   applications for surveillance under FISA; is that correct?

5   Mr. Olsen. Yes.

6   Senator Ossoff. Based on the department's disclosed

7   FISA statistics for 2020, you personally would need to

8   review and fact check at least one 25-page ocument every

9   day in order to personally render such oversight. Can you

10   please describe the process that you anticipate you would

11   implement by which you would assess the accuracy of facts

12   stated in applications to the Foreign Intelligence

13   Surveillance Court?

14   Mr. Olsen. Yes, of course. And -- Senator, the

15   National Security Divisi n includes, when I was last there,

16   approximately 100 attorneys who are responsible for

17   appearing before the FISA Court, representing the

18   government before the FISA Court, and working with the

19   intelligence community, particularly the FBI, to review

20   th se applications. Ultimately, they go to a senior

21   official, whether the attorney general, the deputy attorney

22   general, or if I'm confirmed, me in the role as the

23   assistant attorney general, for final signature.

24   The crucial point here, of course, is that the process

25   needs to be sufficiently robust so that facts are checked

1 and documents are reviewed by agents at the FBI, for

2 example, who submit these applications, by lawyers at the

3 FBI, by lawyers at the Department of Justice, by the

4 individuals who support the judges. So there's a multi-

5 layered process to check the facts and to ascertain the

6 lawfulness of any application, that it meets the standards,

7 in particular probable cause standard, before it's approved

8 by the FISA Court judge.

9   Again, I was very concerned by the IG's finding of 17

10 significant problems in a number of applications that the

11 inspector general reviewed. And I kn w that there are a

12 number of steps already underway by the FBI and DOJ to

13 address those concerns. And I would make it a priority to

14 ensure that those are implemented.

15   Senator Ossoff. Thank you. And Mr. Olsen, you will

16 take personal responsibility for ensuring that all

17 applications to the FISC are factual and accurate?

18   Mr. Olsen. Yes, Senator. That is part of this job,

19 is to be personally responsible, in my view, for the FISA

20 Co rt process, and to represent the government in a way to

21 ensure that FISA Court applications are complete and

22 accurate.

23   Senator Ossoff. Thank you. Section 702 permits the

24 government to obtain the content of communications between

25 Americans and foreign surveillance targets. This,

1   sometimes referred to as incidental collection of American

2   communications, can sweep Americans into surveillance

3   without warrants from courts other than the Foreign

4   Intelligence Surveillance Court. And some would argue this

5   deprives them of Fourth Amendment protections. What are

6   your views on the scope of this incidental collection, and

7   whether or not it does pose a threat to the privacy of

8   American citizens?

9   Mr. Olsen. Senator, in my views, Section 702, first

10   of all, has proven to be extraordinarily successful in

11   collecting critical intelligence that s focused on non-U.S.

12   persons, non-U.S. citizens who are outside the United

13   States. And it has been upheld numerous times by courts

14   that have reviewed the way in which Section 702 operates

15   with judicial and congressional oversight.

16   The concern that you raise is an important one, that

17   is the privacy concerns are interests that are implicated

18   when a U.S. person is -- their communications are captured

19   in the course of targeting a non-U.S. person overseas. And

20   th key here is that there are procedures in place to

21   destroy that information if it does not involve foreign

22   intelligence or evidence of a criminal act.

23   I would say that there have been a number of cases

24   where that, as we've referred to, incidental collection has

25   led to important foreign intelligence also being collected.

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1   For example, if a target outside the United States is

2   communicating with a co-conspirator inside the United

3   States, the government has identified that co-conspirator

4   inside the United States, and then have been able to follow

5   up appropriately under the Fourth Amendment to continue

6   that collection.

7   So the law, I think, strikes the right balance. That

8   said, we need to be careful and sensitive t the privacy

9   interests that are certainly implicated by the way it

10   operates.

11   Senator Ossoff. Thank you Mr. Olsen. I'll have

12   additional questions on this subject for the record. And

13   if indeed you are confirmed, I look forward to working with

14   you. Thanks for your testimony. I yield, Mr. Chairman.

15   [The information appears in the appendix:]

16   / COMMITTEE INSERT

17   Chairman Durbin. Thanks, Senator Ossoff. I think

18   I'll be the last to wrap up. But I just have a question

19   for the aspiring judges, and it relates to my own

20   experience here, serving in Congress.

21   It was about 30 years ago when we declared a war on

22   drugs. And the reason that we acted as we did had a lot to

23   do with the advent of crack cocaine. The arrival of this

24   new narcotic was scary. It was very cheap, very addictive,

25   and very destructive to many people. And during the course

1   of our debate on this issue, I was in the House at the

2   time, there were incidents that occurred that gave us a

3   sense of immediacy of all the discovery of this drug and

4   such.

5   There was a case that did not involve crack cocaine,

6   but had a great deal of publicity involving a Maryland

7   basketball player, Len Bias. And as a consequence, we did

8   something dramatic. We created a sentencing guideline for

9   crack cocaine at 100 times the level of powder cocaine.

10   100 times.

11   The idea was that if we came down that hard, that

12   fast, that dramatically, that it would really break the

13   back of crack cocaine in t rms of its infiltration into

14   America. We were completely wrong. Completely. The

15   number of addicts increased. The price of the drug on the

16   street went down instead of up. And we started filling our

17   prisons, prim rily with African American defendants.

18   Dramatic increases in our federal prison population to

19   levels we'd never seen before.

20   In some of the sentencing that went on as a result of

21   it, we look back on it and say, "How could we have done

22   that?" A man named Alton Mills in the Chicagoland area,

23   three nonviolent crack cocaine sales, life in prison. Life

24   in prison. And many others just like it. It went way

25   beyond any deterrent effect and really reflected our

1   desperation to bring this under control.

2   Many judges commented, as they were forced by our

3   mandatory minimum sentences and other guidelines, they

4   didn't feel justice was being served in our courts when

5   they imposed these sentences. I know several of those

6   judges personally who talked to me at the time.

7   Since then, I have tried to correct my mistake, and we

8   passed two reforms of the sentencing law.   enator Grassley

9   was my partner in the most significant one the First Step

10   Act, and Fair Sentencing before that.

11   I'd like to ask the four of you who are aspiring to

12   these district court judgeships, what lesson we should have

13   learned from this experience? Judge Pan?

14   Ms. Pan. Thank you for the question, Senator. I

15   think that you raise a q estion of deep significance that

16   affects many people   And the lesson that I've learned from

17   what you've just said is that the legislature can learn

18   from mistakes and seek to correct them through the

19   legislative process. And I think that's a very positive

20   thing for the legislature to undertake.

21   Of course, as a judge, this is not the kind of thing

22   that we can address as a policy matter. But I think

23   sentencing considerations before judges are done on a case-

24   by-case, individual, basis, and we are required to look at

25   the facts of each case. But from a judge's perspective, I

1 think that making the sentencing guidelines no longer

2 mandatory, now voluntary, is another thing that's been

3 helpful in this regard.

4   Chairman Durbin. But there are sentencing

5 enhancements that are suggested by the government in many

6 cases. Does that come into play? That's a discretionary

7 decision by the judge.

8   Ms. Pan. Yes. And of course, as a judge, and in

9 performing the function of sentencing, which is so

10 important because the liberty of another person is at

11 stake, a judge must consider all the relevant factors,

12 including the requests of the government, and weigh all of

13 that under the totality of the circumstances.

14   Chairman Durbin. Judge Williams?

15   Ms. Williams. Senator, my understanding of how, as a

16 judge, if confirmed as a district court judge to deal with

17 it, is informed by my handling of some misdemeanor cases,

18 clearly not on point with addressing the crack cocaine

19 issue. As I agree with Judge Pan, that's an issue for the

20 legislature.

21   What we have learned, what we learn and know as

22 judges, is that we have guidelines to follow, 3553(a)

23 allows judges to interact with a very, very seasoned and

24 skilled probation office that helps inform and supply us

25 with the information necessary to work through those

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1   guidelines on individual cases. So, I've done that in

2   misdemeanor cases for individuals charged with crimes. And

3   should I be confirmed, I look forward to working with our

4   many talented probation officers as I work through the

5   Sentencing Act in the role of sentencing as a district

6   court judge.

7   Chairman Durbin. Judge Merriam?

8   Ms. Merriam. Thank you, Senator. When I was in the

9   Federal Defender's Office, I was there when the initial

10   changes in the crack/powder disparity went into effect.

11   And I was heavily involved in the pro ess of organizing the

12   district, which meant everyone. That was the prosecutors,

13   and the probation office, nd the judges, and the Marshals

14   Service, and the defense bar to make those changes

15   applicable to the clients where it was appropriate as

16   quickly and efficiently as possible to try to do the

17   justice on the ground that the legislature had seen fit to

18   put in place

19   And those changes have certainly made a real

20   difference over the years. But at the end of the day,

21   we're bound, now, other than by the mandatory minimums, by

22   3553(a), which is, as Judge Williams referenced, very

23   broadly encompassing the kinds of factors and the kinds of

24   considerations a judge can take into account. And that

25   discretion is an awesome one, and an important one, and

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1   allows judges, I think, to work within the law to try to do

2   justice.

3   Chairman Durbin. Ms. Cobb?

4   Ms. Cobb. Thank you. It's hard to improve upon the

5   responses that have been given. But I think what struck me

6   most about what you said is the fact that this body was

7   paying attention to what was happening in the courts, and I

8   think that's extraordinarily important. Wh n laws are

9   passed, particularly that provide criminal penalties,

10   whether they be mandatory minimums or otherwise, to pay

11   attention to kind of what the effect is on the ground once

12   those laws are implemented.

13   And I know that the S ntencing Commission does some

14   work in compiling statistics. But I really think it's

15   important to, you know, ontinue to pay attention to what's

16   happening after these laws are passed.

17   Chairman Durbin. Let me just add one other thing that

18   has changed the conversation. 20 ago, or 15 years ago, if

19   you would have said, "Oh, did you hear about that person

20   wh overdosed on drugs last night?" the most common answer

21   would be, "No. I didn't. Was it an African American?

22   Inner city? A man between 20 and 35?" You would have been

23   right in most cases. Not anymore.

24   When we talk about drug overdoses now, it could have

25   been that cheerleader at the all-white high school in the

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1   suburbs. And drug addiction has how reached every corner

2   of America. And we're starting to look at it anew. It is

3   no longer, "Just say no." We realize it is a medical

4   problem, a disease. We haven't responded with the adequate

5   resources to deal with addiction. I hope we will in the

6   future. But the conversation on drugs has changed in

7   America because the victims have changed pretty

8   dramatically. That is going to be part of he reality that

9   I hope you soon will be dealing with in your new positions.

10   I thank you for your cooperation at this hearing.

11   It's been an important one. You may receive some written

12   questions in the near term.

13   Is there anything els I need to do formally?

14   He wants me to read it and make sure you understand

15   this. Questions for the record will be due to the nominees

16   by 5 p.m. on Wednesday, July 21. The record will remain

17   open until th t time to submit letters and similar

18   materials.

19   And with that, the hearing is adjourned. Thank you

20   all very much.

21   [Whereupon, at 12:54 p.m., the committee was

22   adjourned.]

23

24

25

C O N T E N T S

C O N T E N T S, continued

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1   NOMINATIONS

2   - - -

3   Wednesday, May 26, 2021

4   United States Senate

5   Committee on the Judiciary

6   Washington, D.C.

7   The Committee met, pursuant to notice, at 10:00 a.m.,

8   in Room G50, Dirksen Senate Office Building Hon Richard

9   Durbin, chairman of the committee, presiding.

10   Present: Senators Durbin [presiding], Leahy,

11   Feinstein, Whitehouse, Klobuchar, Coons, Blumenthal,

12   Hirono, Booker, Padilla, Ossoff, Grassley, Cornyn, Lee,

13   Cruz, Hawley, Cotton, Kenn dy, and Blackburn.

14   Also Present: Senators Heinrich, Lujan, Menendez, and

15   Cassidy.

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1   OPENING STATEMENT OF HON. RICHARD DURBIN, A U.S. SENATOR

2   FROM THE STATE OF ILLINOIS, CHAIRMAN OF THE COMMITTEE

3

4   Chairman Durbin. This hearing will come to order.

5   Today, the committee is holding its sixth nomination

6   hearing of the 117th Congress as we continue to process the

7   Biden administration's nominees. We have before the

8   committee this morning six nominees. Welco e to all.

9   Tiffany Cunningham, nominated to the Federal Circuit,

10   will be on the first panel, and then the second panel

11   includes Margaret Strickland, nominat d to the U.S.

12   District Court for the District of New Mexico; David

13   Chipman, nominated to be director of Bureau of Alcohol,

14   Tobacco, Firearms, and Explosives, known as A.T.F.; Ur

15   Jaddou, nominated to head the U.S. Citizenship and

16   Immigration Services, U.S.C.I.S.; Anne Milgram, nominated

17   to be the administrator of D.E.A., or Drug Enforcement

18   Administration; Ken Polite, nominated to be the assistant

19   attorney general for the Criminal Division.

20   Before I introduce two of these nominees, I want to

21   say a word about the nominations process. I want to thank

22   the White House for sending us nominees with extraordinary

23   experience and credentials for the positions to which

24   they've been nominated. And I want to make sure that we

25   understand we need to do our part, here in the Judiciary

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1   Committee and in the United States Senate, to make sure

2   that we have Senate-confirmed leaders in the executive

3   branch.

4   Many of the positions that are being -- aspiring to be

5   filled today by these nominees have been vacant for long

6   periods of time. For example, former President Trump never

7   nominated an administrator for the Drug Enforcement

8   Administration. There hasn't been a Senate confirmed head

9   of that agency in six years, since 2015. The confirmation

10   process not only serves to gauge a nominee's

11   qualifications, but it's an important challenge to the

12   Senate and to this committee to do their job. The prior

13   administration relied heavily on acting officials, took the

14   Senate out of the process. This administration is trying

15   to bring the Senate back into its constitutional role.

16   Turning to the nominees, I want to first introduce

17   Tiffany Cunningham, nominated to the Federal Circuit. Ms.

18   Cunningham was born in Detroit, Michigan. She spent almost

19   20 years in Chicago. I'm proud to call her a fellow

20   Illinoisan. Her credentials are extraordinary:

21   undergraduate degree in chemical engineering from M.I.T.,

22   law degree from Harvard Law School, clerkship on the

23   Federal Circuit. Ms. Cunningham has spent almost two

24   decades as an intellectual property litigator and has

25   worked on every aspect of patent litigation, from the

1   inception of the case, through discovery, trial, and

2   appeal.

3   Further, she has represented clients from any number

4   of fields: mechanical engineering, chemicals,

5   pharmaceuticals, biotechnology, computer science, and th

6   auto industry. Her clients include Fortune 500 and other

7   high-tech companies.

8   Given her experience representing both plaintiffs and

9   defendants, she understands the importance of the law being

10   applied evenhandedly. Ms. Cunningham will be ready from

11   day one to serve on the bench. She has technical

12   expertise, deep knowledge of patent law, and almost 20

13   years of experience as a litigator.

14   Finally, I would note that, when confirmed, Ms.

15   Cunningham will be the first Black judge to serve on the

16   Federal Circuit. This history -- historic nominee will

17   bring both professional and racial diversity to the court.

18   I also have the privilege of introducing David

19   Chipman, nominated to be the director of the A.T.F. Mr.

20   Chipman, 25-year law enforcement veteran, after beginning

21   his career as a special agent with the General Services

22   Administration's O.I.G., Mr. Chipman joined A.T.F. in 1988,

23   when it was still part of the Treasury Department. He

24   served as special agent with multiple field offices in many

25   locations, including Virginia, Texas, and Michigan, and led

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1   a number of components of the A.T.F. in Washington,

2   including the Firearms Enforcement branch and the Policy

3   Development and Evaluation branch.

4   While at A.T.F., Mr. Chipman led or assisted in

5   multiple efforts to combat gun trafficking and the

6   proliferation of gun violence. He also worked tirelessly

7   to bring more attention to the health, safety, and wellness

8   of law enforcement officials nationwide.

9   Since leaving A.T.F., Mr. Chipman has continued his

10   work advancing bipartisan, commonsense measures to protect

11   responsible gun ownership while reducing the use of law --

12   of firearms against law enforcement officers and innocent

13   individuals. Mr. Chipman has quite literally been on the

14   front lines in a fight against gun violence. As a gun

15   owner himself and an advocate for principled,

16   constitutional gun safety measures, Mr. Chipman is

17   singularly positioned to lead A.T.F. and tackle the gun

18   violence epidemic facing our nation.

19   It's worth noting, as well, that Mr. Chipman would be

20   only the second confirmed A.T.F. director in the agency's

21   history. I want to repeat that. He would be the -- only

22   the second confirmed A.T.F. director in the agency's

23   history and the first director to ever have served as an

24   A.T.F. special agent.

25   His knowledge of the agency and its purview is

1   unparalleled. In my estimation, he has what it takes:

2   acumen, leadership experience, and commitment to lead the

3   A.T.F. With that, I turn to my friend and ranking member,

4   Chuck Grassley.

5   Senator Grassley. You don't have to answer this now,

6   Mr. Chairman, but I would think that science ought to be

7   advanced enough to show us on this virus that we don't have

8   to have this spacing that we have now. Would you check

9   that out for me?

10   Chairman Durbin. If you want to sit closer to me,

11 I'll arrange that.

12   [Laughter.]

13   Senator Grassley. We l, I do, yes. Yes. But I think

14 we ought to get to the point where we have some more -- I'd

15 like to be able to actually see our witnesses, so maybe

16 think about it   Okay. Thank you.

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1   STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE

2   STATE OF IOWA

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4   Senator Grassley.   Today, we're here for six nominees,

5   one for the circuit, one for the district, and four

6   executive nominees.

7   The nominee for the Federal Circuit, Tiffany

8   Cunningham, seems very well qualified.   The Federal Circuit

9   is a specialty court.   It hears mostly patent cases.   It

10   does also hear some other appeals as well, including

11   federal taking, and so I'm going to have some questions for

12   Ms. Cunningham on that subject.

13   The district nominee, Margaret Strickland, is another

14   of President Biden's criminal defense judges.   This is the

15   fourth criminal defense judge that we've considered.

16   I want to be very clear that there's nothing wrong

17   with being a criminal defense attorney.   Some of President

18   Trump's excellent judges, like Paul Matey of the Third

19   Circuit, Raag Singhal of Florida, and Clifton Corker of

20   Tennessee, were criminal defense attorneys.   They were out

21   to protect their clients' constitutional rights, all of

22   thems.

23   Like I said before, there's nothing wrong with the

24   position that an organization -- that Demand Justice takes.

25   But we ought to have equal consideration or thoughts given

1   by that organization compared to some things that were said

2   about judges that came with federalist backing. Groups

3   like Demand Justice have made it clear that's not what they

4   want. They seem to think that these criminal defense

5   judges will defund the police from the bench. I think w

6   should try to find out what kind of criminal defense judges

7   we're getting: a Bill of Rights judge or a Demand Justice

8   judge.

9   We also have some executive nominees   Former Attorney

10   General Milgram and Mr. Polite seem to be - have

11   relatively broad support. Mr. Polite, in particular, has

12   received strong letters of support from Republicans like

13   Brian Benczkowski and Alic Fisher, who aren't the usual

14   suspects supporting Democrat nominees. That's pretty

15   impressive.

16   I have concerns regarding Ms. Jaddou, a nominee to be

17   director of U S.C.I.S. During her time as chief counsel

18   for that organization, that agency, during the last several

19   years of the Obama administration, the agency created

20   various parole programs that are not consistent with the

21   language or the intent of the Immigration and Nationality

22   Act. Should she be confirmed, I have concerns about her

23   willingness to further stretch the limits of parole

24   authority, and I hope to get some clarification in her

25   views during today's hearing, and I didn't get that

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1   clarification when I had a telephone conference with her.

2   I'm also troubled by statements that she has made on

3   other issues, such as the use Title 42 expulsion authority

4   at the southern border, funding for immigration enforcement

5   agencies, and asylee law.

6   I believe all of these issues are worthy of thorough

7   questioning and examining before this committee. I regret

8   that today's format hearing will hinder our ability to

9   explore each of these topics, so I will probably have

10   questions in writing on those issues.

11   Lastly, we have Mr. Chapman. Ev r since Mr. -- not

12   Chapman, Chipman. Ever since he was announced, I have been

13   hearing from alarmed constituents who care about their

14   rights under the Second Amendment. Mr. Chipman seems to

15   have worked for every pr minent gun control group in the

16   country. He's been described by CNN as, quote, "a fierce

17   advocate for gun control," end of quote. There isn't a

18   liberal hobbyhorse on guns that he hasn't ridden, whether

19   it's misleading the public about modern sports rifles,

20   arguing against popular magazine sizes, or advocating for

21   universal background checks.

22   Of particular concern is the contempt with which he

23   seems to view ordinary Americans who buy and carry

24   firearms. And by the way, Mr. Chairman, I don't think I've

25   pulled a trigger of a gun in the last 40 years. If I do, I

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1   don't remember when. So I'm not one of these guys that has

2   an arsenal of guns on my farm or anyplace. So I just come

3   from this from the standpoint of the Constitution.

4   So in regard to Mr. Chipman, to pick just one example,

5   he said last year, quote, "If you keep gun --" quote, "If

6   you keep gun -- the gun store open, there's a risk of

7   first-time buyers who are largely buying out of fear and

8   panic and untrained," end of quote.

9   A.T.F. is a significant law enforce ent agency. We

10   mostly hear about it when it messes up, whether it's Waco,

11   Operation Fast and Furious, or the Chicago stash house

12   scandals. But day to day, A T.F plays a significant role

13   in the legal trade of fire rms in this country. Many see

14   putting a command -- committed gun control proponent like

15   Mr. Chipman in charge of A.T.F. is like putting a tobacco

16   executive in charge of the Department of Health and Human

17   Services or antifa in charge of the Portland Police

18   Department. I hope he can alleviate those fears today as

19   we question him. I yield.

20   Chairman Durbin. Thank you, Senator Grassley. We

21   have four or five members, Democrats and Republicans, who

22   would like to say a word of introduction on behalf of one

23   of the nominees. First, from the state of New Mexico, we

24   have both senators. The senior senator, Senator Heinrich,

25   is joining us remotely, I believe. He'll introduce Ms.

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1   Strickland. The floor is yours, Senator Heinrich.

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1   STATEMENT OF HON. MARTIN HEINRICH, A U.S. SENATOR FROM THE

2   STATE OF NEW MEXICO

3

4   Senator Heinrich.   Chairman Durbin and Ranking Member

5   Grassley, it's really my pleasure and honor this morning to

6   introduce Margaret Strickland, the President's nominee to

7   be district court judge for the District Court of New

8   Mexico.   Ms. Strickland was born and raised in the

9   southwest border region, where this district court seat

10   presides.   She attended New Mexico State University and the

11   University of Texas at El Paso before attending law school

12   at New York University.

13   Ms. Strickland return d to the southwest after law

14   school and started her career with the Las Cruces office of

15   the New Mexico public defender, representing clients in the

16   juvenile drug court and in felony defense work.

17   In 2011, Ms. Strickland formed her own law firm,

18   continuing her public service work representing indigent

19   defendants in federal court.   Ms. Strickland has litigated

20   bo h criminal and civil cases, including a significant

21   number in the Federal District Court located in Las Cruces,

22   New Mexico.   She's also appeared before the New Mexico

23   Court of Appeals, the New Mexico Supreme Court, and the

24   Tenth Circuit Court of Appeals, and filed before the United

25   States Supreme Court.

1   Ms. Strickland served on the board of New Mexico

2   Criminal Defense Lawyers for over a decade, including as

3   president. In 2018, the Federal District of New Mexico

4   appointed her to represent all Criminal Justice Act lawyers

5   as a panel representative. Ms. Strickland has also done

6   significant volunteer work with programs that reduce the

7   rate of euthanasia for companion animals. In fact, she and

8   her husband, Greg, foster dogs and puppies o that they can

9   be placed in a home rather than euthanized

10   If confirmed, Ms. Strickland will be faced with one of

11   the busiest federal dockets in the co ntry and inherit a

12   heavy back load of cases. I am confident that her

13   experience and her incredible work ethic will best position

14   her to immediately get to work. Ms. Strickland is a highly

15   qualified nominee with the right experience, the right

16   temperament, and the right disposition to be a fair-minded

17   district court judge.

18   The A.B A. agrees with the majority, giving her a

19   well-qualified grading. She has spent her entire

20   pr fessional career working in the community in which she

21   will sit. She knows intimately the impact the legal system

22   has on everyday Americans. And she understands that

23   serving as a judge is very different from serving as an

24   advocate. She is ready and prepared for the shift from

25   zealously and effectively representing clients to

1   faithfully applying the law to the facts of a specific

2   case.

3   I also want to take a quick moment to recognize Ms.

4   Strickland's husband, Greg, and their son, George, who I am

5   certain are so proud to celebrate this moment. I

6   enthusiastically support Ms. Strickland's nomination for

7   district court judge for the District of New Mexico. And I

8   hope that all of the members of this commit ee will join me

9   in supporting this highly qualified nominee. Thank you

10 both.

11   Chairman Durbin. Thank you, Senator Heinrich. Next,

12 we have the junior senator from New Mexico, our new

13 colleague, Senator Lujan.

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1 STATEMENT OF HON. BEN RAY LUJAN, A U.S. SENATOR FROM THE

2 STATE OF NEW MEXICO

3

4   Senator Lujan. Mr. Chair, it's my honor to be before

5 the Judiciary Committee today to help introduce Margaret

6 Strickland for consideration to serve on the U.S. District

7 Court for the District of New Mexico in Las Cruces.

8   Ms. Strickland, as my colleague Senato Heinrich

9 shared, was born and raised in the southwest and would

10 bring significant legal experience and judicial experience

11 to the district court. Ms. Strickland has spent the last

12 15 years practicing law in New Mexico, including before the

13 New Mexico Court of Appeals, the New Mexico Supreme Court,

14 and the Tenth Circuit Court of Appeals and the United

15 States Supreme Court. As a former public defender, she

16 would bring much-needed professional diversity and

17 perspective to our federal courts.

18   Ms. Strickland has strong ties to the New Mexico legal

19 community, including being elected by her peers to the

20 board of New Mexico Criminal Defense Lawyers, where she

21 served for over a decade in different positions, including

22 as president. In 2018, she was appointed by the Federal

23 District of New Mexico to represent all Criminal Justice

24 Act lawyers as the panel representative.

25   With a proven record of service and leadership, I'm

1   confident that Ms. Strickland will continue to serve all

2   New Mexicans equitably on the district court once

3   confirmed. She is a highly qualified nominee, and it's my

4   honor to stand with her today. Thank you, Mr. Chairman.

5   Chairman Durbin. Thank you, Senator Lujan. Next, we

6   have Senator Padilla to introduce Ms. Jaddou. I think he's

7   going to join us shortly. In the meantime, I'll ask if

8   Senator Menendez is available, also by remo e, to offer one

9   of the two introductions of Ms. Milgram, our D.E.A.

10   nominee. Senator Menendez, please proceed.

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1   STATEMENT OF HON. ROBERT MENENDEZ, A U.S. SENATOR FROM THE

2   STATE OF NEW JERSEY

3

4   Senator Menendez. Well, thank you, Mr. Chairman, Mr.

5   Ranking Member, esteemed colleagues. Today, I'm pleased to

6   join Senator Booker in introducing Ms. Anne Milgram,

7   President Biden's nominee for administrator of the Drug

8   Enforcement Agency.

9   Ms. Milgram's experience as a local, state, and

10   federal prosecutor, a state attorney general, a

11   philanthropy executive, and a respect d voice on criminal

12   justice reform make her an exceptional nominee. Ms.

13   Milgram grew up in East Br nswick, New Jersey, was drawn to

14   public service at a young age, even serving as a

15   congressional page. She went on to earn her B.A. from

16   Rutgers College, a Master of Philosophy from the University

17   of Cambridge, and law degree from New York University.

18   After clerking for U.S. District Court Judge Anne Thompson

19   in Trenton, New Jersey, Ms. Milgram got her start in the

20   Manhattan District Attorney's office.

21   In 2001, she joined the U.S. Department of Justice's

22   Civil Rights Division as special litigation counsel for

23   human trafficking. There, Ms. Milgram won several

24   convictions under newly enacted human trafficking laws, an

25   issue that is deeply intertwined with illicit drug trade.

1   Then in 2007, after serving as counsel in his U.S.

2   Senate office, New Jersey Governor Jon Corzine nominated

3   her to serve as attorney general. In this position, Ms.

4   Milgram oversaw a criminal justice division with 21

5   prosecutors, 30,000 law enforcement officers across New

6   Jersey, a managerial experience that leaves her well

7   prepared to oversee the D.E.A.'s 9,000 employees. As

8   attorney general, Ms. Milgram led investigations into gang

9   activity, organized crime, mortgage fraud illegal

10   trafficking, and more. She also pursued innovative, data-

11   driven approaches to fighting crime in New Jersey,

12   including a 2007 partnership with the Bureau of Alcohol,

13   Tobacco, Firearms, and Explosives to help New Jersey trace

14   illegal firearms recovered at crime scenes.

15   Yet Ms. Milgram is best known for her ground working

16   -- reform policing in the city of Camden, then known as the

17   most violent city in America. Using analytics and crime

18   data to create a more responsive police force, within one

19   year, she helped achieve a 40 percent reduction in violent

20   crime in Camden.

21   In 2011, she founded the Criminal Justice Initiative

22   at the Laura and John Arnold Foundation to continue her

23   focus on leveraging technology to advance criminal justice

24   reform. There she developed a public safety risk

25   assessment tool to provide judges with more holistic

1   decision-making information and helped invest over $55

2   million in efforts across the country to prevent violent

3   crime and create a more humane criminal justice system.

4   Today, she is a professor of practice and

5   Distinguished Scholar in Residence at New York University

6   School of Law, where she launched the Criminal Justice Lab.

7   My colleague, Anne Milgram is uniquely positioned to

8   lead the D.E.A. and advance the Biden admin stration's

9   effort to combat the opioid epidemic, stop the flow of

10   dangerous substances like fentanyl into our country, and

11   build safer communities. In my view, the D.E.A. can only

12   benefit from her vast experience her eye for innovation,

13   and her reputation for exc llence. I urge her swift

14   confirmation. Thank you, Mr. Chairman.

15   Chairman Durbin. Thank you, Senator Menendez.

16   Senator Booker, you're now recognized.

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1   STATEMENT OF HON. CORY BOOKER, A U.S. SENATOR FROM THE

2   STATE OF NEW JERSEY

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4   Senator Booker. Thank you very much. Mr. Chairman,

5   there are a privilege senators get, to introduce someone

6   from their state, but this is a deeper privilege, that some

7   of my colleagues have had, is I get to introduce somebody

8   from my state who I have known for almost 3 years.

9   About 29 years ago, I met Anne Milgram when -- and by

10   the way, I'm not under oath, so I will say 29 years ago, I

11   was 21 and she was 5. And I met her when we were both

12   finalists in New Jersey to go on for -- to go on to the

13   final round to be Rhodes Scholar candidates. I have since

14   got to know a lot of the people that interviewed us that

15   day, and they made it cl ar to me that she was the

16   outstanding standout of the duo that would go on to the

17   final round. Anne made an impression me on that day, back

18   in 1992, that I will never forget, and I tracked her career

19   since then.

20   It was 15 years ago that she and I both landed in

21   important positions in our state. I was the mayor of the

22   state's largest city, and she was the attorney general for

23   the state of New Jersey. Newark was in crisis. We had

24   spiking violent crime. The drug crisis in our city was

25   palpable. Residents were afraid, and the biggest issue

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1 people talked about in our public polling was the crisis of

2 crime.

3   What we got in Anne Milgram was, for our city, a

4 champion, someone that had a depth of knowledge about the

5 issues from her being a prosecutor, an advocate for civil

6 rights, and she became, for the state of New Jersey, a

7 nationally known pioneer in public safety. My colleague,

8 Senator Menendez, has already mentioned the statistical

9 data that supports the simple truth: she helped to drive

10 down crime to historic lows in places all over the state of

11 New Jersey.

12   For me, she was an extraordinary partner who had a

13 holistic understanding of what real public safety is. It

14 is not a police officer on every corner. It is this

15 understanding that these issues go deeper, that there is an

16 intrinsic tie between public safety and ideals of justice,

17 transparency, and accountability. Her success as an

18 attorney general led to her continuing that pathway of

19 being a pioneer. She went to work with the Arnold

20 Fo ndation and helped to further advance ideals of reform

21 in how we address safety and security in our communities.

22   She has now become one of the preeminent experts on

23 the very issue she would be dealing with should be

24 confirmed. She is someone that gives me hope about our

25 country that we cannot be chained to the drug war policies

1   of the past but find ways that actually produced evidence-

2   based results.

3   I am so confident in her leadership, not just because

4   of the pattern of her career of success after success,

5   successful innovation after pioneering triumph, but I kn w

6   her as a person. I know her character. I know her core.

7   She is an extraordinary American. She is a celebrated

8   leader in the state of New Jersey, and I am confident for

9   our country, in this time when we are still dealing with

10   the travesties of a failed war on drugs, that she will do

11   for this country what she did for cities like Camden and

12   Newark, deliver public safety and a deeper, more meaningful

13   justice for all. Thank yo .

14   Chairman Durbin. Thank you, Senator Booker, for that

15   inspiring statement. Finally, before we return to Senator

16   Padilla, one of our colleagues from the great state of

17   Louisiana is going to introduce Mr. Polite. I understand

18   Senator Cassidy may be joining us by remote. I hope so.

19   Senator, are you with --

20   Senator Cassidy. You should be seeing me, Mr. Chair.

21   Chairman Durbin. I hope so.

22   Senator Cassidy. Do you have me? Do you have me?

23   Chairman Durbin. You can proceed, and I think we will

24   find you. There you are.

25   Senator Cassidy. I should be on.

1   Chairman Durbin. There you are.

2   Senator Cassidy. You got me?

3   Chairman Durbin. Yes. Please proceed.

4   Senator Cassidy. Got you. Thank you.

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1   STATEMENT OF HON. BILL CASSIDY, A U.S. SENATOR FROM THE

2   STATE OF LOUISIANA

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4   Senator Cassidy. Thank you, Chairman Durbin and

5   Ranking Member Grassley. It is a privilege to introduce

6   New Orleans native and former U.S. attorney for the Eastern

7   District of Louisiana Kenneth Polite. He is the nominee

8   for the assistant attorney general for the riminal

9   Division in the Department of Justice.

10   Mr. Polite has succeeded with his intelligence, hard

11   work, and support from his family. H started his life in

12   the Calliope Projects in New Orleans raised by a single

13   mom driven to provide a fu ure for her children. Her

14   mother -- his mother, Rosalind, took classes at Xavier

15   University, gained employment in the state Probation and

16   Parole typing pool, which enabled her to move off of public

17   assistance and out of the projects into her own home. She

18   taught her children the power of education by, among other

19   things taking them to the public library every weekend.

20   It paid off. Mr. Polite received a full scholarship to De

21   La Salle High School. He graduated as valedictorian and

22   subsequently graduated from Harvard University and

23   Georgetown Law School.

24   With this background of hard work and dedication and

25   two decades of litigation and management experience in

1 criminal, civil, and compliance law, Mr. Polite is clearly

2 qualified.

3   He's also highly recommended from official -- by

4 officials across the political spectrum back home.

5 Republican Louisiana Attorney General Jeff Landry wrote a

6 letter to this committee saying of Mr. Polite's time as

7 U.S. attorney for the Eastern District of Louisiana that he

8 was, quote, "not only an effective crime fighter, but also

9 an invaluable member of the community."

10   Mr. Polite is also endorsed by Mayor LaToya Cantrell

11 of New Orleans and the City of New Orleans Department of

12 Police, sheriffs, district attorneys, faith-based leaders,

13 as well as the F.B.I. New Orleans field office, former

14 Special Agent in Charge Michael Anderson, and former

15 Assistant Special Agen in Charge Daniel H. Evans.

16   I look forward to the committee and the full Senate

17 taking up and approving Mr. Kenneth Polite's nomination.

18 Thank you, Mr. Chairman.

19   Chairman Durbin. Thank you, Senator Cassidy. Has

20 Senator Padilla joined us by remote, I hope, to introduce --

21   Senator Padilla. Yes, I'm here.

22   Chairman Durbin. Please proceed.

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1   STATEMENT OF HON. ALEX PADILLA, A U.S. SENATOR FROM THE

2   STATE OF CALIFORNIA

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4   Senator Padilla. Thank you, Mr. Chairman, and I

5   apologize for the back and forth. We're wrapping up the

6   markup in Environment and Public Works. I do expect to

7   join you in person in a little while, but in the meantime,

8   I want to thank you and Ranking Member Grassley for the

9   opportunity to introduce Ur Mendoza Jaddou from the great

10   state of California as President Biden's nominee to be the

11   director of the U.S. Citizenship and Immigration Services

12   at the Department of Homeland Security.

13   U.S.C.I.S. plays a critical role in our immigration

14   system, as every member of this committee knows. It is the

15   agency tasked with processing and adjudicating visa

16   applications, asylum petitions, and employment

17   authorizations. It also handles the process for granting

18   citizenship to immigrants who have worked hard to come to

19   the United States and pursue the American dream. Ms.

20   Jaddou has spent her long and distinguished career working

21   to improve the lives of immigrants in the United States.

22   This work is personal to me and to her, I, as a son of

23   immigrants and her as a daughter of immigrants. Her mother

24   was from Mexico and her father was from Iraq. Ms. Jaddou

25   grew up in the California border community of Chula Vista,

1   which is just seven miles north of the Mexican border. She

2   knows firsthand what it means to be from an immigrant

3   family and how much immigrants contribute to the diversity

4   of our country and to the fabric of our communities and, of

5   course, to our economy.

6   I believe Ms. Jaddou is uniquely qualified to serve as

7   director of U.S.C.I.S. at this critical time. In 2014, she

8   was named chief counsel for U.S.C.I.S., whe e she led an

9   office of 270 attorneys around the country who provided

10   legal advice to the agency. This included advising on

11   policies and programs, changes in sta utes and regulations,

12   and other complex legal issues. During her time as chief

13   counsel, she also worked c osely with the D.H.S. Office of

14   General Counsel and her counterparts at Immigration and

15   Customs Enforcement and Customs and Border Protection.

16   Her understanding of immigration law and how

17   U.S.C.I.S. functions is second to none. Her career began

18   on Capitol Hill as counsel to Congresswoman Zoe Lofgren.

19   She went on to become the majority chief counsel to the

20   Ho se Immigration subcommittee when Congresswoman Lofgren

21   was named chair of that subcommittee. She also served as

22   deputy assistant secretary for regional, global, and

23   functional affairs at the State Department's Bureau of

24   Legislative Affairs, and most recently, she served as

25   director of D.H.S. Watch, a project of America's Voice.

1   I want to close with a story that Ms. Jaddou shared

2   with me that perfectly demonstrates her passion for this

3   work, for immigration law, and her commitment to service.

4   While she was a student at U.C.L.A. Law School, there was

5   no tenured immigration law professor on staff or an

6   immigration law clinic where she and her peers could help

7   immigrants with their cases. Instead of being deterred,

8   she sought the guidance of her professors, nd she and her

9   classmates started their own immigration law clinic. I

10   think it embodies the passion and initiative that we need

11   in the next director of U.S.C.I S.

12   She's the right person to lead this agency, and I

13   strongly support her nomin tion. I urge you all to do the

14   same. Thank you very much.

15   Chairman Durbin. Thank you very much, Senator

16   Padilla. And now, I'd ask our first nominee on the first

17   panel, please stand to be sworn.

18   [Witness sworn.]

19   Thank you. Let the record show that the witness

20   answered in the affirmative. Ms. Cunningham, please

21   proceed with your opening remarks.

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1   TESTIMONY OF TIFFANY CUNNINGHAM, NOMINEE TO BE UNITED

2   STATES CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT

3

4   Ms. Cunningham. Thank you, Chairman Durbin. Thank

5   you, Ranking Member Grassley. And thank you to the entire

6   committee for scheduling this hearing. I also appreciate

7   the committee's flexibility in the scheduling because I had

8   to attend to a pressing family emergency.   also want to

9   thank President Biden for the nomination   I m truly

10   humbled and honored. I have some people here to introduce,

11   some people who are present in the ro m and also some

12   people who are unable to attend

13   I'm going to start wi h the people who are unable to

14   attend. First, I want to introduce my mother. Her name is

15   Patricia Mae Cunningham. She was born and raised in

16   Paducah, Kentucky. She was a high school English teacher,

17   teaching in the Detroit public schools for almost 30 years.

18   And she's also literally an embodiment of my heart outside

19   of my body. And as I sit before this committee, my heart

20   is partially broken because my mom is facing a very serious

21   medical issue, which is the only reason she is not present

22   today. I love you, Mom, and I will see you again very

23   soon.

24   Next, I want to introduce my father. His name is

25   Elisha Donald Cunningham. He was born and raised in

1   Talladega, Alabama. He is a veteran of the Vietnam War.

2   He worked in the automobile industry for approximately 50

3   years. I love you, Dad, and thank you for being there to

4   support Mom through this difficult challenge.

5   Next, I want to introduce my aunt, Dorothy Clemons.

6   She was a longtime resident of the Washington, D.C., area

7   and like a second mother to me. She worked for the federal

8   government for most of her life, and in add tion

9   unfortunately, she cannot be here because she passed away

10 in 2015. But I'm confident that she is watching and

11 sending her support. I want to thank the larger Cunningham

12 family, the larger Clemons family, my friends, loved ones,

13 significant other, and oth r people who have really sent

14 their support my way.

15   I want to turn to introduce the people who are present

16 in the room today, starting with Dr. Muneera Kapadia. I've

17 known her since we were six years old. She was my first

18 best friend. And she drove all the way from North Carolina

19 to be here to support me today.

20   Next to her is Judge Qiana Lillard. I've known her

21 since freshman year of high school, and she is also a very

22 dear friend and supported me on this journey today.

23   Next to her is Ms. Jan Anne Dubin. She is a

24 consultant in Chicago and another dear friend, and I thank

25 her for her support.

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1   Last but not least, I want to thank my colleagues at

2 Perkins Coie for all of their support. I truly appreciate

3 it. And without further ado, I look forward to answering

4 the committee's questions.

5   [The prepared statement of Ms. Cunningham appears in

6 the appendix.]

7   / COMMITTEE INSERT

8   Chairman Durbin. [Presiding.] Thank yo   Ms

9 Cunningham. Yours is an amazing story that brings you to

10 this moment before the Senate Judiciary Committee and

11 aspiring to this judgeship. And it r ally is star studded,

12 the things you have done, chemical engineering from M.I.T.

13 and Harvard and so forth. Let me ask you this question.

14 At this point in your career, you seem to be at the top of

15 your game. Why do you want to give it up to be on the

16 bench?

17   Ms. Cunningham. Thank you for that question, Senator.

18 I can tell ou that this is literally my dream job. I

19 recall when I was fortunate enough to clerk for the court

20 in 2001 to 2002, one of the first days walking around and

21 really seeing the pictures of the judges on the walls. And

22 I saw a court that had fine, fine jurists, but it was very

23 homogeneous, if I must admit. There were all white judges

24 and only two women at that time. And at that point in

25 time, I kind of put in my mental vision board that I hoped

1   that one day I could be a judge at that court. So I'm

2   truly humbled to be sitting here before you today, and it's

3   really a dream job that I've aspired to.

4   Chairman Durbin. And you've seen a number of judges

5   as a litigator, as a clerk. What do you think are the

6   shortfalls of some and the benefits that others bring to

7   the bench?

8   Ms. Cunningham. Thank you for that question, Senator.

9   So in general, I have been very fortunate to both clerk for

10   a wonderful judge and also appear in front of wonderful

11   judges across the country. In general I have appeared in

12   front of judges that really have upheld all the standards

13   of being a good judge. These are fair, impartial, unbiased

14   people who come to the judging without any sort of

15   prejudgment. So I feel like that is really great. In

16   terms of being a judge, and if I were fortunate enough to

17   be confirmed, I really would bring those same qualities to

18   the bench and also really make sure that I carefully gave

19   every party a chance to be heard and carefully studied the

20   arguments and faithfully applied the law to the facts of

21   the case.

22   Chairman Durbin. Some critics argue that the jury

23   system may not be up to the 21st century challenges, that

24   many issues coming before juries are so technical, so

25   complicated, that the average layman -- laywoman, layman --

1   would have difficulty understanding them and really coming

2   to a conclusion that is the basis for a verdict or a

3   decision. You're in one of those rarefied atmospheres of

4   the law where there is just that sort of technicality and

5   complexity. What has been your observation on the

6   performance of juries with those challenges?

7   Ms. Cunningham. Senator, I've been fortunate enough

8   to try a number of cases, and I've seen juries really meet

9   the task. They absolutely will pay attention to all of the

10 arguments. And what has been incumbent on really all of

11 the advocates is to make sure to explain the technology so

12 it's understandable to a layperson. That really is a duty

13 of every zealous advocate nd something that I have really

14 tried to fulfill in my role as an advocate to date.

15   Chairman Durbin. Thank you. Senator Grassley?

16   Senator Grassley. Thank you very much.

17 Congratulations to you, Ms. Cunningham.

18   It is important for the Federal Circuit to protect the

19 rights of private property owners under the Fifth Amendment

20 taking clause. I'm going to give you some facts. At the

21 Supreme Court, taking clause relief was granted to 35

22 percent of private property owners between 1979 and 2015,

23 where in state and federal courts, excluding the Federal

24 Circuit, the success rate of regulatory takings claims from

25 that same period of time was nine and nine-tenths percent.

1   Lastly, Justice Thomas has cited data showing that only one

2   and sixth-tenths percent of the taking claims under Lucas

3   were successful from '92 to 2017 in the Federal Circuits,

4   where you will be seating -- sitting. These aren't exactly

5   apple-to-apples comparisons, but there is a trend there.

6   So do you think it's a problem that the takings claims

7   seem to be far less successful in the Federal Circuit than

8   in other tribunals, and what do you think a counts for the

9   difference?

10   Ms. Cunningham. Thank you, Senator, for that

11   question. In general, I think that I -- while I've told

12   you already, I've been a patent litigator for the last 20

13   years and have not actually litigated any takings cases,

14   what I can tell you is that if I were fortunate enough to

15   be confirmed, I would take that area very seriously, no pun

16   intended, and would also be sure to faithfully apply the

17   law to the facts of any case before me. In terms of the

18   statistics, I believe that the court faithfully tries to

19   apply the law to the facts of a case, so I think it really

20   depends very much on the facts of each case that comes

21   before the court.

22   Senator Grassley. If you'll do no more for me than

23   just take that into consideration, that we seem to get less

24   relief under the taking constitutional rights than -- in

25   the Federal Circuit than we do at other tribunals, I would

1   consider that quite an accomplishment today. In the wake

2   of the T.C. Heartland, what do you see as the role of the

3   Federal Circuit in enforcing proper venue in patent cases?

4   Ms. Cunningham. Thank you for that question, Senator.

5   T.C. Heartland, obviously, the venue case that came down,

6   has led to cases being filed in different jurisdictions and

7   potentially a shift of some of the cases from some of the

8   jurisdictions where they were filed previou ly. In

9   general, I feel like the Federal Circuit will, of course --

10   and I recognize that if I were fortunate enough to be

11   confirmed, would be bound by all Supr me Court precedent,

12   including that case, and I would faithfully apply that case

13   to any of the issues that came before me.

14   Senator Grassley   Okay. My last question, as a

15   general matter, do you think it's appropriate for district

16   judges to actively create favorable patent venues in their

17   courts?

18   Ms. Cunningham. Thank you for that question, Senator.

19   In general, I think that district court judges, just like

20   all judges, need to be bound by the rule of law and just

21   being focused on applying the law to the facts of each case

22   without really taking into consideration regarding what

23   sorts of cases they might want to appear before them.

24   Senator Grassley. Thank you, Mr. Chairman.

25   Chairman Durbin. Thank you, Senator Grassley. The

1   next senator seeking recognition is Senator Coons.

2   Senator Coons. Mr. Chairman, if I might, I'll defer

3   to my colleague from New Jersey, who would like to make

4   just a minute of brief remarks.

5   Chairman Durbin. Of course.

6   Senator Booker. Yeah, I just wanted to have 60

7   seconds. You know, these -- we have these hearings, and

8   this is one of those moments where I feel this sense of

9   exhaustion and exaltation at the same ti e   And we are in

10   this period, almost 250 years of American history, where we

11   still are counting the first Black person to do this, the

12   first Black person to do this. And I just wanted to say

13   for this moment, and have no questions for the witness, how

14   extraordinary it is that she is a history maker and a rule

15   breaker, should she be c nfirmed.

16   This is a long and tortured history of federal courts

17   in this country, from Dred Scott to Plessy versus Ferguson

18   to even recent decisions that trouble me on voting rights.

19   But we have to mark these moments where we are making

20   ex raordinary progress. The witness before us today is an

21   extraordinary human being by any measure, and I just want

22   to say for the record that the history of our country, our

23   ancestors, Black and White, a rainbow coalition of people

24   that have struggled to make a day like this possible, our

25   ancestors are rejoicing, and I'm so grateful to see the

1   witness before us today. Thank you.

2   Chairman Durbin. Thank you, Senator Booker. Senator

3   Coons.

4   Senator Coons. Thank you, Mr. Chairman. Ms.

5   Cunningham, welcome. You have very strong credentials and

6   have represented some of America's most successful and

7   best-resourced companies, companies like Intel or Microsoft

8   or General Motors.

9   And I'm someone who, in IP, is always concerned about

10   balance, balance in policy, balance in experience, balance

11   in advocacy. I just am interested in your views, broadly,

12   as well as your experience around solo inventors, small

13   start-up companies, becaus often, they have quite

14   different experiences in our IP system and different views

15   on the importance of pat nt protection, in particular.

16   Have you represented a small start-up company or a solo

17   inventor, or re you aware of the challenges that sometimes

18   face these smaller players when they seek protection under

19   our patent system?

20   Ms Cunningham. Thank you, Senator, for that

21   question. So my representations have been very broad.

22   I've represented both individuals and large companies, as

23   you already indicated, and also smaller companies. So I do

24   have that breadth of representation.

25   Senator Coons. And what do you see as the differences

1   in how a General Motors or a Microsoft experiences our

2   patent system versus the somewhat iconic, I know, garage

3   inventor?

4   Ms. Cunningham. Sure. I think usually the

5   differences come down to kind of the resources that are

6   available to the companies versus the smaller individuals.

7   So really, ensuring equal access for everybody, including

8   the garage inventor, as you indicated, as w ll as the large

9   companies that may be more well-heeled, is important in our

10   system.

11   Senator Coons. We're in the middle, on the floor of

12   the Senate right now, in debating and hopefully moving

13   towards a final vote on a bill designed to strengthen

14   innovation, R&D, our competitiveness as a country. And I'm

15   concerned about China's ngoing theft of American

16   intellectual property. I'm also alarmed by the contrast

17   between China's recent efforts to bolster its IP regimes

18   and the weakening of protections for creators and

19   innovators in our system. How do you view the challenge or

20   th potential threat to our global leadership in IP by

21   China?

22   Ms. Cunningham. Thank you for that question, Senator.

23   So in general, I've seen some statistics, for example, that

24   show that China's involved in potentially 60 percent or so

25   of trade secret cases, and I'm aware of some of the theft

1   concerns and some of the issues that I believe this body

2   and Congress at large are considering.

3   I also am aware of a fairly recent suit where there

4   was essentially an antisuit injunction that took place, and

5   then the Texas court -- it was the Eastern District of

6   Texas, I believe, before Judge Gilstrap. It looks like

7   you're familiar with this particular decision I'm

8   describing, Senator Coons. But in that particular case, it

9   was a situation where the Texas court decided that that

10   court could go ahead and proceed on the merits. But I

11   think that's another concern, and I think it interrelates

12   with the concern that you flagged.

13   Senator Coons. One of the areas that Senator Tillis

14   and I worked hard to try and find some common ground and

15   some path forward on in he last Congress is subject matter

16   -- the eligibility to Section 101 jurisprudence. And I

17   would argue we have heard from many former heads of the

18   P.T.O., man practitioners in the field, even judges on the

19   circuit to which you've been nominated, that there is

20   pr found uncertainty about the path forward in Section 101

21   jurisprudence.

22   And I recognize there's real limitations on what you

23   can say in a confirmation hearing, but do you believe the

24   Federal Circuit could provide greater clarity or certainty

25   in this area? Are you concerned that some critical

1   technologies around things like artificial intelligence or

2   personalized medicine are now not eligible for patents or

3   there's lack of real clarity and that's impacting our

4   competitiveness as a country, particularly in these two

5   critical areas?

6   Ms. Cunningham. Thank you for that question, Senator

7   Coons. So I know this is an area that I think is near and

8   dear to your heart as well to some of the o her senators'

9   hearts. And in general, in terms of Section 101, I think

10   the impact of the Alice and Mayo decisions and kind of that

11   framework, the two-step framework tha it looks like you're

12   familiar with that was set up, has led to decisions where

13   there is more in terms of cases where really there are

14   Section 101 invalidation decisions that come down. It

15   comes down in a variety f areas. As you indicated,

16   because some of these cases may likely come before me, I

17   can't speak to it because I completely understand my duty

18   to not prejudge any matters.

19   Senator Coons. Understood.

20   Ms Cunningham. But I do recognize that this is an

21   important area and an area that deserves attention and an

22   area that the Supreme Court is considering taking up a cert

23   petition on as well.

24   Senator Coons. Last question, if I could. A decade

25   ago, we passed and the president signed into law the

1   America Invents Act. One of its core goals was increased

2   efficiency and the improvement of patent quality and the

3   reduction duplicative litigation. A decade later, is it

4   your impression that that goal has been achieved or not,

5   and what, if anything, has surprised you about the

6   implementation or interpretation or real-world impacts of

7   that legislation?

8   Ms. Cunningham. Thank you, Senator, f r that

9   question. So in general, as you indicated that

10   legislation was passed in 2011, and it really has led to a

11   number of -- especially, I.P.R. petitions have really been

12   a boon effort. And I think that has led to more people

13   really seeking, from the P T.O., sort of the invalidity

14   decisions that they may want to try to get in place or at

15   least challenging the validity of a patent before the

16   P.T.O. as opposed to strictly before the district courts.

17   I feel like it has led to some decrease in filings, at

18   least in terms of dealing with some issues in terms of

19   invalidity before the district courts. Again, I feel like,

20   as a nominee, I can't speak to exactly where all these

21   things would go because various issues, of course, come

22   before the Federal Circuit. But I do recognize that the

23   A.I.A. has had a huge impact and was really the biggest sea

24   change since the 1952 Patent Act.

25   Senator Coons. I appreciate -- I'm glad that you have

1   been nominated by our president, and I look forward to

2   supporting you and appreciate your answers to my questions,

3   constrained as they are by the context in which you appear,

4   and look forward to your service on the Federal Circuit.

5   Thank you, Ms. Cunningham.

6   Ms. Cunningham. Thank you.

7   Chairman Durbin. Thank you, Senator Coons. Senator

8   Hirono was hoping to be here, but apparently she hasn't

9   made it yet, I'm sorry to say. I want to thank Ms.

10 Cunningham for her testimony, and I also want to say,

11 reminiscent of what has been said by Senator Booker, when

12 you're in a category of a first, you have to be the best.

13 And I believe President Biden has found, in your

14 nomination, that kind of quality. We thank you.

15   You may be receiving written questions following the

16 hearing from senators, which we hope you will diligently

17 respond to as quickly as possible. Ms. Cunningham, thank

18 you for your testimony today.

19   Ms. Cunningham. Thank you.

20   Chairman Durbin. With that, we move to our second

21 panel. And I ask for everyone's patience while we finalize

22 the setup for five nominees. Take a minute or two to put

23 the name tags and seats in position.

24   Senator Grassley. Hey, I was just thinking, when I

25 asked you do we have to be socially distanced --

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1   Chairman Durbin. I think we have the five witnesses,

2   and we'll hear from them in their opening statements after

3   they stand to be sworn, please.

4   [Witnesses sworn.]

5   Let the record again reflect that the panel has, in

6   its entirety, answered in the affirmative. I think, Ms.

7   Strickland, you are the first to proceed with an opening

8   statement, please.

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1   TESTIMONY OF MARGARET IRENE STRICKLAND, NOMINEE TO BE

2   UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO

3

4   Ms. Strickland. Thank you. First, I want to say

5   thank you, Senator Durbin and Ranking Member Grassley, f r

6   setting this hearing. I want to thank President Biden for

7   the honor of this nomination. I want to thank my home

8   state senators, Senator Heinrich and Lujan, for their

9   support, their recommendation, and their kind opening

10   statements on my behalf.

11   I would like to acknowledge my parents, who I know are

12   watching this back home in New Mexico; my husband, who was

13   able to come to this hearing today to support me; and his

14   parents, my in-laws, who are watching our son at home so

15   that my husband could be here at the hearing today. I want

16   to also thank my law partner for all of her support during

17   this process nd all of the committee members for your

18   time.

19   And with that, I'm -- I'll be glad to answer all of

20   yo r questions.

21   [The prepared statement of Ms. Strickland appears in

22   the appendix.]

23   / COMMITTEE INSERT

24   Chairman Durbin. Thank you very much. I believe, Mr.

25   Chipman, you are next and may proceed with your opening

1   remarks.

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1   TESTIMONY OF DAVID H. CHIPMAN, NOMINEE TO BE DIRECTOR,

2   BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

3

4       Mr. Chipman.  Good morning, Chairman Durbin, Ranking

5   Member Grassley, members of the committee.  Thank you,

6   Senator Durbin, for your generous introduction earlier

7   I'm honored to be here today and grateful to President

8   Biden for nominating me to the position of  irector of the

9   Bureau of Alcohol, Tobacco, Firearms, and Explosives.  I

10  thank my wife, Tara, who is here with me, and my family,

11  including my children, Carson and Allison, for all their

12  love and support.

13      A.T.F.'s mission is critical to our nation's public

14  safety.  If confirmed  I will proudly lead the bureau and

15  serve, once again, alongside its dedicated and talented

16  agents, investigators, and professional staff as they work

17  every day to keep our communities safe from criminal

18  shootings and other violent crime, firearms trafficking,

19  bombings, arson, and more.  When I first joined A.T.F. in

20  19 8, at the age of 22, I swore an oath to defend my

21  country, uphold our Constitution, and protect the American

22  public.  During 25 years of public service, until my

23  retirement as a special agent in 2012, I honored that oath

24  every day.

25      I know the danger that agents face in the field to
```

1   ensure public safety and bring criminals to justice. As a

2   young agent, I was a certified explosives specialist on the

3   national response team and a tactical operator on the

4   special response team, A.T.F.'s version of S.W.A.T.

5   I understand the physical and emotional stress that

6   agents are under, particularly when working on crimes

7   involving mass casualties and destruction. I was an

8   investigative first responder to the 1993 bombing of the

9   World Trade Center in New York and the 1995 bombing of the

10   Federal Building in Oklahoma City. I have felt the pride

11   that A.T.F. agents experience when they prevent gun

12   violence or apprehend criminals who violate our nation's

13   gun laws. I disrupted firearms trafficking organizations

14   that funneled hundreds of firearms along the Iron Pipeline

15   from Tidewater, Virginia, to New York. And I arrested a

16   straw purchaser who bought a handgun that a child used to

17   shoot a cop.

18   The leadership positions I held at A.T.F. grounded me

19   in what it will take to improve bureau operations and

20   morale. I have supervised agents in the field multiple

21   times. I used that experience to develop new approaches to

22   combat homicides committed with firearms, impacting

23   communities across the United States. While at A.T.F.

24   headquarters during the Bush administration, I was

25   responsible for all A.T.F. field policies and procedures.

1   I later oversaw all firearms programs and foreign offices

2   for the entire bureau. I launched the Violent Crime Impact

3   Team program, credited with preventing gun homicides in 15

4   targeted cities.

5   During my last several years at A.T.F., I had fiscal

6   responsibilities. I oversaw large budgets, including the

7   $50 million field operational budget, A.T.F.'s $80 million

8   spectrum relocation program, and the $60 million assets

9   forfeiture program.

10   These experiences, hard won over the course of

11 decades, will serve as my guide if I'm confirmed to lead

12 the A.T.F. The bureau has excelled at investigating crime

13 since the days of Eliot Ness. My leadership mission will

14 be to sharpen A.T.F.'s focus while striving to prevent more

15 violent crimes from occurring in the first place. I look

16 forward to answering your questions today, and thank you.

17   [The prepared statement of Mr. Chipman appears in the

18 appendix.]

19   / COMMITTEE INSERT

20   Chairman Durbin. Thank you, Mr. Chipman. Ms. Jaddou,

21 please proceed.

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1   TESTIMONY OF UR MENDOZA JADDOU, NOMINEE TO BE DIRECTOR,

2   UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES

3

4   Ms. Jaddou. Thank you, Chairman Durbin. Thank you,

5   Ranking Member Grassley. I greatly appreciate the honor to

6   be considered by this committee for director of U.S.

7   Citizenship and Immigration Services. I would especially

8   like to thank Senator Padilla, my home stat senator from

9   beautiful California, for your kind and gracious

10   introduction. I'd also like to thank Senator Feinstein for

11   opening the door to federal service as a summer intern in

12   your San Diego office 25 years ago.

13   I come before you tod y the product of a uniquely

14   American experience. My late dad, a Chaldean Catholic from

15   northern Iraq, came to America as a bright-eyed foreign

16   student in the 1950s, with dreams of freedom, democracy,

17   and opportunity. He also found love and marriage of almost

18   50 years to my late mom, an immigrant from Mexico,

19   beautiful inside and out, who arrived with an equally

20   ambitious American dream. My parents would go on to raise

21   three daughters and strive for their American dream in a

22   southern suburb of San Diego, less than ten miles from the

23   U.S.-Mexico border.

24   My husband, Peter, my rock, who's right behind me, is

25   here today, along with our two amazing daughters, Suli and

1   Luna, my sun and moon. Peter's family shares a very

2   similar story. His parents, Coptic Christians from Egypt,

3   immigrated to America to serve in the medical field. His

4   dad served as a doctor in the U.S. Navy as a lieutenant

5   commander. His mom trained and became a radiation

6   oncologist, helping thousands of cancer patients through

7   very difficult times.

8   America has been strengthened by the b g dreams, hard

9   work, and contributions of millions of i migrants and

10   refugees who have come to our shores to forge a better life

11   for themselves and their children. A the heart of a

12   functioning immigration system is an agency that

13   effectively processes immigration and naturalization

14   applications under the law, like those of my family and so

15   many others. This means that U.S.C.I.S. must process

16   applications fairly efficiently, and in a humane manner;

17   be accessible, transparent, and accountable; and safeguard

18   the integrity of the system and ensure the security of the

19   nation.

20   My most immediate responsibilities, if confirmed, will

21   be to return the agency to firm solvency, resolve

22   dramatically increasing processing times and backlogs, and

23   utilize 21st century tools. I'll work to ensure that

24   U.S.C.I.S. retains the confidence of the American public as

25   an agency able to fulfill its mission. In addition, I'll

1   work to ensure that the hardworking and dedicated men and

2   women, my former colleagues at U.S.C.I.S., have the

3   resources, support, and leadership they need to carry out

4   their roles without undue difficulty.

5   I'd like to thank the President for nominating me,

6   Secretary Mayorkas, and many others who have supported me

7   through this process. Thank you very much for considering

8   me for the honor of serving as U.S.C.I.S. director.

9   [The prepared statement of Ms. Jaddou appears in the

10   appendix.]

11   / COMMITTEE INSERT

12   Chairman Durbin. Thank you Ms Jaddou. Ms. Milgram,

13   you may now proceed.

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1   TESTIMONY OF ANNE MILGRAM, NOMINEE TO BE ADMINISTRATOR OF

2   DRUG ENFORCEMENT

3

4   Ms. Milgram.   Thank you, Chairman Durbin, Ranking

5   Member Grassley, and members of the Judiciary Committee for

6   the opportunity to appear before you today.   I'm grateful

7   to President Biden for nominating me to this important

8   position, and I want to extend my deepest thanks to Senator

9   Booker and Senator Menendez for their very kind

10   introductions.

11   At the outset, I want to thank my family for their

12   love and support.   My husband and my nephew are here with

13   me today.   My parents, my sister, and her family and our

14   son are watching on TV.   As I sit here today, I cannot help

15   but think about my grandfather and my great-grandfather,

16   both police officers who rose to become the chief of police

17   in South Amboy, New Jersey.   I know that they would be

18   incredibly proud to see their granddaughter nominated to

19   lead the dedicated, passionate, and tenacious professionals

20   at the Drug Enforcement Administration.

21   Today, the D.E.A. is called upon to address some of

22   the most significant challenges in our nation.   We are in

23   the midst of an ongoing crisis of prescription opioid

24   addiction.   It is a homegrown problem, where most of those

25   addicted to opioids begin by taking prescription drugs that

1   they are prescribed or that they find in the medicine

2   cabinets of their families and friends. The prescription

3   opioid crisis has now transformed into a national epidemic

4   that is driven by the distribution of illicit fentanyl,

5   which is senselessly costing hundreds of thousands of

6   American lives.

7   There are sophisticated international drug trafficking

8   organizations that are brazenly distributing highly

9   addictive drugs in our communities, acco panied by waves of

10   senseless violence. And Americans in the grips of

11   addiction are far too often unable to get the necessary

12   treatment and support that they need   We need to confront

13   these challenges head-on, nd I intend to do that.

14   I also recognize that members of this committee and

15   across Congress have spent countless hours working on

16   solutions, and if I am confirmed, I look forward to

17   collaborating with you to ensure that we make tangible,

18   sustained, and measurable progress. My experience

19   vigorously enforcing the law, both public safety and public

20   health will serve me well in this role.

21   I have been an assistant district attorney in the

22   Manhattan D.A.'s office, a federal prosecutor, and the

23   state attorney general for New Jersey, where I led the

24   9,000-person Department of Law and Public Safety.

25   As attorney general, I also oversaw the police

1   department in Camden, New Jersey, which was then one of the

2   most dangerous cities in America. Today, it is not. We

3   worked tirelessly in partnership with the D.E.A. and with

4   other law enforcement agencies to reduce violence in Camden

5   and to improve community relationships. And as a result,

6   violence dropped by more than 40 percent in one year.

7   Today, Camden is at historically low rates of crime and

8   violence.

9   If I am confirmed, I will bring this results-oriented

10 focus in leading the professionals at the D E.A. as they

11 carry out their vital mission to make our communities safer

12 and healthier. I'm grateful for the opportunity to answer

13 your questions. Thank you

14   [The prepared statement of Ms. Milgram appears in the

15 appendix.]

16   / COMMITTEE INSERT

17   Chairman Durbin. Thank you, Ms. Milgram. Mr. Polite?

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1   TESTIMONY OF KENNETH ALLEN POLITE, JR., NOMINEE TO BE

2   ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

3

4   Mr. Polite. Chairman Durbin, Ranking Member Grassley,

5   members of the committee, thank you for today's hearing.   I

6   offer particular thanks to Senator Cassidy for his kind

7   introduction and to both Senators Cassidy and Kennedy for

8   their courtesies throughout this nomination process.   Thank

9   you both for your service to our nation and to the great

10 state of Louisiana. I am grateful to President Biden for

11 nominating me to serve in this important role at this

12 important time.

13   My wife, partner, and advocate, Dr. Florencia Greer

14 Polite, is here with me today, along with our wonderful

15 daughters, Gabrielle and Lena. Watching from afar are my

16 mother, Rosalind; my father, Kenneth Sr.; my supportive in-

17 laws, Gloria nd Theodore; my siblings, Damion, Tyrrel, and

18 Catrina; and scores of other friends, colleagues, and

19 family members.

20   Senators, I come from humble beginnings, the oldest

21 child born to teenage parents in New Orleans, raised in

22 some of the city's most poverty-stricken areas, including

23 the Calliope Project in the Lower Ninth Ward. My life was

24 nonetheless rich with my family's love and, most

25 importantly, my mother's sacrifice, investment, and

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1   commitment to my education.

2   From Harvard University and Georgetown Law to a Third

3   Circuit clerkship with my mentor, Judge Tom Ambro, to

4   prestigious law firms and courtrooms and boardrooms to

5   today's hearing and beyond, I am always representing and

6   always reaching back to the community that helped shape me

7   into a servant leader.

8   I hail from a family of public servant   My mother

9   recently retired after 34 years of service in the U.S.

10   Department of Housing and Urban Development   My father was

11   a 37-year veteran of the New Orleans Police Department. My

12   brother Damion is a captain in the Army Reserves and a

13   detective with the Houston Police Department. Yet despite

14   our connections to law enforcement, our family, like many

15   Americans, has felt the pain of losing a loved one, my

16   brother, to street violence. I carry his memory with me

17   every day.

18   I bring a wide-ranging legal perspective to this role,

19   having served as the United States Attorney in the Eastern

20   District of Louisiana, as well as, as an assistant U.S.

21   ttorney in the Southern District of New York, as well as,

22   as a defense attorney with law firms in New York, New

23   Orleans, and in Philadelphia. I also bring the unique

24   insight that comes with serving as a chief compliance

25   officer for a Fortune 500 company.

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1   If confirmed, I look forward to leading and working

2   alongside the tremendous public servants in the Criminal

3   Division. Its work, which includes combatting

4   cyberthreats, COVID relief fraud, and exploitation of our

5   nation's most vulnerable populations, is more essential

6   than ever. Moreover, it requires even greater

7   collaboration with U.S. attorneys' offices and federal,

8   state, local, tribal, territorial, and inte national law

9   enforcement partners. I look forward to answering your

10 questions. Thank you.

11   [The prepared statement of Mr. P lite appears in the

12 appendix.]

13   / COMMITTEE INSERT

14   Chairman Durbin. [Presiding.] Thank you, Mr. Polite.

15 Well, what an amazing array, in this panel, of talent and

16 experience, and we thank you, each and every one of you,

17 for your willingness to engage in public service. We have

18 questions to ask. With this panel, I wish I could ask each

19 of you five minutes of questions, but I'll -- you'll be

20 spared from that ordeal, and we'll try to keep this as

21 condensed as possible. But I do want to start with Mr.

22 Chipman.

23   Mr. Chipman, first, thank you for serving in law

24 enforcement and risking your life for this nation. We

25 cannot ever thank you enough and your family for standing

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1   by you in this commitment.

2   Buckle your seatbelt. You want to be the head of the

3   A.T.F., hang on tight. They're coming after you, buddy.

4   They are creating some fictional stories about your life

5   and your experience, and you're going to have to try to

6   weather this storm. It's going to be rough from time to

7   time. And I want to give you an opening opportunity.

8   It seems that some on the political fr nge are willing

9   to say whatever it takes to try to sink your nomination.

10   That includes peddling baseless claims about your work as

11   an A.T.F. special agent in Waco Texas and statements that

12   you made regarding attacks on a helicopter supporting

13   A.T.F. operations at Waco. I also understand they've gone

14   so far as to Photoshop your face on somebody else's body to

15   try to establish that yo were in Waco or some other place

16   when you weren't.

17   So now is your chance to at least open up by telling

18   us the facts Would you comment on the role -- your role

19   at Waco, the purported photograph, and the statements you

20   made regarding the helicopter attack?

21   Mr. Chipman. Thank you, Chairman Durbin, for the

22   opportunity to address these issues. First, I was directed

23   to report to Waco in May of 1993. That was in the month

24   after the events at Waco had concluded. My role was to be

25   assigned to a group of D.O.J. employees who were

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1   investigating the events there, and one of the reasons I

2   was selected is because I had no involvement in the actual

3   case that was being examined.

4   With regards to a photo that I too have seen on the

5   internet, this is not me. It is, in fact, a real photo

6   that comes from the time of Waco. It has a stamp on it

7   that showed that it was evidence. But during the course of

8   the investigation, I interviewed all of the A.T.F. agents

9   at Waco, and that is not an A.T.F. agent

10   And then finally, the question about what I believe

11   you're responding to is I had the opp rtunity to do a event

12   on Reddit. Reddit is one of those things where people fire

13   questions at you, and you have to type very fast. And I

14   got a question about the lethality of the .50 caliber rifle

15   and how often it was used in crime in the United States,

16   and I was trying to be candid and say that the only case

17   that I knew of that .50 calibers were used was at this

18   incident at Waco that I was familiar with.

19   And I was also familiar that Branch Davidians had, in

20   fa t, shot two of the planes -- excuse me, helicopters.

21   There were bullet holes and I saw the pictures of that. I

22   could have done a better job by describing them as being

23   forced down because of the gunfire as opposed to shot down,

24   which might have left the impression that they were blown

25   out of the sky, which they were not. And I regret that

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1   confusion I added.

2   Chairman Durbin. Thank you very much, and I'm sure

3   you'll have ample opportunity to answer that and similar

4   questions as we proceed. Ms. Milgram, I think one of the

5   really startling things that I learned in this Judiciary

6   Committee many years ago, as we consider the role of the

7   D.E.A., was the responsibility of the Drug Enforcement

8   Administration of the United States federal government to

9   determine each year how many opioid pills would be produced

10   by pharmaceutical companies across our nation.

11   Between 1993 and 2015, the agency which you are hoping

12   to lead allowed production of oxycodone to increase 39-

13   fold, from three and a half tons to 151 tons, with D.E.A.

14   approval. Senator Kennedy and I authored legislation to

15   require D.E.A. in their quota setting to take into account

16   the fact that that was way too many, and there were many

17   people who were abusing it and too many overdose deaths.

18   I'm encouraged that the quota has gone down from 14 billion

19   opioids on the market in 2016 to 9.7 billion in 2019, but

20   that is still too much. Those pills are enough -- that

21   quota is enough for every adult in America, every adult in

22   America, to have a two-week supply of opioids. Haven't we

23   learned our lesson? Have you addressed this issue? Are

24   you aware of it?

25   Ms. Milgram. Senator, thank you for that question,

1   and thank you also for the leadership that both you and

2   Senator Kennedy have shown in raising this issue and in

3   passing the SUPPORT Act.

4   I agree with you that drug diversion remains of

5   critical, critical and urgent importance for the D.E.A.

6   We've seen, between 2019 and 2020, approximately 90,000

7   Americans have overdosed. And again, many of those

8   individuals are starting on opioids through their medicine

9   cabinets and through the medicine cabinets of their family

10   and friends. So I share your concern about this issue.

11   You have my commitment that, if I am onfirmed, I will --

12   this will be a high priority issue to look at the quotas

13   and to work with you, I hope, and other members of this

14   committee on this important issue.

15   Chairman Durbin. I ll just say to my colleagues, it

16   is hard to understand how the pharmaceutical industry can,

17   year after ye r, ask for approval for the production of

18   billions of these opioid pills when we're going through

19   this scourge of overdose and all the heartbreak that it

20   brings with it. And I hope the D.E.A. will finally stand

21   up and say, "Enough." Thank you very much, Ms. Milgram.

22   Senator Grassley.

23   Senator Grassley. One question for Ms. Strickland.

24   What, if any, is your relationship with the group Demand

25   Justice or its leaders, like Brian Fallon and Chris Kang?

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1   Ms. Strickland. Thank you for the question, Senator.

2   I have spoken with Mr. Kang.

3   Senator Grassley. And that's the answer to your

4   question. You've had one conversation with him?

5   Ms. Strickland. I believe I've spoken to him twice,

6   maybe three times.

7   Senator Grassley. Okay. Now, for Ms. Jaddou, as

8   you're aware, the Immigration and Nationali ation Act

9   grants Homeland Security the authority to temporarily

10   parole an alien into the country on a case-by-case basis

11   for specific reasons. Unlike with D.A C.A., aliens who are

12   paroled into the United States are eligible to adjust their

13   status and obtain green cards.

14   Now, the vice president has said -- and called for

15   granting parole in place to countless young people who are

16   living in the United States illegally. This would have the

17   effect of byp ssing Congress and giving millions of people

18   living illegally in the United States a path to legal

19   status or U.S. citizenship, unlike some of us who would

20   like to do that if we could get it done reasonably on a

21   bill passed in Congress.

22   Do you agree with the vice president's proposal to

23   grant parole in place to potential millions of so-called

24   Dreamers?

25   Ms. Jaddou. Thank you, Senator, for the question. My

1   job as U.S.C.I.S. director, if I'm confirmed, will be to

2   work with the attorneys in the agency to understand that

3   provision and understand who it could apply to. I would

4   have to study what the vice president is recommending or

5   suggesting, and I would have to work with the people who

6   understand the provision of law and apply it to the facts

7   of the individual on a case-by-case basis to determine that

8   answer.

9   Senator Grassley. Okay. Then let's go to the law.

10   One more question for you. How is letting an entire class

11   of people receive parole consistent with an immigration

12   law's clear language that parole should only be on a case-

13   by-case basis for specific reasons?

14   Ms. Jaddou. Thank you, Senator. One of the things

15   that U.S.C.I.S. does as it adjudicates -- it adjudicates on

16   a case-by-case basis. Individuals must submit a form that

17   is the general access that people have to any sort of

18   request made before the agency. They must provide quite a

19   bit of information about themselves before they can even be

20   considered. And many background checks are done on each

21   individual case, and an adjudicator says yes, no, may

22   request additional information. And that's where -- how

23   adjudication is done.

24   Senator Grassley. Mr. Chipman, on March 25th this

25   year, Senator Johnson and I wrote to A.T.F. asking for

1 records relating to the October 2018 Hunter Biden firearm

2 incident. In response to my letter, A.T.F. has refused to

3 provide any records, citing the Freedom of Information Act,

4 which is totally irrelevant to A.T.F.'s responsibility to

5 comply with legitimate Congressional oversight requests.

6 Congress isn't subject to F.O.I.A. restrictions, and

7 A.T.F.'s use of the law as a shield is incompetent.

8   If confirmed, what steps will you take to produce

9 records to this committee relating to Hunter Biden's

10 October 2018 firearm incident?

11   Mr. Chipman. Senator Grassley, hank you for asking

12 me this question. If I am confirmed as A.T.F. director, I

13 will abide by all A.T.F. p licies and D.O.J. policies to

14 ensure that you receive the records that you require.

15   Senator Grassley. This matter has been all over the

16 news. What else do you need to learn before you can make a

17 decision to do what I ask you to do?

18   Mr. Chipman. Senator, I am familiar with what I've

19 seen in the news. But I think if I'm confirmed as A.T.F.

20 director, it'll be my responsibility to respond based on

21 the facts, and I'm sure that there would be more facts

22 available to me if I am confirmed.

23   Senator Grassley. I will submit the rest of my

24 questions for answer in writing.

25   [The information appears in the appendix:]

     1   / COMMITTEE INSERT

     2   Chairman Durbin. Thank you, Senator Grassley.

     3   Senator Leahy?

     4   Senator Leahy. Thank you, Mr. Chairman. Mr. Chipman,

     5   as you know, the A.T.F.'s National Tracing Center in West

     6   Virginia is our country's only crime gun tracing facility.

     7   When a gun is found at a crime scene, law enforcement

     8   authorities want to find the gun's last-kno n owner, they

     9   submit a trace request to the National Tracing Center. The

    10   National Tracing Center receives nearly 1,700 trace

    11   requests every day, every day.   It's n a pace to receive

    12   550,000 requests this year as all -- a record high.

    13   Incredible number -- amoun of time-sensitive work for the

    14   N.T.C.

    15   And I know from my days in law enforcement how

    16   important it was to trace a gun found at a crime scene. It

    17   could be the key to solving the crime, preventing others.

    18   So I think most Americans would be shocked if they knew

    19   this is the observed reality of crime gun tracing at the

    20   A.T F.'s National Tracing Center. Laws have been passed

    21   that forced you into that situation. Congress, at the

    22   behest, I think, of some of the gun lobby, prohibited

    23   A.T.F. from electronically searching gun sales records

    24   currently in its possession. You have tens of millions of

    25   these records being stored in metal shipping containers in

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1   the parking lot, some of them frayed, decayed, barely

2   legible.

3   Again, a number of us on this committee have served in

4   law enforcement, and we know how important it is to be able

5   to trace a gun. So anything else you want to trace, we'd

6   do it electronically, scan it. Any agency in the 21st

7   century would do that. But you are forced by the laws that

8   we passed, foolish laws, to have this labor intensive

9   process, which, of course, hinders law enforcement all over

10   the country. I think we have to act swiftly to bring the

11   A.T.F. into the 21st century. Just yesterday, I

12   reintroduced the Crime Gun Tracing Modernization Act. It's

13   supported by the Justice Department. It would allow A.T.F.

14   to electronically search crime gun records.

15   So, Mr. Chipman, my question is do you agree that

16   further improving the efficiency of crime gun tracing is

17   going to help law enforcement throughout the country?

18   Mr. Chipman. Thank you, Senator, for this question,

19   and thank you for being so passionate about something

20   that's just so critical to not only the functions of state

21   and local law enforcement, which A.T.F. supports, but the

22   mission of A.T.F. to disrupt firearms trafficking.

23   As a young agent in Norfolk, Virginia, there was not a

24   single trafficking case that I was able to make that didn't

25   rely on the Tracing Center, and I can confirm those

1   pictures are accurate, at least as of ten years ago, when I

2   oversaw the activities there, that we have dedicated

3   federal employees that are just meeting obstacles that are

4   inhibiting the A.T.F. from doing a good job. And that is

5   telling local cops where crime guns came from, which is

6   just a very valuable lead.

7   Senator Leahy. I'm told that electronic traces could

8   potentially save hundreds of thousands of h urs on traces

9   overall. I think that's why so many law enforcement

10   agencies support my legislation. In fact, Mr. Chipman, I'd

11   like to enter letters of support from the Federal Law

12   Enforcement Officers Association and the Major Cities

13   Chiefs Association.

14   [The information appears in the appendix:]

15   / COMMITTEE INSERT

16   Chairman Durbin. Without objection.

17   Senator Leahy. And since 2013, Mr. Chipman, I've been

18   working with A.T.F. on bipartisan legislation to curb straw

19   purchasing and firearms trafficking. I worked with Senator

20   Collins and Chairman Durbin to reintroduce that legislation

21   to help us stop these kind of straw purchases. Why is that

22   important, that we be able to do that?

23   Mr. Chipman. Well, it's critical. One of the most

24   significant cases I ever was able to make in my A.T.F.

25   career was actually in Waco. We had a officer shot by a

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1   juvenile, and I was able to trace the gun using the Tracing

2   Center and was able to identify that an adult had straw

3   purchased this gun for the child.

4   You know, this is what places everyone in danger, and

5   it's something we've known has occurred for a long time,

6   and I think that working collaboratively with the licensees

7   to teach them how to observe this criminal behavior and

8   stop it but also investigating these crimes is just

9   absolutely essential.

10   Senator Leahy. I now close with this. I'm a gun

11   owner, but when I go to the gun store in Vermont to buy a

12   gun, they say hi to me and, "I saw your cousin the other

13   day. Every -- how are you doing? Oh, by the way, we have

14   to do a background check on you." And I say, "Fine." I

15   want it to be done for everybody. I don't want straw

16   purchases. And most gun shop owners don't want some of

17   these gun show things where they can have straw purchases.

18   Thank you, Mr Chairman.

19   Chairman Durbin. Thank you very much. Senator

20   Cornyn?

21   Senator Cornyn. Mr. Chairman, before my five minutes

22   starts, I'd like to just respectfully note my objection to

23   five executive branch nominees here all for very

24   significant Senate-confirmed positions, and the chairman

25   has given us these five nominees and five minutes to ask

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1   them questions. This is a -- to me, it's a -- trivializes

2   our constitutional responsibility of advice and consent. I

3   don't think we have much choice but to proceed to try to

4   ask what questions we can, but this is really a joke. And

5   when it comes to our constitutional responsibilities, I

6   understand the eagerness of the chairman and the

7   administration to move nominees as fast as they can. It's

8   a frustration for every administration, eve y Senate

9   majority. But this is really beyond ridiculous, and I just

10   would respectfully note my objection.

11   Chairman Durbin. Senator, if I ould respond? We're

12   doing our best to move these nominees in a timely fashion.

13   But I --

14   Senator Cornyn. Well, this is a drive-by hearing, is

15   what this is.

16   Chairman Durbin. But I would like to add for the

17   record that m ny of the vacant -- many of the positions

18   they are seeking were either left vacant or filled by

19   temporary appointment under the previous administration.

20   This administration is bringing the nominees for Senate

21   confirmation.

22   Senator Cornyn. Mr. Chairman, I support the

23   nomination and will, in all likelihood, vote for the

24   confirmation of some of these nominees, but there's some I

25   have serious questions about that I'd like to have a chance

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1   to ask them. But having noted my objection, let me just

2   proceed.

3   Ms. Jaddou, in 2015, the Permanent Subcommittee on

4   Investigations here in the Senate did a extensive multiyear

5   investigation into the placement of unaccompanied childr n

6   with sponsors here in the United States. They documented

7   that, in one case, the Office of Refugee Relocation placed

8   eight children in a forced labor condition. Basically,

9   what happened is human traffickers posed as sponsors, and

10   then O.R.R. placed these unaccompanied children with

11   sponsors who then trafficked them and used them for forced

12   labor. Do you believe the current procedures that are in

13   place to vet sponsors for placement of unaccompanied

14   children are acceptable?

15   Ms. Jaddou. Thank you, Senator, for that really

16   important question. As a mother, the protection of

17   children is - I can't even describe how important it is,

18   not only to me personally but parents everywhere.

19   On this specific issue, as the director of U.S.C.I.S.,

20   if I'm confirmed, this is not generally the area where I

21   would have a specialty, and I don't necessarily have a

22   specialty in the placement of children in specific homes.

23   I am aware that U.S.C.I.S. currently is assisting in the

24   mission of Homeland -- that H.H.S., Health and Human

25   Services, at the moment, and they have been trained under

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1   the current procedures. But unfortunately, I have not been

2   brought up to speed on those issues, and I would certainly

3   -- that would be one of the first things I would want to

4   do, to ensure that the officers of U.S.C.I.S. have the

5   greatest amount of information and training available to

6   them to place children in safe and loving homes.

7   Senator Cornyn. Are you aware that, as of May 24th,

8   2021, that the Biden administration has 18, 87 children in

9   custody?

10   Ms. Jaddou. I was not aware of that specific number,

11   but I have heard it's a larger number

12   Senator Cornyn. And are you aware that, since the

13   Permanent Subcommittee on Investigations conducted this

14   multiyear investigation into the placement of unaccompanied

15   children with sponsors, here has been no change in the

16   policy. In fact, there is no government agency that is

17   responsible for following up on the placement of these

18   children. Are you aware of that?

19   Ms. Jaddou. As I stated, sir, I was not aware.

20   That's not a process that I'm a specialist in. I don't

21   have much expertise in that area. But certainly, to the

22   extent that U.S.C.I.S. officers, if I'm confirmed, are

23   involved in that process, I would like to learn as much

24   about it, and I thank you for bringing that to my

25   attention. I would definitely like to take a look as soon

1   as I'm confirmed.

2   Senator Cornyn. As a matter of fact, on March the

3   11th, 2021, the Biden administration entered into a new

4   memorandum of understanding regarding unaccompanied

5   children, terminating the cooperation between H.H.S.,

6   O.R.R., I.C.E., and C.B.P. with regard to vetting the

7   background of the sponsors with whom these unaccompanied

8   children are placed. In other words, as ba as this

9   committee report is, and it dates back to 2015, there's

10   been no change in the follow-up of these children that are

11   being placed with potential traffickers, people who would

12   subject them to forced labor assault them, abuse them,

13   exploit them. The Biden administration has just made that

14   harder to vet because they terminated the memorandum of

15   April the 13th, 2018.

16   Mr. Chipman, I wanted to ask you, do you recognize the

17   -- an individual right to keep and bear arms?

18   Mr. Chipman. Thank you for that question, Senator.

19   The Supreme Court has recognized that right. I'm a gun

20   owner myself. And the answer is yes.

21   Senator Cornyn. And is a law-abiding gun owner a

22   threat to public safety, in your view?

23   Mr. Chipman. Thank you for that question, Senator.

24   If the term law-abiding means someone has lawfully

25   possessed a gun, there are often occasions that that person

1   then goes on to commit a violent crime. If you're just

2   saying characterize the majority of gun owners, the

3   majority of gun owners are law abiding.

4   Senator Cornyn. What's the role of the A.T.F. or the

5   federal government in restricting the right of law-abiding

6   gun owners to keep and bear arms? You said that some of

7   them may go on to commit crimes, but so far, we're not

8   living with, I guess, the movie The Minority Report, where

9   we had the capacity or ability to investigate pre-crimes.

10   So what restrictions would you place on the right of a law-

11   abiding citizen to keep and bear arms under the Second

12   Amendment?

13   Mr. Chipman. If I'm confirmed as A.T.F. director,

14   it's A.T.F.'s responsibility to primarily enforce the

15   National Firearms Act, the Gun Control Act, and our

16   priority will be, you know, focusing on people who break

17   federal laws nd attempt to, you know, intervene before

18   they kill someone. So that is a balance that we need to

19   strike but again, the Constitution is the guardrails to

20   that activity.

21   Senator Cornyn. I'll just say, in conclusion, if the

22   chairman will give me just a moment, that I think one of

23   the areas that I do think that A.T.F. needs to focus on is

24   unlicensed firearms manufacturers that are not currently

25   obligated, like federal firearms licensees are, to conduct

1 background checks. And indeed, this is a loophole through

2 which some individuals -- for example, the shooter in

3 Odessa, Texas, a few years back, circumvented the

4 background check system by buying a AR-15 lookalike from a

5 unlicensed firearms manufacturer. So I hope that's an area

6 you will look at and work with us on.

7   Mr. Chipman. Thank you, Senator, and if confirmed, I

8 will strive to work with you on that, and I thank you for

9 your dedication improving the N.I.C.S. system.

10   Chairman Durbin. Thank you, Senator Cornyn. And

11 Senator Feinstein.

12   Senator Feinstein. Thanks, Mr. Chairman. While we

13 are sitting here, we have   gunman in San Francisco

14 shooting down people. The press say at this time maybe six

15 to seven people have been killed. Mr. Chipman, gun

16 violence is so prevalent in this country. What are the

17 first steps you will take to do something about it, if any?

18   Mr. Chipman. Senator, well, I wanted to say thank you

19 for that question, but first, I'm sorry to hear that news.

20 I asn't aware of that. If I'm confirmed as A.T.F.

21 director, one of our priorities at A.T.F. will be focusing

22 on gun trafficking and the unlawful transfer of legal guns

23 to criminals, and perhaps, in this case, you know, a crime

24 like this could be prevented. So as A.T.F. tries to solve

25 crimes, we will have to strive just as hard to prevent them

1   from ever happening in the first place.

2   Senator Feinstein. Well, I thank you. You know, and

3   I guess I've been listening to these questions being asked

4   and responded to for more than 20 years now, and nothing

5   changes on the streets. And I think we all need to think a

6   little bit about that. You know, this is a gun-happy

7   nation, and everybody can have their gun, but what is

8   happening out there in the killing of innocents should be

9   protected by our laws. And unfortunately we're not making

10   the laws that can protect people from this kind of gun

11   crimes.

12   Last fiscal year, the number of inventory inspections

13   conducted by A.T.F. to ensre that weapons are not diverted

14   to criminals fell to just over 5,800. And my

15   understanding, that's down from 13,000 in fiscal year 2019.

16   So the -- your department is sitting by, and all of this is

17   happening. At the same time, gun sales were spiking around

18   the nation. Even before the pandemic, A.T.F. inspected

19   less than 15 percent of licensed dealers in a year. So I'm

20   no a great fan of those numbers. If confirmed, what will

21   you do, specifically, to increase the number of A.T.F.

22   inspections?

23   Mr. Chipman. Thank you for this question, Senator.

24   And it's a very important question. If confirmed, very

25   early on in my tenure, I want to find out the reasons for

1   that drop in statistics. One thing strikes me is I'm

2   unsure how COVID impacted the A.T.F. workforce. But

3   certainly, when just looking at the numbers, we have to

4   ensure that A.T.F. inspectors are targeting those firearms

5   dealers most at risk.

6   I also see in those numbers that a large percentage of

7   the inspections result in no findings, which suggests that,

8   in those cases, they're -- the dealer is co pliant. So I

9   think a whole review of what's going on to make sure that

10   the limited resources that A.T.F. -- is used efficiently to

11   further this mission is absolutely critical, and thank you

12   for bringing up this important point

13   Senator Feinstein. W ll, thank you. And I will do

14   everything within my power to see that you have the staff

15   to do this if you really show that you're going to do it

16   because I am increasingly concerned, as the numbers of mass

17   shootings go up, people dying, and that is happening on our

18   streets right now. Gun sales are spiking across the

19   nation. And A.T.F.'s record has decreased from -- as I

20   understand it, down to 15 percent of licensed dealers being

21   inspected in a year. Is that a correct figure? It was in

22   The New York Times, 5/2/21.

23   Mr. Chipman. Senator, thank you for that question.

24   It is my understanding that A.T.F. has not yet been able to

25   meet a self-imposed goal of inspecting dealers every three

1   years. It's something that A.T.F. is mandated to do with

2   explosives dealers. So I think it's a good goal. Again,

3   if I'm confirmed, I will get to the bottom of this

4   situation, and I thank you for your dedication in doing

5   what you can to provide A.T.F. the resources to get this

6   important mission done.

7   Senator Feinstein. Well, I hope you do that. I'm

8   going to hold you to it. And if you don't, you re going to

9   hear from me. So thank you very much.

10   Mr. Chipman. Yes, Senator.

11   Senator Feinstein. Thank you, Mr Chairman.

12   Chairman Durbin. Thank you Senator Feinstein.

13   Senator Lee.

14   Senator Lee. Thank you, Mr. Chairman. Like Senator

15   Cornyn, I'd like to make a brief statement not counting

16   against my time at the outset. I just want to express

17   agreement with what Senator Cornyn said, and while I'm

18   certainly s mpathetic to the need to get through nominees,

19   it is different than establishing that we need to have all

20   fi e of these nominees in a single panel in a single

21   hearing. If we need to have more hearings, fine. If we

22   need to have more panels of the same hearing, that's fine

23   too. This is a difficult spot. To cover this many

24   nominees of this much significant in one hearing can be

25   tough. Thank you for letting me address that.

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1   Mr. Chipman, I'd like to start with you. I believe

2   Senator Cornyn referred briefly to a statement that I

3   independently found concerning, a statement that you had

4   posted on Reddit back in 2019, when you said, quote, "While

5   at A.T.F., I conducted studies involving people who fail d

6   background checks to determine how many later committed

7   crimes with a gun. Many did. This is a perfect

8   opportunity to arrest people before committ ng crimes

9   rather than responding after the fact," close quote.

10   I find this statement very troubling, especially

11   troubling for someone who's been nominated to serve as the

12   A.T.F. director, because, even setting aside for a minute

13   the Second Amendment, even before you get to the Second

14   Amendment, this violates our most fundamental rules of due

15   process, talking about a desire to arrest people before

16   committing crimes rather than after the fact. It's not how

17   our criminal justice system works. And if that's how you

18   view people, that is concerning to me.

19   Now, this is compounded by other comments you've made

20   that, to me, reflect a certain degree of disdain toward gun

21   owners and, in particular, new gun owners.

22   On April 3rd of 2020, just over a year ago, you gave

23   an interview with Cheddar News, and you were talking about

24   increases in gun sales, especially first-time gun owners

25   who had decided to purchase a gun for the first time during

1   the pandemic. In the interview, you openly mocked first-

2   time gun owners, saying that they were, quote, "more like

3   Tiger King," and then advising them in quite a mockery to

4   hide their gun, quote, "behind the cans of tuna and beef

5   jerky they have stored in a cabinet and only bring that ut

6   if the zombies start to appear," close quote.

7   When I first saw this, I watched the clip and I read

8   the clip several times, hoping that I was m ssing context,

9   hoping that there was something else there that would make

10   this less troubling. It concerns me that you, as the

11   nominee to be the director of the A.T F. would have such a

12   flippant and, if I may say so, utterly condescending

13   attitude toward first-time gun owners in this country. And

14   I say this as a former federal prosecutor, one who worked

15   with A.T.F. agents and agents from many other agencies.

16   This is a troubling flippant attitude for somebody who's

17   going to head this agency.

18   Now, you may find it interesting to learn that a

19   survey of federal firearms licensees conducted by the

20   Na ional Shooting Sports Foundation shows that retailers

21   supported the highest average percent increase in sales to

22   Black Americans during the first half of 2020, with large

23   increases also to women and to Hispanic Americans and Asian

24   Americans as well. So why would you choose to insult so

25   many of your fellow Americans with a statement like this

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1   based on the fact that they've purchased a gun?

2   Mr. Chipman. Senator, thank you for allowing me the

3   opportunity to address both of these comments that I

4   believe were misunderstood and taken out of context. I'll

5   start with the first.

6   When I was talking about the prosecution of people who

7   had lied and tried to buy a gun, clearly those people who

8   lie and try have committed a serious federal felony. And

9   what I suggested is, if we did research, we could determine

10   which of those people were most likely to later commit some

11   violent crime. And I do believe it w uld be A.T.F.'s

12   mission, that of prosecutors to prosecute those people who

13   committed a serious federa felony before, you know,

14   striking again and killing someone. With respect to the

15   other quote, I'll just say briefly --

16   Senator Lee. So are you saying that what you, in

17   fact, meant w s before committing other crimes and after

18   committing a predicate crime? Is that what you're telling

19   me that you meant when you said, "This is a perfect

20   opportunity to arrest people before committing crimes

21   rather than responding after the fact"? Is that what you

22   meant?

23   Mr. Chipman. Senator, thank you for the question, and

24   thank you for the opportunity to clarify. What I said was

25   that I think that, in certain circumstances, it is

1   absolutely the mission of A.T.F. to arrest people for lying

2   on a federal firearms form, a five-year felony --

3   Senator Lee. Right, because that's a crime. That is

4   a crime.

5   Mr. Chipman. And it's the one I was speaking about in

6   the quote that you were saying, sir.

7   Senator Lee. Okay. But you said before committing

8   crimes.

9   Mr. Chipman. Before committing an additional violent

10   crime, which is something I was seeing at A T.F., that

11   people would lie and try and then go hrough other means,

12   acquire a gun, and hurt someone

13   Senator Lee. Okay. So that statement was sort of in

14   invisible brackets? Is that what you mean? Or is that

15   just what you're saying hat you meant?

16   Mr. Chipman. At the time, I did my best to

17   communicate and clearly, as exampled here, I fell short. I

18   will try to do better.

19   Senator Lee. Okay. How about the other statement?

20   Mr Chipman. With regards to the comments that I made

21   on Cheddar, that was a lengthy interview. What I was

22   trying to use is self-depreciating humor. The person who

23   had a gun stored behind his tuna and beef jerky was me.

24   And I was saying that all of us were acting in new ways as

25   a response to COVID, and I thought that people should be

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1   very clear that when they bring a gun in their home, they

2   need to be properly trained.

3   So again, we have oftentimes the ability to talk to

4   the media. Sometimes that's taken out of context, and I'm

5   sorry for any confusion I made when I was trying to point

6   out the fact that sometimes bringing a gun into your home,

7   if you're untrained, is a particularly dangerous thing to

8   do.

9   Senator Lee. Yeah, it does concern me that these

10   statements that you say are taken out of context or

11   misunderstood are not themselves out f context. When you

12   view them in context against other statements you've made,

13   statements -- including st tements that you made while you

14   were representing, as a lobbyist, Americans for a

15   Responsible Solution.

16   You were talking about silencers, about sound

17   suppressors used on firearms. You said, "You know what

18   protects your hearing better than a silencer? Earplugs."

19   And you went on to say that making it easier for people to

20   purchase silencers would make it easier for active shooters

21   to inflict serious harm on our communities without being

22   protected by trained law enforcement professionals. Now,

23   The Washington Post, hardly a bastion of conservative,

24   right-wing-nutcase journalism, gave that three Pinocchios.

25   You were even more acerbic. You were even more

1   aggressive and, I believe, even more reckless, when you

2   gave a similar comment to The Salt Lake Tribune, my

3   hometown paper, in response to legislation I had filed

4   dealing with sound suppressors for firearms, recognizing

5   that there are legitimate medical reasons why someone might

6   want to protect their hearing using a combination of

7   earplugs and sound suppressors.

8   You said, quote, "The only people that benefit from

9   this bill are gun lobbyists and criminals who want easier

10   access to deadly weapons. That's why this irresponsible

11   legislation couldn't get passed when Republicans had

12   complete control of the Congress   Instead of making it

13   easier for firearms that c uld be used in ambushes and

14   other attacks to enter our streets, Congress should focus

15   on making the job of police officers who are trained to

16   serve and protect the communities and their families

17   safer."

18   You're saying that the only people who could benefit

19   from them are gun lobbyists and criminals who want to kill

20   pe ple   Is that statement also taken out of context? If

21   so, what was the additional context? And how does this

22   reflect the careful, measured judgment of one who would be

23   in charge of enforcing our nation's gun laws?

24   Mr. Chipman. Senator, thank you for the question

25   about silencers, which have been regulated under the

1   National Firearms Act since the 1930s. The effort to take

2   the silencer out of that regulatory regime that has

3   prevented silencers by more frequently being used in

4   criminals, as an advocate, I thought that that was the

5   wrong approach.

6   Senator Lee. Yes, you made that quite clear. But

7   that's not what I'm complaining about. What I'm

8   complaining about is that you said the only people who

9   could support this are gun lobbyists and people who want to

10   engage in illegal shootings, people who want to engage in

11   mass shootings, or something like tha   Do you stand by

12   that statement?

13   Mr. Chipman. Senator I was trying to contrast the

14   fact that silencers are legal. You purchase them --

15   Senator Lee. No. No.

16   Mr. Chipman. -- through the National Firearms Act.

17   The people who want them unregulated are those that want to

18   have easier access.

19   Senator Lee. Look, you're not going to spit downwind

20   and then tell us it's just raining. I mean, I'm sorry.

21   There is no reasonable reading of this statement that could

22   be interpreted this way. "The only people that benefit

23   from this bill are gun lobbyists and criminals who want

24   easier access to deadly weapons." Is it not also true that

25   some people might want to protect their hearing while

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1   shooting?

2   Mr. Chipman. Senator, as I said before, it's my

3   belief that those who want to buy silencers to protect

4   their hearing, there's a method to do that. There are many

5   companies that sell National Firearms Act weapons, and

6   there's a process to do that. What I was addressing was

7   making it easier for criminals to use silencers, a threat

8   that our nation has really avoided because f a strong law

9   passed in 1930.

10   Senator Lee. Yeah. All right. Look, I get it. My

11   time has expired. That's not what yo   said. That's not

12   what you said at all, nor is that the impact that this bill

13   would have. The fact is that most people don't get sound

14   suppressors because of the regulatorily and expensive,

15   time-consuming, burdensome process that is imposed by this

16   law. And I think this is very concerning for someone who's

17   had a series of inflammatory statements, very concerning

18   that we're considering confirming you to be our lead law

19   enforcement officer for our gun laws. Thank you, Mr.

20   Chairman.

21   Chairman Durbin. Senator Whitehouse.

22   Senator Whitehouse. Thank you, Chairman. Mr. Polite,

23   I assume you'll agree that it's wrong to pursue a criminal

24   case for political purposes.

25   Mr. Polite. Certainly, Senator. That is correct.

1   Senator Whitehouse. Is it also wrong to duck a case

2   for political purposes?

3   Mr. Polite. Senator, considerations related to

4   politics should play no role in enforcement or

5   prosecutorial decision-making.

6   Senator Whitehouse. So there's room for misuse on

7   both sides. It would be wrong to pursue a case for

8   political reasons, and it would be wrong to duck a proper

9   case for political reasons also, correct?

10   Mr. Polite. That's correct, Senator.

11   Senator Whitehouse. Did you read Judge Gleeson's

12 brief in the Flynn case?

13   Mr. Polite. I am familiar with the brief, Senator.

14   Senator Whitehouse. Would you read it before I vote

15 for you?

16   Mr. Polite. Certainly, Senator.

17   Senator Whitehouse. Great. Thank you. Ms. Milgram,

18 in Rhode Island, we have integrated peer recovery

19 specialists into law enforcement. Sometimes they ride

20 al ng. Sometimes they follow up. It has been an

21 enormously successful program that many of our police

22 departments have not only come to participate in but come

23 to love.

24   Whoever is handling the mic, could they please deal

25 with that? Like, turn down my volume. May I hold the time

1   while we fix this? How are we feeling? Well, it's just --

2   let me try again. Can you hear me? I think my mic is off

3   now. All right. Hello? Off. You get a pause while we

4   sort out the microphones. Okay. Am I back yet? No.

5   Speaker Unknown. Can you all hear that?

6   Chairman Durbin. This microphone is not working.

7   Senator Whitehouse. Are we back?

8   Chairman Durbin. No.

9   Senator Whitehouse. Are we back? All right. Well,

10 what I'm told is that we are audible online but maybe not

11 through the speakers in the room. So I will just try to

12 speak loudly enough that we can hear each other across the

13 gap.

14   So I mentioned this integration of peer recovery

15 specialists into law enforcement. As D.E.A. administrator,

16 how would you respond to that kind of initiative?

17   Ms. Milgram. So, Senator, I really appreciate the

18 question and the work that you're doing in your state.

19 When I did work around reducing violence in the city of

20 Camden many years later, we went back to look at the

21 overlap of health and crime in the city. We did a study,

22 and we found that 67 percent of the individuals who were

23 frequent users of the healthcare system were also frequent

24 users of the criminal justice system. And underlying that

25 is substance abuse, mental health, and homelessness.

1   So I very much agree with you that we have separated,

2   in many ways, law enforcement from public health, but that,

3   if we want to have the safest communities we can, we need

4   to be thoughtful about addressing many of these things that

5   can be --

6   Senator Whitehouse. So while D.E.A. is an enforcement

7   agency, you would support the integration of peer recovery

8   and addiction workers into law enforcement' work?

9   Ms. Milgram. Senator, I've spent the better part of

10   the past three years at N.Y.U. working with law

11   enforcement, with the Indianapolis Police Department, and

12   with McLean County, Illinois to build a screening tool for

13   law enforcement to be able to identify individuals

14   suffering from substance abuse and mental health. And so,

15   if I'm confirmed, I would very much look forward to working

16   with you and others to address the overlap of health and

17   crime, and I would look forward to that opportunity.

18   Senator Whitehouse. Yeah. Senator Cornyn and I are

19   working on legislation to expand what's happening with

20   respect to peer recovery, recovery integration, into a

21   larger behavioral health and crisis intervention

22   integration with law enforcement. Would you support those

23   initiatives as well?

24   Ms. Milgram. Senator, I would very much look forward

25   to working with you and Senator Cornyn on these. The

1   question in my mind, just to put it very basically, is how

2   do we make our communities safer and healthier. And to me,

3   anything that can get us there are things that -- sorry --

4   are things that we should be pursuing. I didn't mean to

5   scream. I apologize.

6   Senator Whitehouse. No, I think they just turned the

7   speakers back on. That's why that happened. Would you

8   also comment on how important it is for D.E A. to look at

9   the money side of the international narcotics trafficking

10   industry as opposed to just the drug supply side?

11   Ms. Milgram. Yes, Senator There is no question that

12   one of the core missions of D.E A. is to dismantle the most

13   significant individuals and organizations that are engaged

14   in narcotics trafficking, and a significant aspect of that

15   is following the money, looking at whether it's money

16   laundering or other financial transactions that are

17   happening, not just in the United States but also around

18   the world. I'm grateful for the leadership you've had on

19   this issue, and I would also look forward to working on

20   that with you and other members of the committee.

21   Senator Whitehouse. Good. Thank you. As the chair

22   of the International Narcotics Trafficking Caucus, I want

23   to focus in this area, and we look forward to working with

24   you.

25   Finally, Mr. Chipman, can you think of any position

1   that you have taken regarding firearms that you would

2   pursue at A.T.F. that is out of step with majority views of

3   the American public?

4   Mr. Chipman. Senator, thank you for that question,

5   and the answer is no.

6   Senator Whitehouse. And let me just take a second if

7   I close out. I think I actually got a little extra time as

8   we switched the clock because of the microphone, so I'll

9   end. But I do want to express my appreciation to Chairman

10   Leahy for his work on gun tracing. As a U.S. attorney and

11   as my state's attorney general, we really tried to focus on

12   getting information to investigators as quickly as possible

13   from crime scenes and to b able to trace back where guns

14   and ballistics, shells, for instance, came from so that you

15   could, in real time, be working on preventing further

16   crimes.

17   And we are long overdue getting that problem fixed.

18   And I just wanted to express my appreciation to Senator

19   Leahy for his work on this, and he is well supported in the

20   ca cus trying to make sure that we get this done. So thank

21   you. Look forward to working with you on this ballistics

22   and gun tracing side.

23   Mr. Chipman. Thank you, Senator.

24   Chairman Durbin. Thank you, Senator Whitehouse.

25   Senator Cruz.

1   Senator Cruz. Thank you, Mr. Chairman. Mr. Chipman,

2   a minute ago, Senator Whitehouse asked you if any of your

3   views on guns are out of step with the majority of the

4   American people. The AR-15 is one of, if not the most

5   popular rifle in America. It's not a machine gun. It's a

6   rifle. Your public position is that you want to ban AR-

7   15s. Is that correct?

8   Mr. Chipman. Senator, thank you for the question, and

9   thank you for our visit yesterday and offering me a Dr.

10   Pepper. It made me reminisce about my time in central

11   Texas. But now, to your question, wi h respect to the AR-

12   15, I support a ban, as has been presented in a Senate bill

13   and supported by the president. The AR-15 is a gun I was

14   issued on A.T.F.'s S.W.A.T. team, and it's a particularly

15   lethal weapon, and regulating it as other particularly

16   lethal weapons I have advocated for. As A.T.F. director,

17   if I'm confirmed, I would simply enforce the laws on the

18   books, and right now, there is no such ban on those guns.

19   Senator Cruz. So you want to ban the most popular

20   rifle in America. A minute ago -- and you noted there is a

21   Senate bill. Senator Feinstein had a bill to ban some

22   2,000 specified rifles and other firearms in her bill. In

23   2013, the Democrats had a majority in the Senate. It was

24   the Harry Reid Senate. And we voted on the Senate floor on

25   Senator Feinstein's so-called assault weapon ban. Do you

1   know how many Senators voted for it?

2   Mr. Chipman. No, I do not.

3   Senator Cruz. 40. 60 voted against it. So in a

4   Democratic Senate, a supermajority voted against a ban.

5   Now, part of the reason they voted against the ban, as

6   you're aware, is during the Clinton administration there

7   was a ban in effect. The Department of Justice studied the

8   effect of that law and discovered that it h d no measurable

9   impact on violent crime. Is that right?

10   Mr. Chipman. Senator, I did enforce this law for ten

11   years as an A.T.F. agent. I'm unfamiliar with the study

12   that you are pointing out, and I apologize for that.

13   Senator Cruz. Well, when you and I met in my office

14   last night and discussed it, I asked if there were any data

15   to suggest that the ban was effective, and what you said in

16   the office is you were not aware of any data, that the data

17   was -- I think mixed is the term you used.

18   Mr. Chipman. Yes, Senator. What I said to you

19   yesterday, you've accurately stated it. I think it was

20   mixed, which, you know -- I stand by that remark. And I

21   think my recollection is that evidence was shown that the

22   limitation on magazine size had an impact. I also believe

23   that later studies showed that the use of assault weapons

24   in mass shootings had declined during that period, but, you

25   know, that's how I would like to characterize my views on

1   that.

2   Senator Cruz. So you also said, when you and I talked

3   yesterday in the office, that Senator Feinstein's bill,

4   which a supermajority of senators voted against in a

5   Democratic Senate, you said that bill didn't go far enough,

6   and you wanted an even broader ban to ban -- you said it

7   didn't go far enough. Is that right?

8   Mr. Chipman. Senator, thanks for that question and

9   the ability to clarify. What I did say is that Senator

10   Feinstein's bill did not address those firearms that are

11   currently in the possession of Americans, and then I did

12   share with you my view as an advocate, which would be quite

13   different than someone act ally enforcing the law on the

14   books, that those firearms could be treated under the

15   N.F.A. and regulated tha way, which would deal with those

16   currently in the possession of Americans.

17   Senator Cruz. So when you say it didn't go far

18   enough, you mean that you don't just want to ban the

19   manufacture of those rifles, you don't just want to make it

20   illegal to sell those rifles, but you want to actively have

21   government go after the people who currently possess

22   firearms, and if they don't register and submit to all of

23   the onerous restrictions of the National Firearms Act,

24   presumably confiscate their weapons?

25   Mr. Chipman. Senator, what I've said publicly is

1   that, as an advocate, I prefer a system where the AR-15 and

2   other assault weapons are regulated under the National

3   Firearms Act.

4   Senator Cruz. Let me shift to Ms. Jaddou. You and I

5   also had a conversation this week. Do you consider so-

6   called birth tourism to be a problem?

7   Ms. Jaddou. Thank you, Senator. Thank you, and thank

8   you for taking the time to meet with me yes erday. I

9   really appreciated that. Yeah, we did have a quite

10   fruitful discussion on that issue. And I believe we ended

11   with the thought that we need to coll ct some information

12   and the data is not there. I also noted that, as a mother

13   and as someone who's been hrough quite a difficult

14   delivery, the incredible interest in protecting the health

15   of a mother, the health f a new baby, and ensuring that we

16   can do the best we can so that women and their babies are

17   protected.

18   Senator Cruz. Ms. Jaddou, with all respect, I don't

19   find that answer remotely credible. And you said in my

20   office you didn't consider birth tourism, an eight-month-

21   pregnant or nine-month-pregnant woman getting a tourist

22   visa to come to America to have a child on American soil so

23   that child is an American citizen, that you didn't consider

24   it an abuse of our laws. It's an obvious and transparent

25   abuse of the laws.

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1   I will point out last December federal prosecutors

2   indicted six people running a birth tourism operation in

3   Long Island where Turkish women would pay between 7,500 and

4   10,000 dollars to travel to New York on tourist visas to

5   give birth and return to Turkey with American-citizen

6   babies. And in 2019, The New York Times referred to the

7   birth tourism industry as, quote, "thriving." Is it your

8   position that this doesn't occur, that The New York Times

9   was wrong, that there's not a blatant abuse of our

10   immigration system?

11   Ms. Jaddou. To the extent that anybody is committing

12   fraud or assisting in anybody committing fraud or

13   misrepresentation, that has -- not only makes someone

14   inadmissible to the United States, but also there are

15   criminal penalties. And I understand -- I'm not familiar

16   with the case you just mentioned, but I'm familiar with

17   other ones th t a sister agency inside the Department of

18   Homeland Security in the past, Immigration and Customs

19   Enforcement, has addressed.

20   Senator Cruz. Thank you.

21   Chairman Durbin. Senator Klobuchar?

22   Senator Klobuchar. Thank you very much, Mr. Chairman.

23   Congratulations to all the nominees. I think I'll start

24   with you, Mr. Polite, down there. You were appointed by a

25   Republican Louisiana governor to serve on the Louisiana

1   Civil Service Commission and currently have the support of

2   Louisiana's Republican attorney general, who praised you

3   for being not only an effective crime fighter but also an

4   invaluable member of the community.

5   In your view, have you earned that support? And how

6   do you work together? I always think of prosecutors, when

7   I had my old job, as ministers of justice, that you have

8   to, of course, focus on community safety an convicting the

9   guilty but also protecting the innocent, which, to me, also

10 involves things like conviction integrity units, drug

11 courts, and the like. So if you want to briefly respond.

12   Mr. Polite. Senator, thank you so much for that

13 question, and my view is v ry similar to what you

14 articulated, Senator, that my role as a U.S. attorney,

15 while certainly focused n issues of enforcement, was much

16 broader than that. It was to be a community problem

17 solver, and so to utilize all of the tools at our disposal,

18 not just enforcement but tools such as prevention and

19 intervention and even reentry, particularly in a state like

20 Lo isiana, where incarceration rates were so high. All of

21 those tools were critical to our work, and it required

22 outreach to many different components within our

23 communities, across state, local, and federal law

24 enforcement, but also outside of government to actually

25 achieve those goals.

1   Senator Klobuchar. Very good. Thank you. Mr.

2 Chipman, it's not lost on me that, as we're having this

3 discussion with you, or several members are, about guns,

4 that there is another mass shooting with fatalities near

5 San Jose.

6   We have worked hard. There are Republicans, like

7 Senator Toomey, that have worked on the background check

8 issue and tried to get that done. We know he vast

9 majority of Americans support rational gun violence

10 legislation, and a piece of this is for many years, I've

11 led the legislation to close a danger us loophole in the

12 law that allows domestic abusers to buy a gun simply

13 because they're not married to their victims. This bill

14 actually was included in the Violence Against Women Act

15 over in the House and go a number of Republicans voting

16 for it, and it's something that I think we can advance.

17   Could you comment about that? Do you agree that we

18 should keep guns out of the hands of all convicted domestic

19 abusers?

20   Mr Chipman. Thank you, Senator, for this question,

21   nd thank you for your dedication to domestic violence,

22 which remains the most dangerous call police will ever

23 respond to. As an A.T.F. agent in central Texas, one of

24 the most significant cases I worked was a pipe bomb sent by

25 an estranged boyfriend to a woman who worked at a probation

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1   and parole office. So domestic violence is something that

2   A.T.F. agents regularly deal with on the job, and there's

3   no greater threat than those offenders who have access to a

4   gun. So it would be one of the top priorities I had if I

5   am confirmed as A.T.F. director.

6   Senator Klobuchar. Very good. Thank you very much.

7   Ms. Milgram, I enjoyed our discussion, and we talked about

8   opioids, something that I've been working on for quite a

9   while with a number of Republicans on this committee as

10   well as Democrats. What do you see D.E.A.'s role -- we

11   talked about the documents from a rec nt trial showing drug

12   manufacturers mocking what they called "hillbillies" in

13   West Virginia. I do suggest -- I know there's shared

14   belief on this issue, but this mocking of the Beverly

15   Hillbillies song, where drug executives were -- actually

16   put in words mocking the people they got hooked on the

17   drugs, was an outrageous thing I'd never seen until last

18   week, and it just shows how heartless this addiction was

19   where people were profiting off of people's own addictions,

20   many times resulting in death.

21   Could you quickly address what the D.E.A. -- you see

22   as the priorities?

23   Ms. Milgram. Senator, I share your concern on this

24   issue. America is in the midst of an opioid crisis, and

25   fentanyl, which has now come to our cities and streets, is

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1   really fueling this addiction opioid crisis today. But I

2   share your concern that there are two pieces of this.

3   First, it's the pharmaceutical companies and the

4   manufacturers and others that have essentially put us in a

5   situation today where we must regulate opioids and the

6   prescription drugs that people are being given. So there's

7   a huge function in the D.E.A.'s diversion work that is a

8   part of that, and it will be a priority for me.

9   The other piece is really stopping the illicit

10   fentanyl from coming into our country, where individuals

11   who -- most of whom first become hook d through

12   prescription drugs, are then turning to heroin, to illicit

13   fentanyl, and to other substances. And we're seeing just

14   way too many overdose deaths in our country.

15   Senator Klobuchar. Okay. Thank you. Last, Ms.

16   Jaddou, I really enjoyed our conversation as well. It --

17   we talked about the fact that, for so many of us in our

18   states where we have needs for immigrant workers, permanent

19   workers, temporary workers, and the like, this is becoming

20   a near crisis, especially in northern Minnesota in our

21   tourism industry, in some of our farmlands, and others. We

22   also rely on all levels of education from immigrants that

23   are part of our economy.

24   And one of those is in medical. And yesterday,

25   Senator Collins, Rosen, Ernst, and I led -- introduced a

1   bipartisan bill that I've long been leading. I took it

2   over from Senator Conrad when he left. The Conrad State 30

3   and Physician Access Act, which increases the number of

4   international doctors trained in the U.S. to remain in the

5   country if they practice in rural or underserved areas. I

6   remind people that more than 25 percent of our U.S. Nobel

7   laureates were born abroad, and 70 of America's Fortune 500

8   companies were started by people born in other countries.

9   How can U.S.C.I.S. help to ensure we are attracting

10   talent to come to our country at all levels and work with

11   us on this really crisis of not having enough doctors in

12   underserved areas, one of the reasons you see Senator

13   Collins and Senator Ernst join me on this bill?

14   Ms. Jaddou. Thank you, Senator. I really appreciated

15   the time talking with yo yesterday, and when we talked

16   about this issue, as you know, I worked on it when I was a

17   Hill staffer back in the day on the House side, and I

18   completely appreciate and understand this issue. And a

19   family member, my father-in-law, came through a program, a

20   li tle different but somewhat similar to ASSIST, in the

21   U.S. Navy. So I can personally appreciate the program.

22   Professionally, from U.S.C.I.S., what we can do is to

23   ensure that the processing of the applications surrounding

24   that is not something that is slowing down the process,

25   that we are doing it efficiently and in an accessible

1   manner, and of course, to ensure the integrity and security

2   of the system.

3   Senator Klobuchar. Excellent. Thank you all for --

4   Ms. Jaddou. Thank you.

5   Senator Klobuchar. -- your pointed and brief answers

6   so I could get all my questions in. I appreciate it.

7   Chairman Durbin. And the patience of your chairman.

8   Senator Klobuchar. The patience of ou chairman, yes.

9   Chairman Durbin. Senator Hawley.

10   Senator Hawley. Thank you, Mr. Chairman, and thanks

11   to all of the witnesses for being her

12   Mr. Chipman, if I could just start with you. Since

13   leaving the A.T.F., you've served as a policy advisor or

14   provided support for, I think, just about every national

15   gun control group in the country, or close to it: the Brady

16   Campaign to Prevent Gun Violence, the Coalition to Stop Gun

17   Violence, Mayors Against Illegal Guns, and most recently

18   the Giffords group.

19   My question is, given your policy bias -- I mean, you

20   cl arly have a very distinct policy point of view. You

21   lluded to this with Senator Cruz a moment ago. How can

22   America's hundreds of millions of law-abiding gun owners

23   have confidence that you won't try to restrict their Second

24   Amendment rights if you're confirmed as A.T.F. director? I

25   mean, what assurances can you give them that you will limit

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1   your efforts to criminals who misuse weapons and leave law-

2   abiding firearms owners to themselves?

3   Mr. Chipman. Senator, thank you for this question

4   because it's really important. As I've said, for 25 years,

5   I enforced the law on the books. Every day, me and other

6   federal agents tried to catch the bad guys. I mean, that's

7   what the mission was. It was trying to keep the public

8   safe.

9   During those 25 years, I saw gaps in the law that

10   really prevented us from doing the job I knew the American

11   public wanted us to do. Look at that 25 years. I was not

12   going wayward with law-abiding gun owners. I never

13   received complaint of that sort. And I'm prepared to

14   return to that job. But my passion after leaving A.T.F.

15   was to make A.T.F. and o r enforcement of gun laws more

16   effective to keep us all safe. And I understand, if I'm

17   confirmed, I will have to earn the confidence and your

18   respect and trust to keep doing that.

19   Senator Hawley. Let me ask you about some of your

20   work for the Giffords group. In the landmark U.S. Supreme

21   Court case District of Columbia versus Heller, which

22   happened -- was handed down when I was actually working at

23   the U.S. Supreme Court, the Giffords Law Center that year,

24   if memory serves, authored an amicus brief arguing that

25   there is no individual right to own a firearm under the

1   Second Amendment. The Supreme Court, famously, found

2   otherwise.

3   Do you share your employers believe that the Second

4   Amendment does not protect an individual right to keep and

5   bear firearms?

6   Mr. Chipman. Thank you for your question, Senator. I

7   do not. I'm a gun owner. I respect that the Supreme Court

8   has recognized this right, and if A.T.F. director, I will

9   ensure to uphold that right.

10   Senator Hawley. Very good. So you think Heller was

11 rightly decided, just to be clear about this?

12   Mr. Chipman. Senator, I'm a cop, not a lawyer. What

13 I know is the law is the law, and the Supreme Court plays a

14 role in recognizing what those rights are. You know, as an

15 agent, I felt like we were going down a highway. Our

16 mission was to prevent crime, and the Constitution were

17 those guardrails to keep us in line. And at times, when

18 the road was uncertain, we had signposts, and those were

19 attorneys who we asked advice and counsel.

20   And so, if confirmed as A.T.F. director, that's the

21 balance that I would strike. But the bottom line is our

22 job is to prevent crimes from -- apparently, that is

23 ongoing right now, that other members have suggested, and

24 that would be my sole duty.

25   Senator Hawley. Well, I just want to be clear on this

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1   because you said that you do think that the Constitution

2   supports -- protects the individual right to keep and bear

3   arms. That was the holding of Heller. You've been a

4   policy advocate now for quite a number of years, and I

5   think that your views, and you've discussed some of them

6   today, are fair game. So I just want to be clear on this.

7   You think Heller was rightly decided, is that correct?

8   Mr. Chipman. Yes, sir.

9   Senator Hawley. Okay, great. Thank you. That's

10   helpful. Let me ask you about something you said in 2012.

11   In an interview -- I think it was on MSNBC -- you said that

12   the Secret Service should not carry guns. You said their

13   whole role is to cover and evacuate, and you went on to say

14   possibly we need to think of strategies like that in

15   schools. Is that still your view?

16   Mr. Chipman. Senator, I trust that you have -- and

17   your staff have actually picked something I've said. I do

18   not believe I ever said that. I might have said this,

19   which is I was trained to work with the Secret Service.

20   And I have observed that part of that training is that you

21   have to get your body in between you and the person you're

22   protecting, and you often don't have the opportunity to

23   even draw your gun. That is something that I would say. I

24   have never advocated that the Secret Service should not

25   carry guns, ever.

1   Senator Hawley. Did you mean to suggest then that

2   schools should have unarmed guards, that they shouldn't be

3   able to protect students with firearms? I mean, I'm trying

4   to understand the import of your comments.

5   Mr. Chipman. Senator, thank for the question about

6   schools. I mean, this is something that we've all debated

7   and tried to figure out a solution to the mass violence

8   we've seen in schools. We know how to keep buildings safe.

9   I came in one today. I do not believe that the best

10   approach is to arm people to win gunfights in schools.

11   Senator Hawley. So you're oppos d, then, to having

12   armed guards in schools? You think that they shouldn't be

13   armed?

14   Mr. Chipman. As an advocate and as a firearms expert,

15   I've rendered my opinion that I believe that there are

16   better ways to secure schools. If I'm confirmed as A.T.F.

17   director, largely, this is not going to be the focus of

18   A.T.F. Our focus would be to prevent people who would do

19   harm at schools from ever getting guns in the first place.

20   So hopefully that addresses the question as you've asked.

21   Senator Hawley. Wouldn't that just leave the guards

22   who are there, the law enforcement who are there, to act as

23   human shields? I mean, is that essentially your view?

24   Mr. Chipman. Senator, no, it's not. And I'm sorry if

25   I'm not explaining this correctly. We came into a building

1   today secured so that guns would not be brought in. I'm

2   more a believer of hardening targets so that guns could

3   never enter a school, so that armed people inside would not

4   be faced with other armed people. So, you know, metal

5   detectors is something used in some schools, and I've

6   suggested that that's a possible, you know, view that

7   states and localities will have to make for themselves.

8   Senator Hawley. I do have some additional questions

9   for you which I'm happy to give to you for the record, as

10 well as we'll give to you for the record your comments on

11 that 2012 interview that I referred t and give you a

12 chance to follow up more fully on that. Thank you, Mr.

13 Chairman.

14   [The information appears in the appendix:]

15   / COMMITTEE INSERT

16   Chairman Durbin. Thank you, Senator Hawley. Senator

17 Cotton. I'm sorry. Senator Blumenthal, then Senator

18 Cotton.

19   Senator Blumenthal. Thanks, Mr. Chairman. I want to

20 pursue the line of questioning, Mr. Chipman, that you just

21 finished with my colleague Senator Hawley because I think

22 you said something very telling, and it ought to be

23 compelling to this committee and to the United States

24 Senate. You said, "I'm a cop, not a lawyer." And as the

25 head of A.T.F., you'd be the top cop in that agency, which

1   has agents who enforce the law just like cops do. You

2   wouldn't be making law, would you? You'd be enforcing it.

3   Mr. Chipman. No, I'd be enforcing it, and I'd be

4   relying on attorneys, as I did through my entire career, if

5   that road became uncertain. That's just standard practice.

6   Senator Blumenthal. And in 25 years as an agent at

7   the A.T.F., you liked some of your targets, maybe

8   personally, and you didn't like others. Yo thought some

9   laws were really good and maybe didn't like others, but you

10   enforced them against people without fear or favor,

11   correct?

12   Mr. Chipman. In some ways, it's easy. You enforce

13   the law on the books. There's not -- and you want to do it

14   safely, and you want to keep yourself safe.

15   Senator Blumenthal. And the president of the United

16   States has issued a proposed regulation dealing with ghost

17   guns, that in effect would require that all firearms have

18   serial numbers. I strongly support it. I've introduced

19   legislation that would ban ghost guns, as they're called,

20   that lack serial numbers. In a hearing that I recently

21   held in my Subcommittee on The Constitution -- not mine; I

22   chair it -- the following fact was disclosed.

23   In -- between January 1, 2016, and March 4, 2021,

24   A.T.F. attempted to trace almost 23,946 ghost guns, but

25   only 151 traces could be completed. That's less than 1

1 percent. What happens in investigations when guns can't be

2 traced?

3   Mr. Chipman. Thank you for this question, Senator.

4 What happens is it makes the case very difficult to solve.

5 We can rely on other technologies to help, but certainly,

6 tracing the serial number of a product is critical. It's

7 how we solved the World Trade Center bombing and the

8 Oklahoma City bombing. So it's absolutely ssential to law

9 enforcement to be able to trace a gun.

10   Senator Blumenthal. There's nothing ghostlike about

11 ghost guns. They look like guns. Th y shoot like guns.

12 They kill like guns. They are guns. And in my home state

13 of Connecticut, we've bann d ghost guns. But the law of

14 one state really can't protect the citizens of that state

15 because guns can be brought from other states. And now

16 people can actually assemble these guns in their homes,

17 make them out of plastic on machines.

18   In your experience, is the serialization of firearms

19 the same as a gun registry? Because I know some of my

20 colleagues and some people are very fearful that the

21 serialization of guns, which is now a requirement on all

22 guns sold by licensed manufacturers, will be turned into

23 some kind of national registry. That isn't true, is it?

24   Mr. Chipman. No, Senator. It was clear as an A.T.F.

25 agent that such a registry is prohibited by law. The only

1   registry that exists is in the National Firearms Act. The

2   bottom line is is that serial number, even before ghost

3   guns, was something that criminals would try to remove,

4   especially firearms traffickers, and so this is a real

5   threat to firearms trafficking.

6   Senator Blumenthal. Thank you. Ms. Jaddou, you and I

7   had a wonderful conversation, and I want to just commend to

8   my colleagues your personal story. Your mo and dad, your

9   entire family is really a model of what citizenship should

10   mean in this country, the way you've contributed and your

11   entire family.

12   I want to focus on the use of parole powers, which you

13   and I discussed briefly. There are about 3.5 million

14   people in the family-based visa backlog and hundreds of

15   thousands more in the employment-based visa backlog. This

16   problem is now completely out of hand. It's a disgrace to

17   this country. And I know this administration didn't create

18   it, but I'm hoping that you will address it. I've spoken

19   to you previously about recapturing unused visas, which I

20   hope you will explore.

21   And to circumvent the visa backlog problems, Congress

22   specifically granted D.H.S. the authority to grant parole

23   on the basis of urgent humanitarian need or significant

24   public benefit, as you know. It seems reasonable that the

25   reunion of families who have an approved immigrant visa

1   petition but who are stuck, literally just stuck, waiting

2   for a visa to become available is an urgent humanitarian

3   need.

4   So I'm -- would like to ask you, would you consider

5   creating a parole program for children and spouses of th se

6   with approved visa petitions? Such a step would have

7   enormously beneficial consequences to thousands of people.

8   Ms. Jaddou. Thank you, Senator, and I especially

9   appreciated the time talking with you. It was extremely

10   enjoyable getting to know you.

11   So with regard to your question, that is certainly

12   something I would like to take a look at if I'm confirmed.

13   I -- of course, it would r quire reviewing the parole

14   provision with regard to the individuals you're mentioning

15   and to determine whether the law allows for such facts.

16   And that would -- something I'd be happy to work with you

17   and your office on.

18   Senator Blumenthal. Thank you very much. Thank you,

19   Mr. Chairman.

20   Chairman Durbin. And now Senator Cotton.

21   Senator Cotton. Thank you, Mr. Chairman. I want to

22   add my voice to the objections raised by Senator Cornyn and

23   Senator Lee about scheduling a panel with five witnesses,

24   one of which is a lifetime judicial appointment, the other

25   four of which are very important appointments to the

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1   executive branch.

2   Chairman Durbin. Senator, would you allow me to

3   respond be -- and not at the expense of your time?

4   Senator Cotton. Please. Please.

5   Chairman Durbin. Senator, in the last Congress, on

6   the following occasions, we had one court nominee followed

7   by a second panel with five nominees, judicial and

8   executive nominees: October 4th, 2017; Dec mber 13th,

9   2017; May 9th, 2018; June 6th, 2018; August 22nd, 2018;

10   October 17th, 2018; May 22nd, 2019; December 4th, 2019.

11   These panels included lifetime appoin ees, and as you can

12   see, in eight different occasions under Republican

13   leadership, they had exact y the same format as today.

14   Senator Cotton. No time like the present to change

15   our ways. And as a new member of the committee, I'm

16   observing that I don't think that we should have four

17   important executive branch nominees in front of us at a

18   time. But thank you.

19   Mr. Chipman, you testified to Senator Lee that it's a

20   serious felony to lie on a background check application,

21   nd I agree. The A.T.F. form 4473 asks, "Are you an

22   unlawful user of or addicted to any drug or uncontrolled

23   substance?" If an applicant checks yes, they cannot

24   purchase a firearm.

25   On March 25th, Politico reported that Hunter Biden,

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1   President Biden's son, applied for a handgun that was later

2   thrown in the trash and had to be recovered by Secret

3   Service agents in 2018. Politico reported that Hunter

4   Biden completed this background check and answered no to

5   the question of whether he was an unlawful user of or

6   addicted to any drug.

7   Hunter Biden has since published a book and gone on a

8   nationwide book tour, conducting numerous interviews

9   stating that he was, in fact, very much addicted to drugs

10   at the same time that he purchased this firearm. This

11   would mean that, by his own admission, Hunter Biden lied on

12   that form, and, by your earlier testimony, committed a

13   serious felony. Should Hunter Biden be prosecuted for

14   breaking this law?

15   Mr. Chipman. Senat r, thank you for your question.

16   If I'm confirmed as A.T.F. director, it will be my

17   responsibility to enforce all federal laws without

18   political favor. I do not know any factors in this

19   particular case, but I am familiar with the press account

20   of it.

21   Senator Cotton. Well, my understanding is the statute

22   of limitation is only five years and that this happened in

23   2018. Mr. Biden is obligated to keep a record of that form

24   for up to five years himself. So this should be a fairly

25   easy case to investigate. Can I get your commitment that,

1   if you are confirmed, you will, in fact, look into this

2   matter and refer it for prosecution if you find that Hunter

3   Biden violated the law?

4   Mr. Chipman. Senator, what I will assure you is that,

5   if A.T.F. director, I will ensure that all violations of

6   law are investigated and referred. I'm not sure that it

7   has not been investigated.

8   Senator Cotton. Well, I hope it has. And if the

9   facts are as clear-cut as they appear to be, based on Mr.

10   Biden's own admission, I would expect to see criminal

11   charges forthcoming. But I would say that when a case is

12   as high profile as this, if there is not an answer for the

13   American people and public it severely undermines the

14   confidence in our gun laws as well as the A.T.F. and the

15   Department of Justice if there are not criminal

16   consequences.

17   I want to turn to a second matter now, Mr. Chipman.

18   You have called for an assault weapons ban. I have a

19   simple question for you. What is an assault weapon?

20   Mr Chipman. Senator, an assault weapon would be, in

21   the context of the question you asked, what Congress

22   defines it as.

23   Senator Cotton. So you're asking us to ban assault

24   weapons. We have to write legislation. Can you tell me,

25   what is an assault weapon? How would you define it if you

1   were the head of the A.T.F.? How have you defined it over

2   the last several years as your role as a gun control

3   advocate?

4   Mr. Chipman. Senator, if I'm confirmed as A.T.F.

5   director, you know, my recollection is the only process by

6   which A.T.F. is weighed in is that I know there is a Demand

7   Letter 3 program, which requires multiple reports --

8   multiple sale reports on the southwestern b rder   And

9   A.T.F. in that program has defined an assault rifle as any

10   semiautomatic rifle capable of accepting a detachable

11   magazine above the caliber of .22, which would include a

12   .223, which is, you know, largely the AR-15 round.

13   Senator Cotton. So y u believe that every weapon that

14   takes a detachable magazine that can take a .22 round or

15   5.56 in military parlanc should be defined as an assault

16   weapon?

17   Mr. Chipman. Let me clarify. What I believe I just

18   said is any semiautomatic rifle with --

19   Senator Cotton. Okay, any semiautomatic rifle.

20   Mr Chipman. What --

21   Senator Cotton. That's the -- a detachable magazine

22   that takes a 5.56 or .22 round should be defined as an

23   assault weapon?

24   Mr. Chipman. Senator, you asked me if A.T.F. had used

25   this term, and I was sharing with you my knowledge of a

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1   program in which A.T.F. has defined this term. And it is

2   in the Demand Letter 3 program. And that rifle is a

3   semiautomatic rifle capable of accepting a detachable

4   magazine with a round greater than a .22 caliber. And in

5   those cases, firearms dealers on the southwest border ar

6   required to make a multiple sale report to A.T.F.

7   Senator Cotton. I'm amazed that that might be the

8   definition of assault weapon. That would b sically cover

9   every single modern sporting rifle in America today. Let

10   me put it this way. If I wanted to buy an assault weapon,

11   and I walked into Walmart or Cabela's or some other firearm

12   dealers, and I looked up on the wall where they were

13   labeling their weapons, wo ld there be a label on the wall

14   for assault weapon?

15   Mr. Chipman. I don t believe, Senator -- and thank

16   you for this question -- that the firearms industry has

17   used the term assault rifle in their marketing since there

18   was a ban on it. It was after that that they changed their

19   use of the term assault rifle to the modern sporting rifle.

20   Senator Cotton. Well, so I've been in Walmarts, and

21   I've been in Cabela's, and I've seen that you can find

22   sections for pistols or handguns or for shotguns or for

23   rifles because those are actual kinds of firearms. I think

24   our exchange here illustrates that there really is no such

25   thing as an assault weapon. That is a term that was

1   manufactured by liberal lawyers and pollsters in Washington

2   to try scare the American people into believing that the

3   government should confiscate weapons that are wildly

4   popular for millions of Americans to defend themselves and

5   their families and their homes.

6   Chairman Durbin. Thank you, Senator. Senator Hirono.

7   Senator Hirono. Thank you, Mr. Chairman. I'm going

8   to ask the panel to respond to my two initi l questions en

9   masse. First question, since you became a legal adult,

10   have any of you ever made unwanted requests for sexual

11   favors or committed any verbal or physical harassment or

12   assault of a sexual nature? Everybody on the panel,

13   please.

14   Ms. Milgram. No Senator.

15   Ms. Jaddou. No, Senator.

16   Mr. Chipman. No, Senator.

17   Ms. Strickland. No, Senator.

18   Mr. Polite. No, Senator.

19   Senator Hirono. Thank you. Have you ever faced

20   discipline or entered into a settlement related to this

21   kind of conduct?

22   Ms. Milgram. No, Senator.

23   Ms. Jaddou. No, Senator.

24   Mr. Chipman. No, Senator.

25   Ms. Strickland. No, Senator.

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1   Mr. Polite. No, Senator.

2   Senator Hirono. This is a question for Ms. Milgram.

3   We all know that our country is in the throes of an opioid

4   crisis. I would like to point out that Hawaii continues to

5   be plagued by meth, and Honolulu actually just set a fiv -

6   year high for drug-related deaths, with 197 such deaths in

7   2020, and this was largely driven by meth overdoses.

8   I know that, you know, you are going t be very

9   focused on the opioid crisis, and I'm glad that you

10   mentioned that there is an overlap of health and behavioral

11   health aspects to this addiction, but I hope that you will

12   also allocate D.E.A. resources to ensure that issues like

13   the meth problem in Hawaii do not get short shrift as the

14   agency focuses on the opioid crisis.

15   Ms. Milgram.   Senat r, thank you for that question.

16   And I share your concern about methamphetamine. In the

17   United States, there are large quantities of

18   methamphetamine and other narcotics coming across borders,

19   being shipped by mail. And so this is a critical aspect,

20   and it's part of the core mission of the D.E.A. So you

21   have my assurance that, if I'm confirmed, that it will

22   continue to be part of that core mission.

23   Senator Hirono. Thank you. Ms. Jaddou, I'm glad that

24   we had a chance to talk briefly, and you mentioned in our

25   discussion, and you also said today that the heart of the

1   immigration system is the processing of applications. And

2   there is a huge backlog on the processing of various kinds

3   of applications where sometimes people have to wait months

4   and months for applications to be processed.

5   So I would like to have your commitment, as you did in

6   our discussion, that you -- this will be one of the first

7   areas that you will address because you do consider the

8   processing of applications to be at the heat of what

9   U.S.C.I.S. does.

10   Ms. Jaddou. Thank you so much, Senator, and I really

11   appreciate the time we had together. I absolutely -- you

12   absolutely have my commitment on that. It is my top

13   priority.

14   Senator Hirono. You have been with the U.S.C.I.S.

15   during the Obama administration, and why are you choosing

16   to return to an office that you have been before?

17   Ms. Jaddou. Thank you, Senator. I understand the

18   intrinsic value of a functioning legal immigration

19   processing agency, and that's what U.S.C.I.S. does. I have

20   be n on the Hill. I have taken those phone calls from

21   constituents. I have seen it myself in my life. At

22   U.S.C.I.S., when I was chief counsel, I saw that the simple

23   act of opening an envelope with an application can create

24   backlogs if not done well, and I also understand that

25   partner agencies are really important to the process.

1   So I look forward to using the relationships and the

2   knowledge that I have already gained in my time working on

3   the Hill and at U.S.C.I.S. to now convert it into working

4   as the director of the agency.

5   Senator Hirono. Thank you. And, Mr. Chipman, just as

6   Ms. Jaddou, you are going back to an agency with which you

7   have a lot of experience. So how do you think the

8   experience -- your previous with A.T.F. will help you in

9   your role as director?

10   Mr. Chipman. Thank you for that question. It's a

11 great question. Much of that experience, I was an agent,

12 and I know what it takes to do that job, so I think I'll be

13 able to connect with the employees that I would lead. But

14 I also know how important it is for a leader to be

15 accountable, and that's what I want to be for the troops.

16   Senator Hirono   You've been asked a number of

17 questions about whether or not -- obviously, you have been

18 an advocate for sensible gun safety legislation, but I just

19 want to note for the record that, of course, you will be

20 enforcing the law, so you'll be following the law,

21 something that I wish some people in the previous

22 administration also did.

23   So when we look at the issue of gun violence -- and

24 even as we speak, there is a mass shooting apparently

25 happening in California -- that there are those among us

1   who think that the way to deal with the scourge of gun

2   violence in our country is to enable ever more guns in our

3   country. And, Mr. Chapman, while I -- Chipman, while I

4   don't expect you to weigh in on that point, it is very

5   clear, is it not, that there's nothing in the Constitution

6   that prevents Congress or the states from enacting gun

7   ownership -- sensible gun ownership laws, is there?

8   Mr. Chipman. Senator, I think that it is well within

9   the powers of Congress to balance the rights we have under

10   the Constitution and the responsibility as a nation to keep

11   us safe.

12   Senator Hirono. Well, and while the Supreme Court did

13   decide in Heller, there are a lot of us who do not agree

14   with that particular Supreme Court decision. My time is

15   up. Thank you.

16   Chairman Durbin. Thank you, Senator Hirono. Senator

17   Kennedy.

18   Senator Kennedy. Thank you, Mr. Chairman. I want to

19   begin -- I don't have any questions for him, but I want to

20   give a shout-out to my friend Mr. Polite, who served

21   honorably and well as a United States attorney in

22   Louisiana, and I'm going to vote for him. And I want to

23   thank him for his willingness to serve. I don't know how

24   he talked his spouse into it. He's giving up major dollars

25   to come back into government service, but I am grateful

1   that he is willing to do so.

2   Mr. Polite. Thank you for your support, Senator.

3   Senator Kennedy. Ms. Strickland, Counselor, you do

4   not believe in qualified immunity for law enforcement

5   officials, do you?

6   Ms. Strickland. Thank you for the question, Senator.

7   For much of my career, I have served on the board of the

8   New Mexico Criminal Defense Lawyers Associa ion --

9   Senator Kennedy. Yes, ma'am. But see, my time is so

10   limited. You don't believe in qualified immunity for law

11   enforcement officials, do you?

12   Ms. Strickland. So on behalf of organizations and

13   associations that I've been in, we have taken the position

14   that New Mexico, who is considering its own civil rights

15   bill, should not -

16   Senator Kennedy. Let me ask you again. Do you

17   believe in qu lified immunity for law enforcement

18   officials?

19   Ms. Strickland. So --

20   Senator Kennedy.   You, personally.

21   Ms. Strickland. Well, any personal views that I have

22   on it would not come into consideration if I were to be

23   confirmed as a judge.

24   Senator Kennedy. Oh, sure they will.

25   Ms. Strickland. I have --

1   Senator Kennedy. Sure they will. You're -- if you're

2 confirmed, you're going to do everything you can to

3 undermine qualified immunity, aren't you?

4   Ms. Strickland. No, Senator. Qualified immunity is

5 the law of the land. It is the law of the Supreme Court,

6 is the law of the Tenth Circuit, and I would apply it.

7   Senator Kennedy. Well, you spent your entire adult

8 career arguing against qualified immunity, haven't you?

9   Ms. Strickland. I have spent my ti e as an advocate

10 working underneath qualified immunity, where I did not

11 argue against qualified immunity. I worked within the

12 bounds of qualified immunity   And on behalf of

13 associations --

14   Senator Kennedy. Yeah, but you don't believe in it.

15 It's okay. I mean, this is America. You can believe what

16 you want.

17   Ms. Strickland. I --

18   Senator Kennedy. But I don't want to be misled here.

19 You don't believe in qualified immunity, do you?

20   Ms Strickland. I do believe, Senator, in qualified

21 immunity. It is the law of this country. It is the law of

22 the Supreme Court.

23   Senator Kennedy. Well, then why did you help New

24 Mexico -- why did you work so hard to get Mexico to change

25 -- New Mexico to change it?

 1   Ms. Strickland. Well, New Mexico was considering a

 2   new bill regarding civil rights, and it was trying to

 3   decide whether qualified immunity should apply in a new --

 4   Senator Kennedy. Okay. Understand, I'm not trying to

 5   cut you off. I really hate being rude like this and

 6   interrupting folks, but we have so little time. Here's

 7   what I want to ask you. I want you to answer this one for

 8   me in front of God and country. If you personally were

 9   queen for a day and you could make any policy you wanted to

10   right now and you had the ability to get rid of qualified

11   immunity for law enforcement officials by just sweeping

12   your hand, you're telling me you wouldn't do it?

13   Ms. Strickland. Yes, Senator. I -- qualified

14   immunity --

15   Senator Kennedy. Y u wouldn't do it.

16   Ms. Strickland   I would not because qualified

17   immunity --

18   Senator Kennedy. Okay. Let me ask a question of Mr.

19   Chipman. Where's Mr. Chipman? You're nominated for

20   Al ohol, Tobacco, and Firearms and Explosives and all kind

21   of other dangerous stuff, is that right?

22   Mr. Chipman. Yes, Senator.

23   Senator Kennedy. Okay. You don't believe in private

24   ownership of handguns, do you?

25   Mr. Chipman. That's incorrect. I own one myself.

1   Senator Kennedy. Do you? Do you believe in private

2 ownership of assault weapons?

3   Mr. Chipman. Yes, sir.

4   Senator Kennedy. What do you own, by the way?

5   Mr. Chipman. That's a pretty private question. I

6 have the -- I'll share the gun I'm proudest of. It's a

7 Smith and Wesson Treasury Commemorative gun, and the serial

8 number is my birth date.

9   Senator Kennedy. Oh, that's cool. Congratulations.

10 Do you believe in banning assault weapons?

11   Mr. Chipman. I do, sir.

12   Senator Kennedy. Okay. Define assault weapons.

13   Mr. Chipman. Assault weapons would be something that

14 members of Congress would define.

15   Senator Kennedy. W ll, how do you define it? You're

16 going to be running the agency.

17   Mr. Chipman. Senator, I think this is good question.

18 If I am confirmed as A.T.F. director --

19   Senator Kennedy. I got 35 seconds left. Define it

20 for me would you please, sir? What's an assault weapon?

21   Mr. Chipman. Yeah. Senator, the bill to ban assault

22 weapons is --

23   Senator Kennedy. What is your definition of an

24 assault weapon?

25   Mr. Chipman. -- dozens of pages. There's no way I

1   could define an assault weapon in 30 seconds.

2   Senator Kennedy. You don't have any -- you're going

3   to run an -- this agency, and you don't have a definition

4   of assault weapon?

5   Mr. Chipman. But I would be enforcing the definiti n

6   that members of Congress pass.

7   Senator Kennedy. Yeah, but you're going to be issuing

8   rules and regulations. Just give me your d finition.

9   Mr. Chipman. I'll give you one definition that A.T.F.

10   currently uses.

11   Senator Kennedy. Give me your d finition.

12   Mr. Chipman. One definition that A.T.F. currently --

13   Senator Kennedy. Giv me your definition.

14   Mr. Chipman. I can give you one definition that

15   A.T.F. currently -

16   Senator Kennedy. If you won't answer my question, how

17   can I vote for you? I'm done, Mr. Chairman. I don't think

18   I'm going to get an answer.

19   Senator Ossoff. [Presiding.] Thank you, Senator

20   Kennedy   I yield myself five minutes to question -- oh,

21   pardon me. Senator Coons, you want to go ahead? Okay.

22   Yield myself five minutes, and I thank the panel. Thank

23   you for your willingness to serve. Thank you for putting

24   yourself through this process. I'd like to begin with you,

25   Mr. Chipman. Much of the -- in fact, the majority of

1   homicides involving firearms involve handguns. Is that

2   correct?

3   Mr. Chipman. That's correct. And thank you for the

4   question, Senator.

5   Senator Ossoff. What steps do you intend to take,

6   should you be confirmed, to stop the proliferation of

7   illegal handguns and reduce the level of gun violence

8   involving handguns on American streets?

9   Mr. Chipman. Thank you, Senator. The top priority of

10   A.T.F. will be a focus on firearms trafficking. By

11   focusing on the illegal transfer of g ns from lawful

12   commerce into illegal commerce, the selling and illegal

13   dealing of guns to crimina s, is the best way to prevent

14   crime with guns. The ultimate responsibility is -- of

15   A.T.F. is to do what is within our powers to prevent those

16   offenders from ever getting a handgun if they can't

17   lawfully possess it in the first place.

18   Senator Ossoff. Thank you, Mr. Chipman. And this is

19   a question for both you and Ms. Milgram, please. We've

20   se n a significant increase in violent crime across the

21   country over the last year. In the city of Atlanta, for

22   example, homicide has increased 60 percent year over year.

23   I was recently out at a park in my neighborhood with my

24   wife and dear friends, celebrating our friend's son one-

25   year-old birthday party. And gunfire erupted at that park.

1   A group of young people who had been fighting moved several

2   blocks west throughout the afternoon. Gunfire erupted

3   again. 15-year-old girl was killed, two young people

4   wounded.

5   Senator Ossoff. Will each of you, Mr. Chipman and Ms.

6   Milgram, please commit to joining me in Georgia, should you

7   be confirmed, to meet with leaders in local and state law

8   enforcement, as well as community leaders, he Atlanta

9   Police Department, the Fulton County Sheriff s office, to

10 discuss how we can tackle and reverse this disturbing trend

11 of increased violent crime and homicide that's taking lives

12 and doing grievous harm to so many families?

13   Ms. Milgram. Yes, Senator. I'd be delighted to join

14 you if I'm confirmed.

15   Senator Ossoff. Thank you, Ms. Milgram. Mr. Chipman?

16   Mr. Chipman. Yes, Senator. I'd welcome the

17 opportunity to visit Atlanta, visit our Atlanta field

18 division, and visit A.T.F.'s critical lab that's located

19 there.

20   Senator Ossoff. Thank you. I'm going to ask you a

21 similar question about two other areas of my state that

22 have seen comparable significant increases in violent crime

23 over the last year. The city of Savannah is experiencing

24 an outbreak of homicides and shootings at levels not seen

25 in three or four years. Last fall in Savannah, violence

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1   escalated from, on average, a shooting every three days to

2   one every other day. Will you similarly please commit to

3   joining me to meet with Savannah's political leadership,

4   Mayor Van Johnson, the Savannah Police Department, and the

5   Chatham County Sheriff's office to discuss how to reduce

6   violent crime in and around Savannah, Georgia?

7   Ms. Milgram. Senator, I would commit to you that I

8   believe that violence is -- it is critically important that

9   we address it, and I, if I'm confirmed, am happy to assist

10 you in any way, with any meetings or otherwise, and any

11 other members of this committee in any way that I can.

12   Senator Ossoff. Thank you   Mr Chipman?

13   Mr. Chipman. Senator thank you very much for the

14 opportunity to again go to your state and meet with local

15 law enforcement, which is A.T.F.'s role to support in their

16 efforts to prevent violent crime.

17   Senator Ossoff. It is, indeed, and so, Mr. Chipman,

18 in the same vein, I'd like to also ask you if you'll please

19 make the same commitment to meet with me and the leadership

20 of Augusta's Police Department, the Richmond County

21 Sheriff's office, and leaders in and around Augusta,

22 Georgia to discuss similarly increasing rate of violent

23 crime in the Augusta area.

24   Mr. Chipman. Senator, I agree that I will commit to

25 that visit, and it will be nice to visit a place of Georgia

1   I have never visited.

2   Senator Ossoff. Thank you so much. I appreciate your

3   willingness to serve. Thank you again for putting

4   yourselves through this process. Senator Blackburn is

5   recognized for five minutes.

6   Senator Blackburn. To our witness, thank you for

7   bearing with us today as we have been in and out. Mr.

8   Chipman, I'm going to come to you. There's been a lot said

9   about your affiliations and the organizations and how that

10   might influence your work at the A.T.F. And one of the

11   things that I hear from Tennesseans is they want the A.T.F.

12   to be going after criminals, not after law-abiding gun

13   owners. So how would you xecute that?

14   Mr. Chipman. Thank you, Senator, and thank you also

15   for spending the time on the phone with me earlier so we

16   could meet.

17   Senator Blackburn. Sure.

18   Mr. Chipman. I think the perfect example of how

19   Tennesseans should expect A.T.F. to respond is how we

20   responded to your city that was bombed on Christmas. We

21   will always be there in the worst hours to determine who

22   committed a crime and bring them to justice if we can. We

23   will always be focused on criminals. That's what we do.

24   Senator Blackburn. And I hope you appreciate why

25   people are very concerned about your stance on the Second

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1   Amendment and are very concerned that you would be going

2   after law-abiding gun owners. So let me ask you this. In

3   the House Judiciary Committee hearing on 2019, you said,

4   and I'm quoting you, "Simply restating -- reinstating the

5   '90s era ban on assault weapons is not enough." So I want

6   you to tell me what is enough in relation to this

7   statement.

8   Mr. Chipman. Thank you for the question. In that

9   hearing, I was commenting on the fact that I had the

10   opportunity to enforce the National Firearms Act for 24

11   years. That was an act that balanced the right of

12   individuals to possess those firearms but had a regulatory

13   structure that, I found, kept them out of the hands of

14   criminals, which is the ultimate goal of all Americans. I

15   thought, and I expressed that belief at that time, that the

16   National Firearms Act would be a proper way to balance the

17   rights and responsibilities of Americans --

18   Senator Blackburn. So the National Firearms Act would

19   be enough.

20   Mr. Chipman. I believe that the National Firearms Act

21   would be --

22   Senator Blackburn. Let me ask you this. Because in

23   the same hearing, you continued -- and this gets to the

24   question that Senator Kennedy had for you. And I'm quoting

25   you. "Instead, we should regulate a broader class of

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1   firearms, including assault weapons manufactured before the

2   law's enactment. One option would be to require the

3   registration of all existing assault weapons under the

4   National Firearms Act, while banning the future manufacture

5   and sale of these firearms." So in these statements,

6   you're talking about expanding the National Firearms Act,

7   correct?

8   Mr. Chipman. Yes, ma'am.

9   Senator Blackburn. Okay. So that would not be

10   enforcing it as it is written. That would be a change of

11   policy. And then you would ban the f ture manufacture.

12   That would be a change of policy Banning the sale would

13   be a change of policy. And in these statements, and going

14   back to that hearing, you were referring to common

15   semiautomatic firearms when you speak of assault weapons,

16   correct?

17   Mr. Chipman. Senator, in this hearing, I was acting

18   as an advocate and was asked to propose solutions to

19   complex problems. As the --

20   Senator Blackburn. And you were referring to

21   semiautomatic weapons, correct?

22   Mr. Chipman. Yes, Senator. But --

23   Senator Blackburn. Yes. Thank you very much.

24   Mr. Chipman. -- as director of --

25   Senator Blackburn. Okay. Ms. Jaddou, I'd like to ask

1   you a question, please, ma'am. We are quite concerned

2   about some of the practices that have taken place under

3   U.S.C.I.S. During your time as the chief counsel at

4   U.S.C.I.S., the agency expanded the use of discretionary

5   parole activity from a restricted case-by-case basis int a

6   variety of new parole programs, such as International

7   Entrepreneur Parole, the Filipino World War II Veterans

8   Parole program, and the Central American Minor Parole

9   program.

10   Did this expanded use of discretionary parole through

11 these new programs actually circumven congressionally

12 established immigration policy, and did U.S.C.I.S. exceed

13 its authority under law cr ated by Congress by admitting

14 aliens who did not qualify for admission under normal and

15 legal immigration categories?

16   Ms. Jaddou. Thank you, Senator. And thank you for

17 taking the time to meet with me on the phone.

18   Senator Blackburn. Absolutely. Yes, I enjoyed it.

19   Ms. Jaddou. Thank you. Yes, I did too. Thank you.

20 Wi h regard to your question, we looked at the Immigration

21   nd Nationality Act, and I have worked with the, at the

22 time, other attorneys in the agency as well to determine if

23 it fits within the structure of the Immigration and

24 Nationality Act. And we did determine that, and therefore,

25 we proceeded.

1   Senator Blackburn. So you feel that none of these

2 programs went outside of the authority.

3   Ms. Jaddou. That was the determination we made at the

4 time.

5   Senator Blackburn. So why not just go by the law as

6 written?

7   Ms. Jaddou. So the way the law is structured is there

8 is a case-by-case determination.

9   Senator Blackburn. Correct.

10   Ms. Jaddou. And those programs certainly set out

11 guidelines for adjudicators, but none heless, every

12 individual must apply, must submit an application, must be

13 reviewed, have background checks. An adjudicator must

14 review that application very carefully before they make a

15 decision.

16   Senator Blackburn. Well, I will tell you this appears

17 when you expand the use of discretionary parole authority

18 and move away from a restricted case-by-case basis and put

19 these new programs in place. The appearance of that is

20 that you're making it easier to circumvent the law as

21 written, and that is problematic.

22   I know I'm over my time. I have a question for you on

23 the birth -- Ban Birth Tourism Act, a piece of legislation

24 that I introduced. I'm going to submit that to you --

25   Ms. Jaddou. Thank you.

1   Senator Blackburn. -- for the record. I know that

2   Senator Cruz asked you about that earlier and would

3   appreciate your attention to that question.

4   [The information appears in the appendix:]

5   / COMMITTEE INSERT

6   Ms. Jaddou. Absolutely.

7   Senator Blackburn. And I will say this, Mr. Chairman.

8   Ms. Jaddou, you have an adorable family, an your girls

9   deserve --

10   Ms. Jaddou. Thank you.

11   Senator Blackburn. -- all the i e cream that they

12   want to eat this afternoon.

13   Ms. Jaddou. We already secretly promised them a few

14   dollars.

15   [Laughter.]

16   Senator Blackburn. Because they have behaved

17   beautifully.

18   Ms. Jaddou. Aw, thank you.

19   Senator Blackburn. We give them the gold medal for

20   that.

21   [Laughter.]

22   Ms. Jaddou. Thank you.

23   Senator Ossoff. Thank you, Senator Blackburn.

24   Senator Coons is recognized for five minutes.

25   Senator Coons. Thank you, Mr. Chairman. And I'd like

1   to thank our remarkable panel of nominees for your

2   dedication, your willingness to serve, for all that you are

3   going to bring to your service. Listening to your

4   individual stories, to the journeys that brought you here,

5   was inspiring to me. We stand at a moment when the

6   American people are looking to us here in Washington, in

7   the federal government, in the Biden administration, in the

8   federal judiciary, here in Congress, to see their problems,

9   to hear their concerns, and to actually deliver some

10   meaningful solutions.

11   So if I can, Ms. Strickland, I j st wanted to ask you

12   a quick question about the difference between an advocate

13   and a judge and how you understand those different roles,

14   and then I'm going to get into more law enforcement related

15   issues for our remaining nominees. Ms. Strickland?

16   Ms. Strickland   Thank you for that question, Senator.

17   As an advocate, my role was defined by the Sixth Amendment,

18   to zealousl work within the bounds of law in the best

19   interests of my client, and I've had to -- tried to do that

20   ov r my career. The role of a judge is quite different.

21   The role of a judge is also defined under the Constitution,

22   and the judge is to approach every case neutrally, with

23   deliberately putting aside any personal opinions the judge

24   might have in order to fairly consider the facts, the law,

25   and the argument of counsel.

1   Senator Coons. Well, thank you, Ms. Strickland. If I

2 might also, Ms. Jaddou, U.S.C.I.S. -- I've gotten a number

3 of calls, as has my colleague Senator Hirono, about the

4 backlog for U.S.C.I.S. for fingerprinting, specifically in

5 Delaware, which has put thousands of Delawareans' lives n

6 hold, keeping them from visiting loved ones or getting

7 jobs. U.S.C.I.S. has made some strides recently to address

8 this and has cut the backlog in half, inclu ing by

9 eliminating some unnecessary requirements imposed by the

10 previous administration. Can you speak to how you will

11 address these ongoing processing backlogs and commit to

12 keeping me updated on the situation in my home state?

13   Ms. Jaddou. Thank yo , Senator. And thank you for

14 that question. This is exactly why I think this is the

15 right moment for me in this job. I have been in that

16 agency, and I understand those little, minute steps can

17 really create backlogs, time-sensitive backlogs. And I

18 have seen it so I could hit the ground running. I have

19 built such wonderful relationships with the dedicated men

20 and women at U.S.C.I.S., whom I admire tremendously, and I

21 know I can work with them, and not just them. It's partner

22 agencies as well that we need to build strong working

23 relationships. And I have a running start.

24   Senator Coons. Well, I look forward to working with

25 you in that context, and I know there's thousands --

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1   Ms. Jaddou. Absolutely.

2   Senator Coons. -- of families in my state that are

3   looking for some relief from these significant challenges.

4   Mr. Chipman, if I might, Senator Cornyn and I have

5   recently reintroduced a bill, the N.I.C.S. Denial

6   Notification Act, which would require federal authorities

7   to notify state and local law enforcement when someone goes

8   in, lies on their background check form, tr es to buy the

9   gun -- and this is someone who's a person prohibited, so

10   it's against the law for them to get that gun. Current law

11   does not require any notice to local law enforcement.

12   There were 100,000 federal background check denials in

13   2019. In some states, bec use the background check goes

14   through state police, they get immediate notification, but

15   in a majority of states, including mine, they don't.

16   Can you help explain why it's an urgent warning sign

17   when someone tries to buy a gun, fails their background

18   check because they're lying -- they're a convicted felon,

19   say -- and they're trying to get their hands on a gun? Why

20   is this something we should take up and pass a bill to

21   require notification to state and local law enforcement?

22   Mr. Chipman. Senator, first, thank you for the

23   question and thanks for your dedication to this important

24   issue. I view this as a near miss. In many professions,

25   you study a near miss because you feel lucky that the bad

1 thing didn't happen. If someone is willing to go into a

2 gun store and lie and commit a federal felony, we shouldn't

3 expect that it stops there because there are loopholes in

4 the law. As A.T.F. agents, it's our job to ensure that the

5 information we have is in the hands of local police who

6 might come across these people. So it's not only good

7 policy. It's a way A.T.F. can support local law

8 enforcement and keep them safe.

9   Senator Coons. Thank you. Now, I'd like to ask about

10 what we're going to be doing together to not just make law

11 enforcement more transparent, more ac ountable, but to make

12 law enforcement more effective. I'm from Wilmington,

13 Delaware. You just heard from Senator Ossoff from Georgia

14 concerns about a rise in violent crime in cities in his

15 state, in Savannah and A gusta and Atlanta. In my hometown

16 of Wilmington despite the best efforts of our mayor and

17 governor and our police department, we have seen a steady

18 in violent gun crime.

19   Mr. Polite, I understand from your testimony, you

20 be ame interested in serving as a prosecutor when your own

21 half-brother was murdered. And you've spent time clerking

22 for Judge Ambro, a personal friend, on the Third Circuit

23 and serving in the Skadden Arps office in Wilmington, a

24 place I was a summer associate. So you know a thing or two

25 about my hometown.

1   Mr. Chipman and Ms. Milgram, you're nominated to lead

2   the A.T.F. and D.E.A. and to work alongside Mr. Polite, who

3   will be leading, hopefully, D.O.J. Criminal Division. And

4   all three of you have significant experience in law

5   enforcement and have great experience in addressing violent

6   crime in American cities. Ms. Milgram, you spoke about

7   Camden and the work that you did.

8   I'd be interested in hearing from each of you what

9   role you see in coordinating between the A.T.F., D.E.A.,

10   and D.O.J.'s Criminal Division to reduce violence in our

11   communities, whether you'll commit to staying engaged with

12   me and with other members of this committee and the Senate

13   as we work with our local communities to try and address

14   and interrupt the ways in which drugs and guns and gangs

15   and violence seem to be going together, and how you see

16   this journey, should you be confirmed, of trying to bring

17   more peace, more justice, and more order to our

18   communities. If we could, in order, Mr. Chipman, Ms.

19   Milgram, Mr. Polite.

20   Mr. Chipman. Senator, first, yes. I commit to this

21   collaborative approach. It's one I found effective at

22   A.T.F., and I do believe that the A.T.F. will have

23   information and intelligence and techniques and technology

24   that, when married with the ground truth that a local law

25   enforcement agency has, that that's a good pathway to

1   preventing violent crime.

2   Senator Coons. Ms. Milgram?

3   Ms. Milgram. Thank you, Senator. I've had a job as a

4   state chief law enforcement officer where a prior attorney

5   general had taken over the police department of one of the

6   most dangerous cities in America. So I understand this

7   concern, and my belief is that one of the things we did

8   there was we partnered with the D.E.A. We partnered with

9   A.T.F. We partnered with other local law enforcement

10   agencies and state agencies in order to do a concerted

11   effort to reduce violence, improve community relations, and

12   bring accountability, and it was incredibly effective.

13   If I am confirmed to ead the D.E.A., I believe that

14   one of the great strengths of the D.E.A. today is its

15   partnerships with states and local law enforcement.

16   They're a big part of running task forces across the

17   country and also sit as an important part of H.I.D.T.A. So

18   I am deeply committed to addressing the issues of violent

19   crime. Drugs drive violence in our communities. In

20   Camden it was a huge part of the work we did, was drug

21   related. So you have my full commitment, if I'm confirmed,

22   to partner with you, other members of this committee and

23   Congress, as well as with the other agency heads and the

24   Department of Justice, in any way that I can to be helpful

25   on this.

1   Senator Coons. Thank you, Ms. Milgram. Mr. Polite?

2   Mr. Polite. Senator, thank you for this question, and

3   thank you for your commitment to this area. I would also

4   note that I'm a proud member of the Delaware Bar, and most

5   importantly, my wife was born in Wilmington, so we have

6   very close ties to your state.

7   Like my colleagues assembled here, I share in this

8   commitment to collaboration in this area. During my time

9   as U.S. attorney, this is exactly the way we approached

10   many of the same violent crime issues that crippled the

11   city of New Orleans. And what we did was establish what

12   was called the Multiagency Gang Unit   It included agents

13   from A.T.F., D.E.A., other state, local, and federal law

14   enforcement agencies that worked shoulder to shoulder, not

15   just in terms of sharing intelligence but actual personnel

16   and space where they investigated those cases and

17   ultimately decided what was the appropriate venue in order

18   to address violent crime that was caused disproportionately

19   by a small number of individuals in the New Orleans area.

20   That level of collaboration is what I view as being

21   the hallmark of our work then, and I look forward to, if

22   I'm confirmed, to lending my voice to those same

23   discussions and that same level of collaboration that you

24   articulated.

25   Senator Coons. Well, thank you. I'm not just a

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1   member of this committee. I'm a member of the subcommittee

2   that funds all of federal law enforcement, D.O.J., A.T.F.,

3   D.E.A. And I look forward to working with you because we

4   have a real challenge in this country. We need to

5   strengthen our communities. We need to strengthen

6   families. We need to push back on the drivers of violence

7   and division. But we also need to provide more effective,

8   more timely, more relevant federal resource to support

9   state and local law enforcement and communities as they are

10   trying to bring peace to our streets and justice to our

11   country.

12   So I look forward to working with all of you. Thank

13   you for your willingness t serve. And, Mr. Chairman, I

14   appreciate the time to question.

15   Senator Ossoff. Thank you, Senator Coons. Thanks

16   again to the nominees for your testimony, your willingness

17   to serve. Before I adjourn today's hearing, I want to

18   enter a number of letters into the record and make a few

19   logistical notes.

20   We have received a number of letters of support for

21   today's nominees from those across the political,

22   professional, and ideological spectrum. These include

23   letters of support for Ms. Cunningham from intellectual

24   property experts and practitioners, letters from multiple

25   law enforcement organizations in support of our executive

1   branch nominees, a letter of support from the Criminal

2   Defense Bar in support of Ms. Strickland, and many others.

3   I will enter all of those letters into the record without

4   objection.

5   Questions for the record will be due to the nominees

6   by 5 p.m. on Wednesday, June 2nd, and the record will

7   likewise remain open until that time to submit letters and

8   similar materials. With that, this hearing is adjourned.

9   [The information appears in the appendix:]

10   / COMMITTEE INSERT

11   [Whereupon, at 1:12 p.m., the committee was

12 adjourned.]

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C O N T E N T S

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