Nomination of Emil J. Bove, III
Nominee to be U.S. Circuit Judge for the Third Circuit
Questions for the Record
Submitted July 2, 2025

QUESTIONS FROM CHAIRMAN CHARLES E. GRASSLEY

1. During your hearing, there was considerable discussion about allegations in a recent whistleblower complaint regarding compliance with court orders.

   Please use this opportunity to address the context behind those allegations, your position, and any additional information you believe is important to ensure a fair and accurate understanding of the events.

   Response: As a part of the senior leadership at the Department of Justice (DOJ) since January 20, 2025, I have regularly participated in sensitive internal deliberations concerning litigation strategy and legal advice relating to Executive Branch actions and policy. Generally speaking, the substance of those deliberations has often included encouraging DOJ litigators to advocate zealously on behalf of the Executive Branch subject to ethical and legal constraints. However, while I have participated in the provision of legal advice regarding the scope of court orders, I have not advised a DOJ attorney or other government official to violate a court order.

   The whistleblower complaint that was leaked in the media on the day before my confirmation hearing presents inaccurate allegations relating to sensitive internal deliberations at DOJ concerning three ongoing litigations: *JGG v. Trump*, *DVD v. DHS*, and *Abrego Garcia v. Noem*. Like all other questions at the confirmation hearing, I addressed questions regarding the whistleblower complaint based on my best recollection of the events at issue, subject to the constraints described below. While I do not recall using one or more of the words alleged by the whistleblower and used by certain Senators at the hearing (often in ambiguous compound questions), I did my best to answer the questions by the terms of the (often yes-or-no) format in which the questions were posed.

   In responding to those types of questions as a judicial nominee and a member of the New Jersey and New York bars, I was and am constrained in my ability to address the facts underlying the whistleblower complaint. First, because each of the three cases referenced in the whistleblower complaint is ongoing, it would be inappropriate for me to comment further on the details of these matters as a judicial nominee. *See* Code of Conduct of U.S. Judges, Canon 3(A)(6). Second, I have an ethical obligation to preserve confidential communications and advice that I may have provided to clients, including at DOJ. *See, e.g.*, N.J. Rule 1.6; N.Y. Rule 1.6. Third, it would be inappropriate for me to disclose legal advice or other confidential information, arguably to the detriment of my clients, in a manner that could be viewed as an effort to advance my personal interest in confirmation. *See, e.g.*, N.J. Rule 1.8(b); N.Y. Rule 1.8(b). Fourth, efforts to obtain the Executive Branch's confidential information in the context

of a confirmation hearing present difficult separation-of-powers questions. Fifth, even the prospect that the Executive Branch's confidential information could be required to be disclosed in the context of a confirmation hearing would undermine the candor and free exchange of ideas that is necessary to the effective operation of the Executive Branch. *See Trump v. United States*, 603 U.S. 593, 612-13 (2024) (describing "the public interest in candid, objective, and even blunt or harsh opinions in Presidential decisionmaking, as well as the need to protect communications between high Government officials and those who advise and assist them in the performance of their manifold duties" (cleaned up)). Numerous nominees have taken the same approach, including Justice Kagan, who explained at her confirmation hearing: "I cannot reveal any kind of internal deliberations of the Department of Justice." Additional examples of similar positions taken by past nominees, who were confirmed, are set forth in Appendix A.

In light of the foregoing, as I explained at my confirmation hearing, I hewed to the line drawn by past nominees by identifying in general terms matters that I have worked on without getting into specifics about particular topics. Thus, while I confirmed that I participated in legal advice and deliberations relating to *JGG*, *DVD*, and *Abrego Garcia*, I must respectfully decline to disclose details regarding the advice and deliberations at issue to this Committee. However, the Deputy Attorney General has already stated publicly that the whistleblower's account of the March 14, 2025 meeting at DOJ—which took place prior to the initiation of *JGG*, much less the entry of any court orders—is not accurate. The whistleblower conceded on page 7 of the complaint that he "left the meeting understanding that DOJ would tell DHS to follow all court orders." The whistleblower also asserted at page 25 of the complaint that he "could not sign [a] brief" when he felt it contained "unsupported arguments." But the whistleblower felt no similar constraint with respect to DOJ's March 25, 2025 brief explaining the legal and factual reasons why "the Government has complied with the Court's orders" in *JGG*, which the whistleblower signed. ECF No. 58 at 13, *JGG v. Trump*, No. 25 Civ. 766 (D.D.C. Mar. 25, 2025).

While the whistleblower has suggested that DOJ took unsupported positions in *JGG*, *DVD*, and *Abrego Garcia*, DOJ received at least some emergency appellate relief from adverse trial court decisions in each case. The whistleblower claims that there was "no evidence" to support the allegation regarding Abrego Garcia's gang membership, but he also acknowledged the submission of the March 31, 2025 declaration of Robert Cerna, which discussed evidence of Abrego Garcia's alleged gang membership. *See* App. 59a, *Noem v. Abrego Garcia*, No. 24A949 (Apr. 7, 2025) (describing immigration judge finding that Abrego Garcia was a "danger to the community because the evidence show[ed] that he is a verified member of [MS-13]" (cleaned up)). Additionally, the whistleblower's complaint alleges that the whistleblower asserted that the government "could not" raise an argument "on appeal for the first time." Not so. Even when an argument is not raised below, a court of appeals can consider an issue raised for the first time on appeal, including by exercising its discretion to do so or if the responding party fails to argue that the argument was forfeited. *See, e.g.*, *El Puente v. United States Army Corps of Eng'rs*, 100 F.4th 236, 256 (D.C. Cir. 2024); ("[A] forfeiture can be forfeited by failing on appeal to argue an argument was forfeited." (cleaned up)); *Flynn v. Comm'r*, 269

F.3d 1064, 1069 (D.C. Cir. 2001) ("The rule is not absolute, and courts of appeals have discretion to address issues raised for the first time on appeal.").

2. Your leadership style was discussed during the hearing, and several references were made to how you manage high-profile matters.

   Please describe how you lead teams in complex or sensitive cases, how you foster professionalism and sound judgment in those roles, and any other insights you believe would help the Committee better understand your management approach.

   Response: Throughout my career, I have done my best to lead by example through hard work and a detail-oriented approach that requires ethical behavior and rewards merit.

   I honed my leadership style and management skills in environments that have often involved significant public scrutiny. In 2016, I was one of the federal prosecutors present at the FBI's command center in Manhattan as Ahmad Khan Rahimi detonated bombs in New Jersey and New York, and I was part of the trial team that helped vindicate the rights of Rahimi's New Jersey and New York victims in 2017. Those experiences helped me to assume more of a leadership role in 2018, when I was present in the same FBI command center to help protect Senator Booker and others from a plot involving improvised explosive devices mailed from Florida by Cesar Sayoc.

   These types of high-pressure environments are exacting, and the highest levels of professionalism and sound judgment are required in order to achieve optimal results for the parties involved, the victims, and the public. I faced a steep learning curve in my work as a lawyer, but I focused on these values while I learned on the job. I believe that is why I was ultimately trusted to help train junior prosecutors, to supervise one of the most important national security units in the country at the U.S. Attorney's Office for the Southern District of New York, and to promote an appropriate culture of ethics and professionalism at that Office through my work on the hiring committee, the discovery committee, and the capital case committee. I am proud that people I have mentored through these efforts have risen to leadership positions in government and the private sector.

3. During your hearing, several questions were raised about prosecutorial discretion related to the Justice Department's decision to dismiss the prosecution of Mayor Adams.

   Please provide any further perspective you may wish to offer about how you approached this matter and any broader context that would assist the Committee in understanding this issue.

   Response: The decision to seek dismissal of the charges against Mayor Adams was well within the scope of prosecutorial discretion derived from Article II's Vesting Clause and the Take Care Clause. *See, e.g.*, *Trump v. United States*, 603 U.S. 593, 620 (2024) ("Investigative and

prosecutorial decisionmaking is the special province of the Executive Branch, and the Constitution vests the entirety of the executive power in the President." (cleaned up)).

Mayor Adams's submissions to the district court and sworn statements at a February 19, 2025 hearing refute false public allegations by third parties regarding some sort of improper *quid pro quo* underlying DOJ's decision to file that motion. *See* ECF No. 145 at 20-21, 44-45, *United States v. Adams*, No. 24 Cr. 556 (S.D.N.Y. 2025). The fact that prosecutors in Manhattan convinced a grand jury to return charges against Mayor Adams did not require the senior leadership at DOJ to ignore the policy-level concerns described in DOJ's public filings regarding weaponization, *i.e.*, abuse, of the criminal justice process and impediments to Mayor Adams's ability to govern and campaign. *See Tyson v. Trigg*, 50 F.3d 436, 441 (7th Cir. 1995) ("Instances in which grand juries refuse to return indictments at the behest of the prosecutor are almost as rare as hen's teeth.").

As explained in DOJ's March 7, 2025 filing, the prosecution team's public protests relating to the dismissal motion were belied by their internal communications. In January 2025, prosecutors assigned to the case wrote about their intention to "distance" themselves from, and "create some space" with, the public conduct of the former U.S. Attorney in relation to the case. ECF No. 160 at 15-16, *United States v. Adams*, No. 24 Cr. 556 (S.D.N.Y. Mar. 7, 2025). The same prosecutor who later wrote that only a "coward" or a "fool" would dismiss the charges conceded in writing in January 2025 that the concern that the former U.S. Attorney "had a political motive in bringing the case . . . . [s]eem[ed] pretty plausible." *Id.* at 16. In February 2025, Daneille Sassoon wrote that she was "personally disappointed" in her predecessor's "self-serving actions." *Id.* at 17. Even the district court observed that, "[t]o be sure, it is fair to question the prudence of Williams's decision to publish such statements before Mayor Adams's case had been adjudicated." *United States v. Adams*, 2025 WL 978572, at 28 n.44 (S.D.N.Y. Apr. 2, 2025). DOJ leadership did, in fact, question the prudence of Williams's statements as a former U.S. Attorney about a pending case that was filed during his tenure. Regardless of whether those statements merited legal relief from the district court in response to a defense motion, it was well within DOJ's discretion to conclude that the statements warranted dismissal for policy reasons.

In a public filing, DOJ identified examples of previous instances in which prosecutors dismissed charges, including for policy reasons. ECF No. 160 at 9-10, *United States v. Adams*, No. 24 Cr. 556 (S.D.N.Y. Mar. 7, 2025). As another example, in 2022, DOJ moved to dismiss obstruction charges against Judge Shelley Joseph, which related to allegations that Judge Joseph helped an illegal alien flee her courthouse in 2018. *See* ECF No. 177-1, *United States v. Joseph*, No. 19 Cr. 10141 (D. Mass.). There was no suggestion in the motion that the charges against Judge Joseph were legally or factually deficient. As in the 2025 motion to dismiss the charges against Mayor Adams, DOJ sought to dismiss the charges against Judge Joseph without prejudice to renewal. *Id.* at 2. The court granted the motion, as filed, and dismissed the charges against Judge Joseph without prejudice. While the district court dismissed the charges against Mayor Adams with prejudice, the handling of the case against Judge Joseph

further illustrates that there was nothing improper about DOJ's handling of the dismissal motion in the case against Mayor Adams.

4. During your hearing, several of my Democratic colleagues raised questions about a February 14, 2025 meeting with attorneys from the Justice Department's Public Integrity Section. Unfortunately, you did not have an opportunity to fully respond on the record.

   For the benefit of the Committee, please provide your account of the context and purpose of this meeting and any other significant information you believe would expand upon the responses you were unable to complete at the hearing.

   Response: If I had been permitted to do so, I would have explained at the confirmation hearing that I addressed questions relating to the February 14, 2025 video meeting with attorneys from the Public Integrity Section, like all other questions, to the best of my recollection. I would have added that I began to speak with supervisors from the Public Integrity Section regarding the need to file a motion to dismiss the charges against Mayor Adams after Danielle Sassoon resigned on the afternoon of February 13, 2025. For one of those meetings, Public Integrity Section prosecutors reportedly returned from "a bar nearby" to speak with me, and "returned to the bar" after the meeting, "according to sources familiar with the matter." *See* https://www.cnn.com/2025/02/14/politics/eric-adams-justice-department-tick-tock.
   Following a series of publicly reported resignations at DOJ, including by attorneys in the supervisory chain of the Public Integrity Section, the larger video meeting with the Public Integrity Section was convened the following day.

   My comments during the February 14, 2025 video meeting were informed by the earlier meetings. It was never my intention to coerce, pressure, or induce any DOJ attorney—through adverse employment actions, threats, rewards, or otherwise—to sign the motion to dismiss the charges against Mayor Adams. To the contrary, I intended to convey during the February 14, 2025 video meeting that (1) I wished to move past the resignations and return to the Public Integrity Section's remaining work, (2) no one would be terminated if they declined to sign the motion, and (3) attorneys who comported themselves in a manner consistent with the zealous advocacy principles set forth in the Attorney General's February 5, 2025 memorandum would be considered for existing vacancies in the supervisory chain of the Public Integrity Section.

   In responding to the questions at the hearing, I noted that I hoped I would have an opportunity to explain my answers. The questions asked were often ambiguous, compound questions. Some also asked about the alleged use of specific words or phrases during the meeting. I did my best to answer the questions in the format they were posed and to the best of my recollection.

   For example, at my confirmation hearing, I was asked whether I had "state[d], suggest[ed], or impl[ied] that the section's career attorneys could be fired if none of them agreed to sign the brief dismissing Mayor Adams's indictment." According to public reporting from February

2025, I told the attorneys on the call that "it had been a long week and that [I] wanted all of them to be able to move on, according to two people who were on the call." *See* https://www.theguardian.com/us-news/2025/feb/19/donald-trump-eric-adams-justice-department. The report also indicated that I "told them [I] didn't want to get anyone in trouble, . . . so [I] didn't want to know who was opposed to signing the motion to dismiss." The report also stated that I wanted "two trial attorneys to attach their names because that was the standard practice and because it was easier to have a team than being alone." *Id.* This is all consistent with my general recollection of the meeting.

Another question at my confirmation hearing suggested that I "told attorneys that it is their job to implement the president's agenda and that they have to follow orders from the president and that there's no room for dissent in the chain of command." I do not recall using that specific phrase as an order to the Public Integrity Section during the meeting. In any event, if I had the opportunity at the hearing, I would have explained that I have frequently noted that attorneys have an obligation to provide advice about factual issues and the strength of legal arguments. Consistent with the Attorney General's February 5, 2025 memorandum, however, attorneys working at DOJ do not have "latitude to substitute personal political views or judgments" for the Administration's views, or to "refuse to advance good-faith arguments" on behalf of the Administration.

Following the February 14, 2025 video meeting, I worked collaboratively with the attorneys who ultimately signed the motion with me to arrive at a product that I understood to be acceptable to each of us. I was sensitive to the fact that those attorneys had not been involved in the lengthy meetings with other prosecutors and Mayor Adams's defense counsel that led DOJ to seek dismissal of the charges. Thus, the publicly filed motion sought to make clear to the district court that DOJ's senior leadership was responsible for the factual representations in the document. *E.g.*, ECF No. 122 ¶¶ 4-6, *United States v. Adams*, No. 24 Cr. 556 (S.D.N.Y. Feb. 14, 2025). While I believe the attorneys who signed that motion would have ably represented DOJ at the February 19, 2025 hearing had they been asked to do so, I decided on my own to appear at that hearing alone on behalf of DOJ because I believed that approach was more consistent with the leadership principles and professionalism that I have sought to promote during my tenure.

5. Some of my Democratic colleagues raised questions about personnel changes related to January 6th cases and a January 31, 2025 Justice Department memorandum.

Please provide the Committee with an overview of how you approached those decisions and any additional details you feel are important for this Committee to understand.

Response: My record makes clear that, as a former prosecutor with almost a decade of experience enforcing criminal laws, I condemn all forms of illegal activity. That is especially true with respect to acts of violence against law enforcement. At the same time, based on a variety of professional experiences, I find overreach and heavy-handed tactics by prosecutors

and law enforcement to be equally unacceptable. These concerns are not mutually exclusive, and publicly available materials suggest that both concerns were implicated by some of the events on January 6, 2021.

At my confirmation hearing, I was asked about two separate personnel decisions: (1) the terminations of probationary employees at the U.S. Attorney's Office for the District of Columbia who had worked on prosecutions relating to events on January 6, 2021; and (2) DOJ's request for a list of "all current and former FBI personnel assigned at any time to investigations and/or prosecutions relating to . . . events that occurred . . . on January 6, 2021," ECF No. 25-5, *Does 1-9 v. DOJ*, No. 25 Civ. 325 (D.D.C. Feb. 24, 2025). I am limited in the extent to which I can disclose confidential information relating to these decisions for the reasons I explained in response to question 1, including that these decisions and the underlying events on January 6, 2021 are subject to ongoing litigation in federal court and before the Merit Systems Protection Board. *See, e.g.*, *Blassingame, et al. v. Trump*, No. 21 Civ. 858 (D.D.C.); *Does 1-9 v. DOJ*, No. 25 Civ. 325 (D.D.C.); *FBI Agents Ass'n v. DOJ*, No. 25 Civ. 328 (D.D.C.). However, publicly available materials provide important context for each decision.

I issued a publicly available memorandum on January 31, 2025 relating to the terminations of the probationary employees at the U.S. Attorney's Office for the District of Columbia. The memorandum explained my understanding that "after President Trump was elected to his second term in Office, the Biden Administration's Justice Department converted these [term] employees to permanent status," which "resulted in the mass, purportedly permanent hiring of a group of AUSAs" that "improperly hindered the ability of Acting U.S. Attorney [Ed] Martin to staff his office in furtherance of his obligation to faithfully implement the agenda that the American people elected President Trump to execute." The memorandum further explained that these "subversive personnel actions" drove my thinking about the termination decisions of these probationary employees.

I issued a second memorandum on January 31, 2025, which is also publicly available, requesting the list of FBI employees who were assigned to investigations and prosecutions relating to events on January 6, 2021. The memorandum stated that the requested list would be used to "commence a review process to determine whether any additional personnel actions are necessary." Consistent with that explanation, the Acting Director of the FBI indicated in a February 4, 2025 email that he was "confident" that DOJ would "undertake a full and fair review of the data we provided" and that "the FBI does not consider anyone's identification on one of these lists as an indicator of misconduct." ECF No. 11-2, *Does 1-9 v. DOJ*, No. 25 Civ. 325 (D.D.C. Feb. 24, 2025). The following day, I sent a private email to the FBI that reiterated the point: "No FBI employee who simply followed orders and carried out their duties in an ethical manner with respect to January 6 investigations is at risk of termination or other penalties." ECF No. 11-3, *id.* In light of the ongoing litigation, DOJ "has not commenced this [review] process" or "accessed the unclassified list of names that prior acting FBI leadership claimed to have sent." ECF No. 45-1 at 4, *id.*

Appendix A. Statements By Prior Nominees Regarding Non-Disclosure Of Internal Government Deliberations

- Confirmation Hearing of Chief Justice John Roberts, available at https://www.govinfo.gov/content/pkg/GPO-CHRG-ROBERTS/pdf/GPO-CHRG-ROBERTS.pdf.
    - "[Y]ou have to have a candid exchange among lawyers in presenting cases to the Court in order to effectively represent your client whether your client is the Government of the United States or a private company . . . And yet if that was then revealed to your adversary or to the Court, it would obviously prejudice the presentation. . . . And if those things were going to be regularly revealed, people wouldn't make those types of analyses and judgments."
- Confirmation Hearing of Justice Elena Kagan, available at https://www.judiciary.senate.gov/imo/media/doc/CHRG-111shrg67622.pdf.
    - "I cannot reveal any kind of internal deliberations of the Department of Justice."
    - "I don't think that I can talk about internal deliberations of the Solicitor General's office whether with respect to the White House or otherwise."
- Confirmation of Justice Brett Kavanaugh, available at https://www.govinfo.gov/content/pkg/CHRG-109shrg27916/pdf/CHRG-109shrg27916.pdf.
    - "[W]ith respect to individual deliberations [at the White House] about prospective judicial nominees, that's something that it's not appropriate for me to disclose in this context . . . ."
- Response by Justice Ketanji Brown Jackson to question for the record by Senator Josh Hawley, available at https://www.judiciary.senate.gov/imo/media/doc/Judge%20Ketanji%20Brown%20Jackson%20Written%20Responses%20to%20Questions%20for%20the%20Record.pdf.
    - "Under the ethics rules that apply to lawyers, an attorney has a duty to represent her clients zealously, which includes refraining from contradicting her client's legal arguments and/or undermining her client's interests by publicly declaring the lawyer's own personal disagreement with the legal position or alleged behavior of her client. These standards apply even after termination of the representation."

- Response by Judge Srikanth Srinivasan to question for the record by Chairman Chuck Grassley, available at https://www.judiciary.senate.gov/imo/media/doc/041013QFRs-Srinivasan.pdf.
    - "With respect to whether it would be appropriate for me to provide internal Solicitor General memoranda in connection with my nomination, I agree with the concerns expressed by all then-living Solicitors General in a letter to the Committee dated June 24, 2002. That letter expressed concerns about any request to disclose internal Solicitor General memoranda because the Office's 'decisionmaking process required the unbridled, open exchange of ideas—an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. . . . High-level decisionmaking requires candor, and candor in turn requires confidentiality.'"
- Response by Judge Greg Katsas to question for the record by Ranking Member Dick Durbin, available at https://www.judiciary.senate.gov/imo/media/doc/Katsas%20Responses%20to%20QFRs.pdf.
    - "In preparing for my own confirmation hearing, I determined that I could answer the questions posed to me by Senator Feinstein about whether or not I had worked on or provided legal advice on particular matters since joining the White House Counsel's Office. I also determined that I could not answer further questions about the substance of my advice or any other internal deliberations on those matters. This was based on an assessment of the specific circumstances presented by my own nomination, as well as the answers provided under similar circumstances while the Committee was considering the judicial nominations of Justice Kagan and Judge Kavanaugh."
- Response by Judge Steven Menashi to question for the record by Senator Dianne Feinstein, available at https://www.judiciary.senate.gov/imo/media/doc/Menashi%20Responses%20to%20QFRs.pdf.
    - "As a general matter, the legal advice I provide in the executive branch is subject to executive branch confidentiality interests. A number of legal doctrines protect the confidentiality of these communications. These include the presidential communications privilege, the deliberative process privilege, the executive privilege, and the attorney-client privilege. An attorney may not waive these privileges unilaterally."

- Response by Judge Bradley Garcia to question for the record by Senator Ted Cruz, available at https://www.judiciary.senate.gov/imo/media/doc/QFR%20Responses%20-%20Garcia%20-%202022-07-27.pdf.
    - "Consistent with my duties of confidentiality as an attorney, and the approach taken by past nominees who were Executive Branch lawyers, I am not able to comment on the content of my advice on that or any other matter."
- Response by Judge David Barron to question for the record by Chairman Chuck Grassley, available at https://www.judiciary.senate.gov/imo/media/doc/112013QFRs-Barron.pdf.
    - "Due to classification requirements and applicable privileges, I am not at liberty to discuss confidential advice I may have given while serving in the executive branch, including any advice I may have given regarding the merits of disclosure."
- Response by Judge Jeannette Vargas to question for the record by Senator Mike Lee, available at https://www.judiciary.senate.gov/imo/media/doc/2024-04-17_-_qfr_responses_-_vargas.pdf.
    - "The canons of professional responsibility prohibit me from disclosing confidential information received in the course of that representation or from discussing the merits of that pending matter beyond what is set forth in the Government's public filings."
- Response by Elizabeth Prelogar to question for the record by Senator Josh Hawley, available at https://www.judiciary.senate.gov/imo/media/doc/Prelogar%20Responses%20to%20Questions%20for%20the%20Record.pdf.
    - "As Noel Francisco observed in response to questions from this Committee when he was the nominee for Solicitor General, it would be inappropriate to comment on internal Executive Branch deliberations as to the handling of any specific case."
- Response by Helaine Greenfeld to question for the record by Chairman Chuck Grassley, available at https://www.judiciary.senate.gov/imo/media/doc/Greenfeld%20QFR%20Responses.pdf.
    - "With respect to the disclosure of additional information related to your inquiry, the Department has also stated that 'it has long been the Department's policy to protect the confidentiality interests in internal pre-decisional deliberations including non-public information related to such matters, including seeking ethics advice. To disclose any ethics communications would have a chilling effect on Department employees' willingness to speak openly and candidly with ethics officials on ethics matters.'"