Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge John Andrew Kazen
Nominee to be a United States District Judge for the Southern District of Texas

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

   Response: I do not agree with this statement. I believe that an interpretation of the Constitution should be based on following and applying binding precedent without consideration of my personal morals, values, or beliefs.

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

   Response: I am not familiar with this statement, and I do not have any information on the context in which it was made. To the extent that this statement suggests that lower court judges should attempt to circumvent Supreme Court precedent, I disagree with it. As a magistrate judge, I have not written any opinions that I expected to be reversed. To the contrary, I strive to correctly interpret and apply binding Supreme Court and Fifth Circuit precedent.

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

   Response: Title 28 United States Code, Section 2254 provides:

   > The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

   28 U.S.C § 2254(a). A federal court may not grant habeas corpus relief to a state prisoner unless he "has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A). To prevail on a habeas petition of this type, the petitioner must establish that the state court decision "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).

   Additionally, an application based on a claim that was adjudicated on the merits in state court proceedings cannot be granted unless the adjudication of the claim resulted in a

decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. § 2254(d).

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

   Response: Title 28 United States Code, Section 2255 provides:

   A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

   28 U.S.C § 2255(a). A prisoner may also challenge the constitutionality of their conviction or sentence under 28 U.S.C. § 2241 in a civil action against the warden of the facility in which they are housed. These civil suits are filed in the jurisdiction where the prison is located. *See* 28 U.S.C. § 2241(d).

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

   Response: In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina*, the Supreme Court held that the race-based admissions programs at Harvard College and University of North California violated Title VI and the Equal Protection Clause of the Fourteenth Amendment, respectively. The Supreme Court concluded that the race-based admissions programs of both schools failed strict scrutiny, reviewing the programs in light of the risks and limits set forth in *Grutter v. Bollinger*, 539 U.S. 306 (2003).

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

   Response: Yes.

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

   Response: As a partner of the law firm Kazen, Meurer & Perez, LLP, I was regularly involved in hiring decisions for staff and associate attorneys. As a magistrate judge, I was involved in the hiring of my case manager, and I make annual hiring decisions regarding law clerks.

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

   Response: No.

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

   Response: No.

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

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

   Response: No. Not to my knowledge.

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

    Response: Yes. *See, e.g.*, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023); *Fisher v. Univ. of Texas at Austin,* 758 F.3d 633 (5th Cir. 2014), *aff'd*, 579 U.S. 365 (2016).

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

    Response: The Supreme Court held that a business may refuse, on religious grounds, to provide services to same-sex couples when doing so would require the business to speak a message with which it disagrees. The Court found that the wedding websites the plaintiff sought to create qualified as pure speech protected by the First Amendment. The Court grounded its analysis in its compelled-speech precedents within its First Amendment jurisprudence. The Court held that the First Amendment prohibits Colorado from forcing a website designer to create expressive designs speaking messages with which the designer disagrees.

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

Is this a correct statement of the law?

Response: The Supreme Court recently referenced this quote in *303 Creative LLC v. Elenis*, 600 U.S. 570, 585 (2023), and it is my understanding that *Barnette* remains good law. To the extent this question asks for my personal opinion as to the correctness of Supreme Court precedent, as a sitting magistrate judge and district court nominee, I am generally prohibited from doing so. If confirmed as a district judge, I will faithfully apply all binding precedent of the Supreme Court to the matters that come before me.

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

Response: If I were presented with the question of whether a law that regulates speech is "content-based" or "content-neutral," I would apply binding Supreme Court and Fifth Circuit precedent, including *Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015) and *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61 (2022). In *Reed*, the Supreme Court held that "[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." 576 U.S. at 163 (citations omitted). Pursuant to *Reed*, "the crucial first step in the content-neutrality analysis" is "determining whether the law is content neutral on its face." *Id.* at 165. If is determined that the law is neutral on its face, I would then consider "the law's justification or purpose" to determine whether it is "content-based." *Id.* at 166.

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

Response: The Supreme Court has held that "[t]rue threats are 'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.'" *Counterman v. Colorado*, 600 U.S. 66, 74 (2023). The First Amendment "requires proof that the defendant had some subjective understanding of the threatening nature of his statements," but "a mental state of recklessness is sufficient." *Id.* at 2111–12. The government must show "that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence." *Id.* But the First Amendment requires no more than a recklessness mens rea standard. *Id.* at 2113.

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

Response: The Supreme Court has identified factual matters as "questions of who did what, when or where, how or why." *E.g., U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018). Furthermore, Black's Law Dictionary defines "fact" as "[s]omething that actually exists; an aspect of reality" or "[a]n actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation." BLACK'S LAW DICTIONARY (11th ed. 2019). The Circuit

Courts of Appeal make judgments on findings of fact and conclusions of law in the context of determining the scope of appellate review. In *SEC v. Fox*, 855 F.2d 247 (5th Cir. 1988), the Fifth Circuit said, "with regard to ... determining whether mixed questions of law and fact are to be treated as questions of law or fact for purposes of appellate review, that sometimes the decision 'has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question.'" (citing *Pierce v. Underwood*, 487 U.S. 552 (1988)).

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

Response: The factors that a judge must consider when making sentencing decisions are set forth in 18 U.S.C. § 3553(a). The statute does not provide that any one factor is more important than another. If confirmed, I would follow and apply binding precedent from the Supreme Court and the Fifth Circuit concerning those factors.

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

Response: As a sitting magistrate judge and district court judge nominee, the Code of Conduct for United State Judges precludes me from offering commentary concerning any personal opinions I might have about Supreme Court precedent because related issues could come before me, and I would not want litigants to think I had prejudged those issues. If confirmed as a district court judge, I will faithfully apply all Supreme Court and Fifth Circuit precedent without regard to any personal views I might have.

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

Response: As a sitting magistrate judge and district court judge nominee, the Code of Conduct for United State Judges precludes me from offering commentary concerning any personal opinions I might have about Fifth Circuit precedent because related issues could come before me, and I would not want litigants to think I had prejudged those issues. If confirmed as a district court judge, I will faithfully apply all Supreme Court and Fifth Circuit precedent without regard to any personal views I might have.

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

Response: Section 1507 of Title 18 provides that, "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both."

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

Response: I am unaware of any precedent of the United States Supreme Court or of the Fifth Circuit holding that 18 U.S.C. § 1507 is constitutional on its face. In *Cox v. Louisiana*, 379 U.S. 559, 561–64 (1965), the Supreme Court held that a Louisiana statute modeled after a bill pertaining to the federal judiciary, later enacted as 18 U.S.C. § 1507, was constitutionally valid on its face. Moreover, as a current magistrate judge and district court nominee, the Code of Conduct for United State Judges precludes me from offering personal opinions I might have about the constitutionality of a federal statute because related issues could come before me, and I would not want litigants to think I had prejudged those issues. If confirmed, and if confronted with a constitutional challenge to section 1507, I will faithfully apply binding precedent.

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

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

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. However, there are a small number of cases and areas of law that are so well settled and unlikely to be litigated further that an opinion on those areas is not likely to erode public confidence in the judicial system. Consistent with past judicial nominees, I believe that I am allowed to opine on the correctness of *Brown v. Board of Education* and state that I believe it was correctly decided.

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

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. However, there are a small number of cases and areas of law that are so well settled and unlikely to be litigated further that an opinion on those areas is not likely to erode public confidence in the judicial system. Consistent with past judicial nominees, I believe that I am allowed to opine on the correctness of *Loving v. Virginia* and state that I believe it was correctly decided.

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

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See*

Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Griswold v. Connecticut* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: The Supreme Court recently overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). *Dobbs* is binding precedent, and I will apply it fully and faithfully.

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

Response: The Supreme Court recently overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). *Dobbs* is binding precedent, and I will apply it fully and faithfully.

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

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Gonzales v. Carhart* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it

is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *District of Columbia v. Heller* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *McDonald v. City of Chicago* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *New York State Rifle & Pistol Association v. Bruen*

and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Dobbs v. Jackson Women's Health* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: Under the Code of Judicial Conduct, it is generally improper for a judicial nominee to comment on the correctness of any opinion of any court. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district

judge, I will faithfully apply *303 Creative LLC v. Elenis* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: When considering the constitutionality of a regulation on firearms, district courts must consider whether "the Second Amendment's plain text covers the restricted conduct," and, if so, whether the government has carried its burden "to demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022); *see also McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); *see also United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023).

23. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: On April 8, 2022, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Southern District of Texas. On March 17, 2023, I interviewed with the Federal Judiciary Evaluation

Committee established by Senators Cornyn and Cruz. On May 15, 2023, I interviewed separately with Senators Cornyn and Cruz. On June 12, 2023, I interviewed with attorneys from the White House Counsel's Office. Since June 20, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 30, 2023, the President announced his intent to nominate me. On September 11, 2023, the President sent my nomination to the United States Senate.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

a. If yes,
   i. Who?
   ii. What advice did they give?

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

Response: No.

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

Response: On April 8, 2022, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Southern District of Texas. On March 17, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. On May 15, 2023, I interviewed separately with Senators Cornyn and Cruz. On June 12, 2023, I interviewed with attorneys from the White House Counsel's Office. Since June 20, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 30, 2023, the President announced his intent to nominate me. On September 11, 2023, the President sent my nomination to the United States Senate.

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

Response: I received these questions from the Office of Legal Policy at the Department of Justice on October 11, 2023. I prepared my responses and submitted a draft of those responses to the Office of Legal Policy. I made additional minor revisions in response to comments from the Office of Legal Policy. I then finalized and submitted these responses.

Senate Judiciary Committee
Nominations Hearing
October 4, 2023
Questions for the Record
Senator Amy Klobuchar

John A. Kazen, nominee to be U.S. District Court Judge for the Southern District of Texas

Since 2018, you have served as a magistrate judge in the Southern District of Texas. You were appointed to serve as a magistrate by the sitting Article III judges of the court, and in this capacity you have presided over more than 1,800 misdemeanor criminal cases as well as several civil trials.

- **What are some of the most valuable lessons that you have learned while serving as a magistrate judge?**

  Response: My service as a magistrate judge since June 2018 has provided me with a broad range of experience in criminal and civil law issues. I have learned that it is important to preside over cases with patience for the attorneys and litigants who appear in my court and that it is important to give the attorneys and litigants an opportunity to fully explain their positions and arguments to the court. I also appreciate that as a judge I have the opportunity to serve as a mentor and role model for the lawyers who appear in my court and the law clerks who work in my chambers.

Senator Mike Lee
Questions for the Record
John Andrew Kazen, Nominee to the United States District Court for the Southern District of Texas

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

   Response: My judicial philosophy has been to faithfully apply the law to the facts of the case before me, to decide cases and legal issues without bias or prejudice, to treat the litigants with respect, and to provide them an opportunity to be heard.

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

   Response: Initially, I would look to precedent of the Supreme Court and the Fifth Circuit for their interpretation of the federal statute. If there is no binding precedent, then I would determine if the statute is ambiguous or unambiguous. If it is unambiguous, I would interpret the statute by looking at its plain meaning. If the statute is ambiguous, I would apply the applicable canons of statutory construction and consider persuasive precedent from other courts and the legislative history of the statute, keeping in mind the Supreme Court's admonition that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

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

   Response**:** Initially, I would consult precedent of the Supreme Court and the Fifth Circuit and apply their interpretation of a constitutional provision. However, if it is a matter of first impression, I would look to the plain meaning of the provision and then apply interpretive principles, following the methods of construction and interpretation employed by the Supreme Court.

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

   Response: Supreme Court precedent instructs us that the plain meaning and original meaning of the text of a constitutional provision are essential in interpreting the Constitution. The Supreme Court has directed lower courts to look at the plain text and original meaning in several recent cases and in certain contexts. *See, e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *Kennedy v. Bremerton School District*, 142 S. Ct 2407 (2022); *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). Thus, when faced with interpreting the Constitution on an unprecedented matter, I would apply the plain meaning of the text and then look to interpretive principles described in recent Supreme Court and Fifth Circuit precedent.

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

   Response**:** I first determine whether there is binding Supreme Court or Fifth Circuit precedent interpreting the relevant text. If there is not, I next consider the plain meaning of the text. If the text is not ambiguous, then its plain meaning should resolve the interpretation of the statute. Please also see my response to Question 2.

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

   Response: The Supreme Court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cty*., 140 S. Ct. 1731, 1738 (2020). If confirmed as a district judge, I will continue to faithfully apply Supreme Court precedent as it applies to statutory and constitutional interpretation.

7. **What are the constitutional requirements for standing?**

   Response: To meet the constitutional requirements for standing, a party must establish that it has a genuine stake in the outcome of a case because (1) there is a concrete and particularized injury; (2) that injury is traceable to the allegedly unlawful action; and (3) the injury is redressable by a favorable judicial decision. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

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

   Response: The Supreme Court has interpreted the Necessary and Proper Clause in Article I, Section 8 of the Constitution to mean Congress has the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, § 8, cl. 18; *see McCulloch v. Maryland*, 17 U.S. 316, 324 (1819) ("Congress is authorized to pass all laws 'necessary and proper' to carry into execution the powers conferred on it.").

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

   Response: In *Nat. Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012), the Supreme Court held that the "[t]he question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." If faced with this issue as a judge, I would follow Supreme Court and Fifth Circuit precedent.

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

Response: The Supreme Court has held that the Constitution protects certain rights that are not expressly enumerated in the Constitution when those rights are deeply rooted in the Nation's "history and tradition" and "implicit in the concept of ordered liberty*." See Washington v. Glucksberg*, 117 S.Ct. 2258, 2268 (1997). Some examples of these rights are the right to privacy (*Griswold v. Connecticut*, 381 U.S. 479 (1965)); the right to marry (*Loving v. Virginia,* 388 U.S. 1 (1967) and *Obergefell v. Hodges*, 576 U.S. 644 (2015)); the right to travel (*Kent v. Dulles*, 357 U.S. 116 (1958)); the right to have children (*Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942)); and the right to educate your children (*Meyer v. Nebraska*, 262 U.S. 390 (1923)).

11. What rights are protected under substantive due process?

Response: The Supreme Court has held that the rights protected under substantive due process consist of unenumerated fundamental rights that are "objectively, deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). These rights have been identified in my response to Question 10.

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court held that a state law banning the use of contraceptives by married couples was a violation of substantive due process under the Constitution. It further held in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), that the Constitution does not protect the economic rights at stake in *Lochner v. New York.* If confirmed as a district court judge, I will be bound to follow Supreme Court precedent.

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

Response: The Supreme Court has held that there are three broad categories of activity that Congress may regulate under its commerce power: (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and (3) activities that "substantially affect interstate commerce." *See United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

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

Response: The Supreme Court has described "traditional indicia of suspectness" to include groups that "possess an immutable characteristic determined solely by the accident of birth" or are "saddled with such disabilities, or subjected to such a history of

purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (internal quotation marks and citations omitted). Race, religion, national origin, and alienage have been identified as suspect classes subject to strict scrutiny. *See, e.g., City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

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

Response: The Supreme Court has stated that the "separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch," *United States v. Lopez*, 514 U.S. 549, 552 (1995). The Framers regarded the checks and balances as "a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other," *Buckley v. Valeo*, 424 U.S. 1, 122 (1976). At the same time, the Constitution does not require the three branches of government to "operate with absolute independence." *United States v. Nixon*, 418 U.S. 683, 707 (1974).

16. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: I would carefully consider the arguments and briefing submitted by the parties and the record in the case. I would apply binding precedent of the Supreme Court and the Fifth Circuit, including the potential applicability of Supreme Court precedent such as *Nixon v. United States*, 506 U.S. 224, 234-35 (1993); *Marbury v. Madison*, 5 U.S. 137 (1803); and *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: Generally, judicial decisions should not be based on a judge's personal feelings, opinions, or beliefs. However, I believe it is important for litigants to feel that they have been treated fairly and have had a fair opportunity to be heard in court, and empathy may have a role in understanding the litigants' perceptions of their treatment in my court.

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

Response: A judge should strive to avoid both outcomes by faithfully following and applying the law to the facts of the case before the court. If appointed, I will follow the precedent of the Supreme Court and the Fifth Circuit.

19. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more

common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not studied the trend described in this question, and I therefore do not have sufficient information on which to base an opinion about this subject. If confirmed as a district court judge, I would be required to decide each case on its own merit, following binding Supreme Court and Fifth Circuit precedent and applying the law to the particular facts of the case.

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

Response: Black's Law Dictionary defines "judicial review" as "[a] court's power to review the actions of other branches or levels of government." Black's Law Dictionary (11th ed. 2019). Black's Law Dictionary further defines "judicial supremacy" as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019). *See Marbury v. Madison*, 5 U.S. 137, 178 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.")

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

Response: The Constitution requires all government officials, including elected and appointed officials, to take an oath to uphold the Constitution. U.S. Const., art. VI, § 3. The Supreme Court has further explained that state executive and legislative officials do not have authority to nullify a judgment of the courts of the United States. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

22. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: I generally understand that in Federalist 78, Hamilton expressed his belief that it is the role of the federal courts to interpret and apply the law, while the role of the legislative and executive branches is to make or enforce the law. It is my position that it is not the role of judges to make laws but instead and interpret the law and apply it to the facts of the case before me.

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

Response: District court judges have a duty to follow and apply binding Supreme Court and circuit court precedent. In the absence of precedent, a district judge must always strive to render decisions in accordance with the Constitution. If there is no precedent that squarely controls the issue being considered, I would utilize the constitutional framework employed by the Supreme Court and Fifth Circuit in the most similar cases.

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

Response: A defendant's group identity(ies) should not play any factor in sentencing. The factors relevant to sentencing are those set forth in 18 U.S.C. 3553(a), which I will apply if confirmed.

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

Response: I am not familiar with this statement by the Biden Administration. I have not developed my own personal definition of equity. The definition of "equity" in Black's Law Dictionary includes "[f]airness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019). I would fully and faithfully apply any applicable binding Supreme Court and Fifth Circuit precedent to decide any case involving this issue that properly comes before me.

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

Response: See my answer to Question 25. Black's Law Dictionary defines equality as "[t]he quality, state, or condition of being equal; esp. likeness in power or political status." Black's Law Dictionary (11th ed. 2019). While I am not aware of any Supreme Court or Fifth Circuit precedent comparing these two concepts, I would fully and

faithfully apply any applicable binding Supreme Court and Fifth Circuit precedent to decide any case involving this issue that properly comes before me.

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

Response: The Equal Protection Clause of the 14th Amendment provides that, "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unites States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. The Equal Protection Clause does not specifically refer to "equity." If I am confirmed as a district court judge, it will be my duty to follow and apply Supreme Court and Fifth Circuit precedent to all cases and issues that come before me.

28. How do you define "systemic racism?"

Response: The term "systemic racism" means different things to different people, and I have not developed my own specific definition of that term. Nor am I aware of any Supreme Court or Fifth Circuit precedent that defines "systemic racism." Cambridge Dictionary defines "systemic racism" as "policies and practices that exist throughout a whole society or organization and that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others based on race." Cambridge Dictionary. Merriam-Webster's Dictionary defines it "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)." Merriam-Webster's Dictionary (2022).

29. How do you define "critical race theory?"

Response: I have not developed my own specific definition of "critical race theory. Black's Law Dictionary defines "critical race theory" as "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities" and "[t]he body of work produced by adherents to this theory." Black's Law Dictionary (11th ed. 2019).

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

Response: Please see my responses to Questions 28 and 29.

Questions from Senator Thom Tillis
for John Andrew Kazen, nominee to U.S. District Court for the Southern District of Texas

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

   Response: I believe a judge's personal views and background are irrelevant in interpreting and applying the law. I believe that judges are obligated to faithfully apply the law to the facts of the case before them without regard to the judge's personal views.

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

   Response: I believe impartiality is an expectation for a judge and that a judge must disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

3. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: "Judicial activism" is defined by Black's Law Dictionary as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (11th ed. 2019). I do not consider judicial activism appropriate.

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

   Response: No.

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

   Response: Yes, I believe that a judge's faithful interpretation of the law may sometimes result in what someone may consider an undesirable outcome. As a judge, I am required to faithfully follow the law and apply the law impartially to the facts of the particular case before me. I accept that doing so may result in an undesirable result for a party that is before the court.

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

   Response: If I am confirmed as a district court judge, I will faithfully follow and apply all binding precedent interpreting the Second Amendment, including the Supreme Court's holdings in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

7. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: When considering cases involving the issue of qualified immunity, I follow and apply binding Supreme Court and Fifth Circuit precedent. Pursuant to such precedent, the doctrine of qualified immunity exists to "protect[ ] government officials from civil damages liability when their actions could reasonably have been believed to be legal. This immunity protects all but the plainly incompetent or those who knowingly violate the law. Accordingly, we do not deny immunity unless existing precedent . . . placed the statutory or constitutional question beyond debate. *Anderson v. Valdez*, 845 F.3d 580, 559–600 (5th Cir. 2016) (cleaned up). Courts apply a two-prong analysis to determine if an officer is entitled to qualified immunity. "An officer merits qualified immunity unless (1) he violated a statutory or constitutional right of the plaintiff and (2) the right was clearly established at the time of the violation." *Betts v. Brennan*, 22 F.4th 577, 582 (5th Cir. 2022) (citation and internal quotations omitted); *Anderson*, 845 F.3d at 600.

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

Response: As a current magistrate judge and nominee for district court judge, it would not be appropriate for me to comment on whether current qualified immunity jurisprudence "provides sufficient protection" for law enforcement officers in certain circumstances. There are multiple cases involving qualified immunity pending in cases I preside over and the issue regularly arises in cases I preside over. Therefore, it is not appropriate for me to comment on this question under the judicial codes of conduct. *See* Code of Conduct for United States Judges, Canon 3(A). If confirmed, I would faithfully follow and apply binding precedent from the Supreme Court and the Fifth Circuit to any case that comes before me.

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

Response: Please see my responses to Questions 7 and 8.

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

Response: The Supreme Court has stated that federal patent laws promote the progress of science and the useful arts by offering inventors exclusive rights for a limited period as an incentive for their inventiveness and research efforts. *Diamond v. Chakrabarty*, 447 U.S. 303, 307, 100 S. Ct. 2204, 2206–07 (1980). The methods of enforcement of IP rights are actively being litigated in the federal courts and discussed by policymakers. As a sitting magistrate judge and as a nominee for district court judge, it would be improper for me to publicly comment on this issue. *See* Code of Conduct for United States Judges, Canon 3(A).

If confirmed, I would faithfully follow and apply binding precedent from the Supreme Court, the Federal Circuit, and the Fifth Circuit to any IP case that comes before me.

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

Response: Legal issues regarding proper venue and the application of venue statutes arise regularly in federal courts. In *Ferens v. John Deere Co*., 494 U.S. 516, 527 (1990), the Supreme Court considered the concept of forum shopping in relation to Title 28 U.S.C. § 1404 and the "policy against forum-shopping" set forth in *Van Dusen v. Barrack*, 376 U.S. 612 (1964). As a sitting magistrate judge and as a nominee for district court judge, it would be improper for me to comment on the correctness of legal precedent regarding choice of venue. *See* Code of Conduct for United States Judges, Canon 3(A). If confirmed, I would be required to apply and follow all binding precedent and federal rules.

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

Response: As a sitting magistrate judge and as a nominee for district court judge, it would be improper for me to comment on this correctness of current Supreme Court jurisprudence in this area of law. *See* Code of Conduct for United States Judges, Canon 3(A). If confirmed, I would faithfully follow and apply binding precedent from the Supreme Court and the Federal Circuit on 35 U.S.C. § 101 to the cases that come before me.