Senator Lindsey Graham, Ranking Member
Questions for the Record

Judge Jacqueline Becerra
Nominee to be United States District Judge for the Southern District of Florida

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 strongly disagree with the statement. A judge's independent value judgments are irrelevant. Indeed, the rule of law depends on judge setting aside personal beliefs and following precedent. If I am confirmed as a district court judge, I would faithfully apply Supreme Court and Eleventh Circuit precedent in all cases.

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: The approach articulated in this quote is not an appropriate one as it is improper for a lower court judge to issue an opinion knowing it is contrary to binding precedent.

3. **You signed a statement of Former United States Attorneys and Assistant United States Attorneys opposing President Trump's executive order: "Protecting the Nation from Foreign Terrorist Entry into the United States." Among other things, your statement said: "If we were called upon to defend the Executive Order, could we do it within the guidelines we learned and lived by as lawyers for the United States? We could not."**

   a. **Would this statement be appropriate for a sitting United States Attorney or Assistant United States Attorney to sign? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "yes."**

      Response: No. Although I have not been at the Department of Justice in almost twenty years, my recollection of the Department's policy at the time is that attorneys were prohibited from making public statements about pending matters.

   b. **Would you sign this statement today? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "yes."**

Response: No. As a magistrate judge and judicial nominee, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Immigration issues regularly come before federal courts. Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I would apply Supreme Court and Eleventh Circuit precedent in addressing a case involving any immigration issue.

c. **Particularly in light of Hamas's brutal attack against our Israeli allies, do you believe the President has the legal authority to stop potential terrorists from entering our country?**

Response: The President and Congress have authority over immigration issues. *See Arizona v. United States, 567 U.S. 387, 394, 132 S. Ct. 2492, 2498, 183 L. Ed. 2d 351 (2012) (*"The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.") However, because immigration issues regularly come before federal courts. As a magistrate judge and judicial nominee, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I would apply Supreme Court and Eleventh Circuit precedent in addressing a case involving any immigration issue.

4. **In *United States v. Joseph* you recommended granting a convicted heroin distributor's compassionate release motion. The district judge squarely rejected your recommendation, and explained the court lacked the statutory authority to directly address the prisoner's request.**

a. **Please explain your legal analysis of this motion.**

Response: In *United States v. Joseph,* I recommended that the defendant's motion for compassionate release be granted and that the district judge re-designate the defendant-who had deteriorating medical conditions (including anemia, thrombocytopenia, prediabetes, bilateral low vision) and a history of leukopenia, prostate cancer, and atrial fibrillation-to home confinement at his son's home for the remainder of his sentence. The district judge agreed with my analysis that the defendant satisfied the criteria for compassionate release, noting that he "presented extraordinary and compelling circumstances, no longer presents a danger to society, and has an exceptional release plan." However, the district judge declined to adopt my report and recommendation concluding that the defendant was not eligible for compassionate release

based on the date of his offenses. Specifically, the defendant was sentenced in January 1987 while the eligibility date under the Sentencing Reform Act of 1984 was in November 1987. Whether the defendant was eligible for compassionate release based on the date of the offense had not been raised or considered in any of the pleadings or in earlier motions for compassionate release that had been filed by the defendant and that had been rejected on other grounds by the district court.

b. **Did your personal feelings about the merits of the prisoner's request bear on your recommendation?**

Response: No, my personal feelings about the merits of the request had no bearing on my analysis.

c. **Do you commit to apply the text of the law in all matters before you?**

Response: Yes.

5. **In your 2013 profile published by the Profiles in Diversity Journal, you highlighted a book you were reading by Peggy Orenstein called, "Cinderella Ate My Daughter: Dispatches from the Front Lines of the New Girlie-Girl Culture."**

a. **What was your opinion of the book?**

Response: I read this book over ten years ago upon the recommendation of a friend. I do not recall much about the book and cannot say I developed any opinion of the book.

b. **Criticizing girls' obsession with princesses, Ms. Orenstein writes in the article that the book was based on that she was "not thrilled" to have her "Japanese-Jewish child in thrall to th[e] Aryan features" of Cinderella. What is your opinion of that statement?**

Response: I am not familiar with that statement and have no opinion on her comment.

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

Response: Yes. I would not hire a candidate that publicly endorsed or praised a terrorist organization.

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

   Response. Yes, please see my Response to Question 7.

8. **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: Pursuant to Title 28 U.S.C. Section 2255, "[a] prisoner in custody under [a federal] sentence … 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."

9. **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. University of North Carolina*, 143 S. Ct. 2141 (2023), the plaintiff argued that the University of North Carolina's consideration of race as a factor in its admissions process violated the Fourteenth Amendment. In *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023), the plaintiff challenged Harvard College's admissions process, which also considered race as one factor in its admissions decisions, as violating Title VI of the Civil Rights Act of 1964. The Supreme Court held that the consideration of race as one of the factors in the admissions process of these institutions violates the Equal Protection Clause of the Fourteenth Amendment. *Id*. The Supreme Court explained that "[c]ourts may not license separating students on the basis of race without an exceedingly persuasive justification that is measurable and concrete enough to permit judicial review." *Id*.

10. **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?**
    If yes, please list each job or role where you participated in hiring decisions.

Response: Yes. As Special Counsel to the United States Attorney for the Southern District of Florida, I chaired the Office's Hiring Committee. In private practice, I participated in the firm's decisions to hire associates and partners for the Litigation Department. As a magistrate judge, I have hired law clerks and selected my courtroom deputy.

11. **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.

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

    Response: No.

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

    Response: No.

    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: Not applicable.

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

    Response: Yes, under current Supreme Court precedent, government classifications on the basis of race are subject to strict scrutiny. *See Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023).

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

    Response: In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held that government officials could not require the owner of a website design company to create wedding websites for same sex-couples given that the owner had refused to do so on the grounds that same-sex marriages were inconsistent with her religious beliefs. The

Court concluded that the wedding websites created by the owner constituted "pure speech" and it would violate the owner's rights under the Free Speech Clause of the First Amendment to compel her to create websites with messages that were contrary to her religious beliefs.

16. **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: *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), is still good law. In addition, it was recently relied on by the Supreme Court in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

17. **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: In determining whether a law that regulates speech is "content-based" or "content-neutral," I would apply the analysis required by *Reed v. Town of Gilbert, Ariz*., 576 U.S. 155 (2015), the Supreme Court's binding precedent in this area. In *Reed*, the Supreme Court stated that content-based regulations are "those that target speech based on its communicative content." *Id.* at 162. *Reed* observed 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." *Id.* at 163. Courts must consider "whether a regulation of speech 'on its face' draws distinctions based on the message a speaker conveys." *Id.* While "[s]ome facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, . . . others are more subtle, defining regulated speech by its function or purpose." *Id.* If the court determines the regulation "imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny." *Id*. at 171.

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

    Response: The government "must prove in true-threats cases that the defendant had some understanding of his statements' threatening character," and "that a recklessness standard" of *mens rea* is sufficient. *Counterman v. Colorado*, 143 S. Ct. 2106, 2113 (2023).

19. **Under Supreme Court and Eleventh 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: Pursuant to the Supreme Court's precedent, "basic" or "historical" facts address "questions of who did what, when or where, how or why." *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018). The distinction between a question of fact and a question of law is not always clear and there is no set "rule or principle that will unerringly distinguish a factual finding from a legal conclusion." *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982). To distinguish between the two, courts determine whether the question requires "expound[ing] on the law, particularly by amplifying or elaborating on a broad legal standard." *U.S. Bank Nat'l Ass'n*, 138 S. Ct. at 966. If so, it is a legal question. *See id*. If, on the other hand, the question implicates "case-specific factual issues" that require the weighing of evidence and credibility judgments, it is a question of fact. *See id*.

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

Response: In sentencing, judges are required to consider all four of these primary purposes as Congress has not assigned any one factor greater weight than any other. If I were confirmed, I will follow the factors set forth in Section 3553(a) and the United States Sentencing Guidelines before imposing a sentence.

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

Response: As a magistrate judge and a judicial nominee, I am precluded from expressing any personal views regarding Supreme Court cases as they often contain issues that may come before me. *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I will apply Supreme Court and Eleventh Circuit precedent to any matter before me.

22. **Please identify a Eleventh Circuit judicial opinion from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: As a magistrate judge and a judicial nominee, I am precluded from expressing any personal views regarding Eleventh Circuit cases as they often contain issues that may come before me now and may come before me if I am confirmed. *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I will apply Supreme Court and Eleventh Circuit precedent to any matter before me.

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

Response: Title 18 U.S.C. Section 1507 makes it a crime for any person "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."

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

Response: As a magistrate judge and a judicial nominee, it would not be appropriate for me to opine on the constitutionality of a statute because matters pertaining to this statute could come before me or another court. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will apply Supreme Court and Eleventh Circuit precedent to any matter before me, including any case where I would be asked to consider the constitutionality of this statute.

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

a. Was *Brown v. Board of Education* correctly decided?
b. Was *Loving v. Virginia* correctly decided?
c. Was *Griswold v. Connecticut* correctly decided?
d. Was *Roe v. Wade* correctly decided?
e. Was *Planned Parenthood v. Casey* correctly decided?
f. Was *Gonzales v. Carhart* correctly decided?
g. Was *District of Columbia v. Heller* correctly decided?
h. Was *McDonald v. City of Chicago* correctly decided?
i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?
k. Was *Dobbs v. Jackson Women's Health* correctly decided?
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?
m. Was *303 Creative LLC v. Elenis* correctly decided?

Response as to all subparts: As a magistrate judge and a judicial nominee, I am precluded from expressing any personal views on whether particular cases are correctly decided as these cases contain issues that may come before me now. *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue.

As to subpart (a), because the issue of *de jure* racial segregation in public schools is highly unlikely to come before the courts again, I believe I am permitted to provide my personal opinion that *Brown* was correctly decided.

As to subpart (b), because the issue of interracial marriage is highly unlikely to come before the courts again, I believe I am permitted to provide my personal opinion that *Loving* was correctly decided.

As to subpart (d) and (e), *Roe v. Wade* and *Planned Parenthood v. Casey*, were overturned by *Dobbs v. Jackson Women's Health.*

As to the remaining subparts, the cases are binding precedent that I would be duty bound to follow and apply. If I am confirmed, I will apply Supreme Court and Eleventh Circuit precedent to any matter before me.

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

Response: To evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment, the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation. *New York State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1, 19 (2022).

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

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

Response: No.

b. Are you currently in contact with anyone associated with Demand Justice? If so, who?

Response: No.

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

Response: No.

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

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

Response: No.

b. Are you currently in contact with anyone associated with the Alliance for Justice? If so, who?

Response: No.

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

Response: No.

29. 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.

30. 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.

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

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

Response: No.

b. Are you currently in contact with anyone associated with Fix the Court? If so, who?

Response: No.

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

Response: No.

32. 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: In May 2021, I interviewed with the Judicial Nominating Conference organized by Florida Democratic members of the House of Representatives. On April 7, 2023, I interviewed with Senator Rick Scott's General Counsel. On April 11, 2023, I interviewed with Senator Scott. On April 25, 2023, I received a call from the White House regarding my interest in a district court judgeship. On April 26, 2023, I interviewed with attorneys from the White House Counsel's Office. Since April 26, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 1, 2023, the President announced his intent to nominate me, and my nomination was submitted to the Senate.

33. 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.

34. 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: During the course of the last two years, I have spoken to lawyers who I believe are members of the American Constitution Society about the nomination process.

35. 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.

36. 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.

37. 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.

38. 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? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a "yes."

Response: No, I did not receive any advice regarding which cases to list on my Senate Judiciary 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: Not applicable.

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

Response: Response: On April 25, 2023, I received a call from the White House regarding my interest in a district court judgeship. On April 26, 2023, I interviewed with attorneys from the White House Counsel's Office. Since April 26, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 1, 2023, the President announced his intent to nominate me, and my nomination was submitted to the Senate.

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

Response: I received these questions on December 6, 2023, and drafted my answers after reviewing the materials I had gathered in preparation for my confirmation hearing, the submissions of previously nominees that are publicly available, and the guidance provided by the Department of Justice, Office of Legal Policy, which mostly addressed the format for preparing responses but also provided limited feedback on substance. I then finalized and submitted my responses to the Department of Justice for transmittal to the Committee on the Judiciary.

Senate Judiciary Committee
Nominations Hearing
November 29, 2023
Questions for the Record
Senator Amy Klobuchar

For Jacqueline Becerra, nominee to be U.S. District Court Judge for the Southern District of Florida

In 2019, you were appointed as a magistrate by the sitting Article III judges of the Southern District of Florida, who were appointed by presidents of both parties. You have since presided over three jury trials and one bench trial that have gone to verdict or final judgment. Additionally, you served as the co-chair of your prior firm's Global White-Collar Defense and Investigations practice from 2010 to 2015.

- **What have you learned in your time as a magistrate judge and how will that inform your approach if confirmed as a district court judge?**

  Response: As a Magistrate Judge, I have been assigned hundreds of civil cases across a vast range of subject matters including issues of first impression, class actions, and constitutional challenges. I have handled every aspect of a civil case from a motion to dismiss to a jury verdict. In criminal cases, I have handled arraignments, initial appearances, detention hearings, motions to suppress evidence and statements, motions to dismiss indictments, guilty pleas, and supervised release violations. The wide array of matters I have handled has given me invaluable insight as to how to manage a complex and large caseload which will be critical as a district judge in one of the largest and busiest districts in the country. My experience as a magistrate judge has also given me the opportunity to build a reputation in the legal community as a judge that has the humility, patience, and work ethic necessary to ensure that all parties are fully heard and treated fairly.

- **Can you describe your work in private practice and how that has prepared you for the complex matters you will preside over as a district court judge?**

  Response: As an attorney in private practice, I litigated cases in federal and state court, and led teams of lawyers conducting internal investigations and corruption compliance reviews across Latin America for large multinational companies. The experience of handling both the legal and practical aspects of litigation as a lawyer will be critical to ensuring that cases before me are handled in a manner that is both efficient and fair. Explaining a court's decision to clients has made me acutely aware of the importance of writing decisions that are clear and that can be understood by the parties as well as by the lawyers. The internal investigations I led required that I listen and gather evidence to provide legal opinions and instructions to clients. Learning to quickly identify issues and provide sound advice to clients has prepared me to discern the critical issues in a case and render clear opinions to the parties.

Senator Mike Lee
Questions for the Record
Jacqueline Becerra, Nominee for District Court Judge for the Southern District of Florida

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

   Response: My judicial philosophy is rooted in the principle that judges should be scrupulous in both the review of the record and the facts of a case, and should diligently apply the law. Based on the records and facts of a specific case and the applicable law, a judge should then proceed to impartially decide the matter and communicate that decision in a way that is clear to the parties and the public.

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

   Response: If confirmed as a district judge, I would first look to any precedent from the Supreme Court and Eleventh Circuit that has already interpreted the text at issue. If there is no binding precedent, I would examine the text. If the text of the statute is unambiguous, I would apply its plain meaning. If the text of the statute is ambiguous, I would look to other methods of statutory interpretation including the decisions of other Circuit and District Courts and the canons of construction. If these additional resources do not provide sufficient guidance, I would look to legislative history but only to the extent such analysis is permitted under applicable precedent of the Supreme Court and Eleventh Circuit.

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

   Response: If confirmed as a district judge, I would first look to any precedent from the Supreme Court and Eleventh Circuit that has already interpreted the constitutional provision at issue. If there is no binding precedent, I would examine the text. If the text of the Constitutional provision is unambiguous, I would apply its plain meaning. If the text of the provision is ambiguous, I would look to other methods of statutory interpretation including the decisions of other Circuit and District Courts, as well as the canons of construction. If these additional resources do not provide sufficient guidance, I would look to legislative history of the provision at issue but only to the extent such analysis is permitted under applicable precedent of the Supreme Court and Eleventh Circuit.

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

   Response: Assuming there is no binding precedent on the matter, examining the text of a constitutional provision is the first step in interpreting its meaning. In interpreting the text, the Supreme Court has used the original meaning of provisions to resolve certain Constitutional matters. *See New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022); *McDonald v City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004).

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: My approach would be consistent with the approach I outlined in Response to Question 2. As the Supreme Court has instructed, a statute's "plain meaning must be enforced . . ." *U.S. Nat. Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 454, 113 S. Ct. 2173, 2182, 124 L. Ed. 2d 402 (1993).

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 "plain meaning" of a statute or constitutional provision is fixed from the point of its ratification and does not change or evolve overtime. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2132 (2022); *see al*so *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731, 1738 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.").

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

Response: The requirements for Article III standing are that: (1) the plaintiff has suffered a concrete injury; (2) that the injury be fairly traceable to actions of the defendant; and (3) it must be likely that the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

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

Response: Yes, Article I, Section 8 enumerates Congress's powers and also provides that Congress has the power to make laws that are necessary and proper for carrying out its enumerated duties. *See McCullough v. Maryland*, 17 U.S. 316 (1819) (holding that Article I of the Constitution granted Congress implied powers under the "Necessary and Proper Clause.")

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

Response: Congress is not required to cite a specific constitutional provision for its authority. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). To evaluate the constitutionality of a law, I would follow Supreme Court and Eleventh Circuit precedent. *See, e.g.*, *United States v. Comstock*, 560 U.S. 126, 134 (2010) (holding that to determine "whether the Necessary and Proper Clause grants Congress the legislative authority to enact a particular federal statute," courts should determine "whether the statute constitutes a means that is rationally related to the implementation of a constitutionally enumerated power").

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

Response: Yes, the Supreme Court has held that certain rights, not expressly enumerated in the Constitution, are protected under the Due Process Clauses of the Fifth and Fourteenth Amendments. Those unenumerated rights are those that are "deeply rooted in this country'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, 720-21 (1997). The Supreme Court has recognized various unenumerated rights such as the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); the right to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); and the right to direct the upbringing of one's child, *Meyer v. Nebraska*, 262 U.S. 390 (1923).

11. What rights are protected under substantive due process?

Response: See 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: Supreme Court precedent governs which rights are protected by substantive due process. As to the rights at stake in *Lochner*, the Supreme Court overturned *Lochner* in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). As to the right to contraceptives, the Court in *Griswold* held that the right is a substantive due process right. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

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

Response: Congress's power under the Commerce Clause is delineated in Article I, Section 8, Clause 3 of the Constitution. Under the Commerce Clause, Congress may "regulate the use of the channels of interstate commerce," "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce," and "regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558 (1995).

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

Response: In assessing whether a group is a suspect class, the Supreme Court has considered whether the group possesses an "immutable characteristic determined solely by the accident of birth" or is "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 omitted). Under this analysis, race, religion, alienage, and national origin are suspect classes under the Constitution. *See City of*

Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985); *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: Under the principle of separation of powers, the powers of government are divided among the three branches. Under the principle of checks and balances, the power of each branch is used to checks the power of the other branches so as to ensure that the power among the branches is balanced.

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 apply Supreme Court and Eleventh Circuit precedent in deciding a case in which one branch assumed an authority not granted it by the text of the Constitution. *See, e.g.*, *Bond v. United States*, 564 U.S. 211, 223 (2011) (collecting cases); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Marbury v. Madison*, 5 U.S. 137 (1803).

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

Response: Empathy should not play any role in a judge's consideration of a case.

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

Response: Both are equally unacceptable.

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 Supreme Court's jurisprudence for purposes of measuring the trend noted in this statement. However, if I am confirmed as a district court judge, I would be bound by Supreme Court and Eleventh Circuit precedent and render decisions on the merits of each case before me without consideration to any kind of trends that the decision may or may not effect.

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

Response: Judicial review and judicial supremacy are distinct concepts. *Marbury v. Madison*, 5 U.S. 137 (1803) established the principle of judicial review which is defined by Black's Law Dictionary as a court's power "to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional." Black's Law Dictionary (11th ed. 2019). "Judicial supremacy" is

defined 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).

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: Pursuant to Article VI of the Constitution, every elected official is bound by oath to support the Constitution, which explicitly enumerates the role of the judicial branch in Article III. Elected officials are bound to adhere to the decisions of the Supreme Court based on the longstanding precedent of judicial supremacy. *Cooper v. Aaron*, 358 U.S. 1 (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: Judges must have the humility to accept that their role is to follow and interpret the law as written. A judge that does not follow the law as written threatens not only the separation of powers established by the Constitution, but also the rule of law.

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: The duty of a lower court judge is to apply precedent. A lower court does not have authority to go outside the bounds of binding precedent even in cases where the lower court may question the underpinning of the precedent it is bound to apply.

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: None. A defendant's race, gender, nationality, sexual orientation or gender identity plays no role in sentencing.

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 and have no opinion as to it. I do not have my own definition of equity.

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

Response: I do not have an opinion as to what difference there is between these two terms. However, if a case involving the meaning of the words "equity" or "equality" were to come before me, I would evaluate the arguments of the parties and faithfully apply binding precedent of the Supreme Court and the Eleventh Circuit.

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

Response: The Fourteenth Amendment's Equal Protection Clause 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. There is no reference to "equity" in the Fourteenth Amendment and instead only the word "equal." If I am confirmed, I would follow the Supreme Court and Eleventh Circuit precedent in cases relating to the Equal Protection Clause.

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

Response: I do not have my own definition of "systemic racism" but have seen the phrase used to refer to a myriad of issues relating to race and government processes.

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

Response: I do not have my own definition of "critical race theory" but I am generally aware that it is used to refer to an academic movement that studies race and its relationship to government institutions.

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

Response: Please see Responses to Questions 28 and 29.

31. In 2017, you signed a letter titled "Statement of Former United States Attorneys and Assistant United States Attorneys in Opposition to Enforcement of the Executive Order Titled 'Protecting the Nation from Foreign Terrorist Entry Into the United States.'" That letter alleges that—among other things—Executive Order 13769 was "a thinly veiled attempt to exclude Muslims from certain countries based on their religion," and states that you would not have enforced this E.O. because it "[bans people] based solely on the fact that others of their religion are perceived to be potential security threats."

Out of the 53 Muslim-majority nations, only seven were listed in that temporary moratorium. None of the five most-populous Muslim nations (representing 804 million Muslim citizens in 2017) were impacted by this order. The moratorium applied to all citizens of the seven nations regardless of the person's religion, and those nation were already subject to heightened scrutiny under President Obama's administration.

Your letter contained blatant, partisan attacks of E.O. 13769 apparently taken straight from media pundits. Is it appropriate for a former United States Attorney to make a public statement condemning an Executive Order?

Response: Along with over thirty former Department of Justice officials, I signed the above referenced letter while I was a lawyer in private practice. The letter was not partisan and addressed the legality of E.O. 13769. I signed the letter almost ten years after I had left the Department of Justice. I know of no code of conduct that would have made it inappropriate for me to join the statement as I was no longer with the Department and had no role in providing advice or counsel to the Executive Order. In addition, my understanding is that E.O. 13769 was superseded by another executive order less than two months after this letter was signed.

32. Your letter stated, "[i]t would be our job, if we were representing the United States today, to say, no, this Executive Order is wrong and should not be defended." Does that type of statement comport with the separation of powers?

Response: In addition to my Response to Question 31, I would note that because the statement referred to whether an executive agency official could honor both the duty of candor and the duty to enforce an Executive Order, I do not believe that there was any separation of powers concerns with the statement.

33. In 2022, as a Magistrate Judge, you recommended granting a convicted heroin distributor compassionate release under the First Step Act despite the fact that he did not meet the criteria set forth in the First Step Act.

How much of the text passed into law by Congress should be observed and enforced by the federal district courts? How much leeway should a federal judge have to decide when and where to stretch the text to fit a particular situation?

Response: The text of a law passed into law by Congress should be observed and enforced in full. Courts do not have any "leeway" to "stretch the text."

34. In 2002, when you were Special Counsel to the United States Attorney's Office for the Southern District of Florida, you made a public statement for the USAO about a case involving two legal permanent residents attempting to smuggle six relatives and friends into Key West, Florida from Cuba. You were unequivocally clear that this was criminal conduct, saying: "[s]muggling illegal aliens is, in fact, illegal, whether or not you're charging, whether or not the people are related to you." Do you stand by those statements?

Response: As Special Counsel, I made statements on behalf of the Department of Justice and not in my personal capacity. Immigration issues similar to those at issue in that case currently come before federal courts. As a magistrate judge and judicial nominee, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. However, I note that Title 8 U.S.C. Section 1324(a) provides for criminal penalties related to offenses for smuggling non-citizens into the United States without regard to the nationality. If confirmed, I would faithfully apply Supreme Court and Eleventh Circuit precedent with respect to any immigration case before me.

35. Does the application of immigration law depend on illegal immigrant is coming from? Do you believe that federal law requires punishing those smuggling illegal aliens across the southern border with the same severity as those smuggling illegal aliens from Cuba?

Response: See Response to Question 34.

36. LatinoJustice PRLDEF awarded you with the Lucero Award in 2018. LatinoJustice PRLDEF regularly fights against laws that punish those who transport illegal aliens into the United States, and supports racial quotas. Do you support their mission?

Response: The Lucero Award was given to me in recognition of my accomplishments as a Latina lawyer. I am not familiar with the mission of the LatinoJustice Puerto Rican Legal and Education Fund but understood at the time I received this award that the organization engaged in mentoring and assisting Latinos with respect to a broad array of legal issues.

Senator Josh Hawley
Questions for the Record

Jacqueline Becerra
Nominee, U.S. District Judge for the Southern District of Florida

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

   Response: No.

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

      Response: Not applicable.

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

   Response: The Supreme Court has looked to the original public meaning to interpret Constitutional provisions in certain contexts, including, for example, with respect to the Second Amendment. *See, e.g*., *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022).

3. **Do you consider legislative history when interpreting legal texts?**

   Response: If confirmed, I would first look to Supreme Court and Eleventh Circuit precedent that has interpreted the legal text at issue. If there is no binding precedent, I would then examine the text. If the text of the statute is unambiguous, I would apply the plain meaning of the statute. If the text of the statute is ambiguous, I would look to other methods of statutory interpretation including the decisions of other Circuit and District Courts and the canons of construction. If these additional resources do not provide sufficient guidance, I would look to legislative history but only to the extent such analysis is permitted under Supreme Court and Eleventh Circuit precedent. However, even in cases where permitted, the Supreme Court has cautioned that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 568 (2005). As such, the role of legislative history in determining a statute's meaning, if at all permissible, is very limited.

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

      Response: The Supreme Court has cautioned that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp. v. Allapattah*

Servs., Inc., 545 U.S. 546, 568 (2005). In accordance with the direction provided by the Supreme Court in cases where the Court has permitted reliance on the legislative history, I would consider committee reports that have been drafted contemporaneously with the passage of legislation to be more probative than other sources, such as comments or remarks made by members. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'").

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

Response: Consulting the laws of foreign nations when interpreting the provisions of the U.S. Constitution would only be appropriate if the Supreme Court or Eleventh Circuit had instructed a lower court to do so in interpreting a particular provision. Otherwise, law of foreign nations would have no relevance in interpreting the provisions of the U.S. Constitution.

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

Response: Under the precedent of the Supreme Court, a defendant that claims that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment must establish that the method of execution presents a substantial risk of serious harm, and must identify an available alternative that can be readily implemented and also significantly reduces the risk of harm. *Glossip v. Gross*, 576 U.S. 863, 877-878 (2015); *see also Price v. Comm'r, Dep't of Corr.,* 920 F.3d 1317, 1326 (11th Cir. 2019).

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

Response: Yes. See Response to Question 4.

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

Response: I am not aware of a Supreme Court or Eleventh Circuit case that recognizes a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime. *See Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 72 (2009) (holding that a state prisoner had no substantive due process right of access to the government's evidence for purposes of conducting DNA).

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

Response: No.

8. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: A plaintiff challenging state governmental action as placing a substantial burden on the free exercise of religion must demonstrate that such action has burdened a sincere religious practice and that that is neither "neutral" nor "generally applicable." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421–22 (2022). A facially neutral state action is not actually neutral if it encompasses hostility concerning or targets a religion. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). A law that prohibits religious activity while simultaneously permitting or treating more favorably comparable secular activity is not "generally applicable." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). When the government action is neither neutral nor generally applicable, the governmental action is subject to strict scrutiny review to determine whether the government action "was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Kennedy*, 142 S. Ct. at 2422; *see Fulton v City of Philadelphia*, 141 S. Ct. 1868, 1881 (2021).

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

Response: See Response to Question 8.

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

Response: In *Hernandez v. Commissioner,* 490 U.S. 680, 699 (1989), the Supreme Court described the type of religious belief or practice that the First Amendment shields from substantial government burden as "a central religious belief or practice."

Religious beliefs are "sincerely held" if they reflect an honest conviction. *Frazee v. Illinois Dep't of Emp. Sec*., 489 U.S. 829, 834 (1989). The religious belief, however, does not need to be consistent with a particular faith tradition. *See id.* at 834 (1989) ("[W]e reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization."); *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 724 (2014) (stating that the court's role is limited to determining if a person's religious belief is an "honest conviction," not whether that belief is reasonable). *See Watts v. Fla. Int'l Univ*., 495 F.3d 1289, 1296 (11th Cir. 2007) ("The question is not whether the plaintiff's beliefs are religious in the objective, reasonable person's view, but whether they are religious in the subjective, personal view of the plaintiff.").

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

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment confers an individual right to keep and bear arms inside one's home.

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

Response: Yes. *United States v. Pierre*, No. 1:22-cr-20321-JEM (S.D. Fla. Nov. 28, 2022), ECF No. 53, *R. & R. adopted in part and rejected in part*, Paperless Order, No. 1:22-cr-20321-JEM (S.D. Fla. Feb. 23, 2023), ECF No. 74. Copies supplied.

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

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

Response: I do not have an opinion as to what Justice Holmes meant with that statement. However, I note that the Supreme Court overruled *Lochner v. New York*, 198 U.S. 45 (1905) in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), and later observed that the "[t]he doctrine that prevailed in *Lochner* . . . and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).

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

Response: As a magistrate judge and judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the correctness of Supreme Court precedent because it is possible that similar issues could come before me or another court. Specifically, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. However, I note that the Supreme Court overruled *Lochner v. New York*, 198 U.S. 45 (1905) in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), and later observed that the "[t]he doctrine that prevailed in *Lochner* . . . and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). If confirmed, I would faithfully apply Supreme Court and Eleventh Circuit precedent with respect to substantive due process issues.

13. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: The Supreme Court in *Trump v. Hawaii* specifically noted that it was "mak[ing] express what is already obvious: *Korematsu* was gravely wrong the day it was decided," and that *Korematsu* "has no place in law under the Constitution." *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018). My understanding is that the Court was conveying the idea that although the Court had not had a specific occasion to overrule *Korematsu* before *Trump v. Hawaii*, it was nevertheless understood to no longer be good law.

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

a. If so, what are they?

Response: I am unaware of any Supreme Court opinion that has not been formally overruled either by the Supreme Court, a constitutional amendment or act of Congress, but yet is no longer considered good law.

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

Response: Yes.

15. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough;

and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: Issues relating to market share in this context are fact intensive issues that come before federal courts. See *Eastman Kodak Co. v. Image Tech. Servs., Inc.,* 504 U.S. 451, 481, (1992) ("Respondents' evidence that Kodak controls nearly 100% of the parts market and 80% to 95% of the service market, with no readily available substitutes, is, however, sufficient to survive summary judgment under the more stringent monopoly standard of § 2.). As a magistrate judge and judicial nominee, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). I also understand this Canon to generally preclude me from commenting on the correctness of Supreme Court precedent because it is possible that related issues could come before the courts. Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I would faithfully apply Supreme Court and Eleventh Circuit precedent with respect to antitrust issues.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: See response to Question 15(a).

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: See response to Question 15(a).

16. Please describe your understanding of the "federal common law."

Response: The Supreme Court in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938) held that "[t]here is no federal general common law."

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

Response: In interpreting a state's constitutional provision, I would be bound to follow the precedent of the highest state court with respect to the state law at issue. *See Wainwright v. Goode*, 464 U.S. 78, 84 (1983) (holding that "the views of the state's highest court with respect to state law are binding on the federal courts.").

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

Response: See Response to Question 17 (a).

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

Response: In *Florida v. Powell*, 559 U.S. 50, 59 (2010), the Supreme Court held that "state courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution."

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

Response: As a magistrate judge and judicial nominee, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). I understand this Canon to generally preclude me from commenting on the correctness of Supreme Court precedent because it is possible that related issues could come before the courts. However, because the issue of *de jure* racial segregation in public schools is highly unlikely to come before the courts again, I believe I am permitted to provide my personal opinion that *Brown* was correctly decided.

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

Response: Although the Supreme Court has not ruled on this issue, *see Griffin v. HM Fla.-ORL, LLC,* No. 23A366, 2023 WL 7928928, at *1 (U.S. Nov. 16, 2023), Rule 65 of the Federal Rules of Civil Procedure would be the starting point for addressing whether the authority exists to issue a nationwide injunction. Generally, "a plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Baldwin v. Express Oil Change, LLC,* No. 22-10611, 2023 WL 8441086, at *6 (11th Cir. Dec. 6, 2023). It should be noted, however, that injunctions are "a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). As to the circumstances under which a nationwide injunction against the implementation of federal laws or policies would be proper, that issue currently comes before our federal courts. Therefore, as a magistrate judge and judicial nominee, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I would apply Supreme Court and Eleventh Circuit precedent in addressing a case involving a request for a nationwide injunction.

a. If so, what is the source of that authority?

Response: See Response to Question 19.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: See Response to Question 19.

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

Response: See Response to Question 19.

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

Response: Federalism refers to the division and sharing of power between the national and state governments. *See Bond v. United States,* 572 U.S. 844, 857–58 (2014) ("Among the background principles of construction that our cases have recognized are those grounded in the relationship between the Federal Government and the States under our Constitution."). The Supreme Court has explained that the "federalist structure of joint sovereigns preserves to the people numerous advantages." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). In particular, "[i]t assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry." *Id.*

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

Response: Based on my experience as a lawyer practicing in federal court, and as a Magistrate Judge, I am familiar with the following abstention doctrines that have been articulated by the Supreme Court and applied by the Eleventh Circuit:

The *Rooker-Feldman* Doctrine. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), as clarified by *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005). Under this doctrine, a District Court is barred from reviewing a dispute if: (1) the losing party in state court (2) has filed suit in federal court after the state proceeding has ended (3) complaining of an injury caused by the resulting state judgment (4) and is seeking federal review and rejection of that judgment. *See Behr v. Campbell*, 8 F.4th 1206, 1214 (11th Cir. 2021) (noting that the *Rooker-Feldman* is a "limited doctrine that applies only when litigants try to appeal state court losses in the lower federal courts.")

The *Pullman* Abstention Doctrine. *See Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941). This abstention doctrine may be applied if a federal court determines that an interpretation of state law by a state court will moot a federal constitutional claim. *See Siegel v. LePore*, 234 F.3d 1163, 1174 (11th Cir. 2000) (Two elements must be met for *Pullman* abstention to apply: (1) the case must present an unsettled question of state law, and (2) the question of state law must be dispositive of the case or would materially alter the constitutional question presented.

The *Brillhart* Abstention Doctrine. *See Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491 (1942), as clarified by *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995). Under this doctrine, a federal court has the discretion to abstain from adjudicating a case wherein a party seeks the issuance of a declaratory judgment that might interfere with the adjudication of an ongoing state case. The Eleventh Circuit has articulated the factors to be considered as follows: "(1) the strength of the state's interest in having the issues raised in the federal declaratory action decided in the state courts; (2) whether the judgment in the federal declaratory action would settle the controversy; (3) whether the federal declaratory action would serve a useful purpose in clarifying the legal relations at issue; (4) whether the declaratory remedy is being used merely for the purpose of "procedural fencing"—that is, to provide an arena for a race for *res judicata* or to achieve a federal hearing in a case otherwise not removable; (5) whether the use of a declaratory action would increase the friction between our federal and state courts and improperly encroach on state jurisdiction; (6) whether there is an alternative remedy that is better or more effective; (7) whether the underlying factual issues are important to an informed resolution of the case; (8) whether the state trial court is in a better position to evaluate those factual issues than is the federal court; and (9) whether there is a close nexus between the underlying factual and legal issues and state law and/or public policy, or whether federal common or statutory law dictates a resolution of the declaratory judgment action. *Ameritas Variable Life Ins. Co. v. Roach*, 411 F.3d 1328, 1331 (11th Cir. 2005)

The *Burford* Abstention Doctrine. *See Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), as clarified by *New Orleans Public Service Inc. v. Council of New Orleans*, 491 U.S. 350, 362, (1989). "A federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar; or (2) where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." See *New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans,* 491 U.S. 350, 361, (1989). *See Boyes v. Shell Oil Prod. Co*., 199 F.3d 1260, 1266 (11th Cir. 2000).

The *Younger* Abstention Doctrine. *See Younger v. Harris*, 401 U.S. 37 (1971) and *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982), as clarified by *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69 (2013). Under this doctrine, federal courts must refrain from deciding disputes initiated in federal court if: (1) the case in federal court concerns a state criminal proceeding, a state civil enforcement proceeding, or a state civil proceeding involving certain orders that are uniquely in furtherance of a state court's ability to perform its judicial function; (2) the state proceeding is ongoing; (3) the state proceeding implicates important state interests; and (4) the parties will have an opportunity in the state proceeding to raise constitutional challenges and defenses. Where vital state interests are involved, a federal court should abstain unless state law clearly bars the interposition of the constitutional claim. *See 31 Foster Child. v. Bush*, 329 F.3d 1255, 1274 (11th Cir. 2003).

The *Colorado River* Abstention Doctrine. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976). This type of abstention becomes pertinent when there are parallel federal and state civil cases raising substantially identical claims and issues. The Eleventh Circuit considers: (1) whether one of the courts has assumed jurisdiction over property, (2) the inconvenience of the federal forum, (3) the potential for piecemeal litigation, (4) the order in which the fora obtained jurisdiction, (5) whether state or federal law will be applied, and (6) the adequacy of the state court to protect the parties' rights. *Ambrosia Coal & Const. Co. v. Pages Morales,* 368 F.3d 1320, 1331 (11th Cir. 2004) (citation omitted). *See* also *Gold-Fogel v. Fogel*, 16 F.4th 790, 799 (11th Cir. 2021) ("The *Colorado River* doctrine can apply only when concurrent state and federal litigation exists, and the federal litigation does not qualify for abstention under any of the three traditional abstention doctrines.").

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

Response: The relative advantages or disadvantages of issuing an injunction or awarding of damages is specific to the facts of that case. An injunction, however, is an "extraordinary remedy" appropriate only when legal remedies would be inadequate. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

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

Response: Certain substantive rights, though not specifically enumerated in the Constitution, are entitled to due process protection where those rights are deeply rooted in our history and tradition and are essential to the scheme of ordered liberty. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2246 (2022); *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997).

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

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

Response: The Free Exercise Clause "protects not only the right to harbor religious beliefs inwardly and secretly" but also "the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022) (internal quotation marks omitted).

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

Response: The Supreme Court recently explained that the First Amendment "protects religious exercises, whether communicative or not," and "does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022).

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

Response: See Response to Question 8.

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

Response: See Response to Question 10.

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

Response: The Religious Freedom Restoration Act "applies to all Federal law, and the implementation of that law, whether statutory or otherwise." 42 U.S.C. § 2000bb-3.

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

Response: No.

26. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: In the Eleventh Circuit, a "reasonable doubt is a real doubt, based on reason and common sense after you have carefully and impartially considered all the evidence in the case. Proof beyond a reasonable doubt" is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs." Eleventh Circuit Pattern Jury Instructions (Criminal Cases) § B3 (2022). The legal definition of reasonable doubt is not subject to a numerical answer.

27. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

c. If you disagree with either of these statements, please explain why and provide examples.

Response to all subparts: As a Magistrate Judge who handles habeas matters and a nominee for a District Judge position, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I will apply Supreme Court and Eleventh Circuit precedent addressing the writ of habeas corpus under 28 U.S.C. § 2254(d).

28. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

Response: Opinions designated with "unpublished," "not for publication," "nonprecedential," or "not precedent," are permitted by Federal Rule of Appellate Procedure 32.1.

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

Response: See Response to Question 28(a).

c. If confirmed, would you treat unpublished decisions as precedential?

Response: No. Under 11th Cir. R. 36-2, an unpublished opinion is not considered binding precedent, but it may be cited as persuasive authority.

d. If not, how is this consistent with the rule of law?

Response: See Response to Question 28(a).

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

Response: Yes, as I would be bound to do so. *See* Fed.R.App.P. 32.1 (providing that "[a] court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been … designated as 'unpublished,' 'not for publication,' 'nonprecedential,' 'not precedent,' or the like").

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

Response: No.

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: No.

29. In your legal career:

a. How many cases have you tried as first chair?

Response: I cannot recall the precise number, but I estimate that I tried more than twenty-five jury trials where I was either the first chair or had equal responsibilities to the first chair as a second chair on the case.

b. How many have you tried as second chair?

See Response to Question 29(a).

c. How many depositions have you taken?

Response: I cannot recall the precise number but I estimate more than twenty five.

d. How many depositions have you defended?

Response: I cannot recall the precise number but I estimate more than twenty five.

e. How many cases have you argued before a federal appellate court?

Response: I have not argued before a federal appellate court.

f. How many cases have you argued before a state appellate court?

Response: I have not argued before a state appellate court.

g. How many times have you appeared before a federal agency, and in what capacity?

Response: I have not appeared before a federal agency.

h. How many dispositive motions have you argued before trial courts?

Response: I cannot fairly determine the number of dispositive motions that I have argued before trial courts in my 24 years as a criminal and civil litigator. However, I can confidently state that the number is more than 50.

i. How many evidentiary motions have you argued before trial courts?

Response: I cannot fairly determine the number of dispositive motions that I have argued before trial courts in my 24 years as a criminal and civil litigator. However, I can confidently state that the number is more than 30.

30. If any of your previous jobs required you to track billable hours:

a. What is the maximum number of hours that you billed in a single year?

Response: I do not recall the exact number of billable hours that was the maximum that I billed in a single year, however, to the best of my recollection the number of hours was more than 2,000 but less than 2,200.

b. What portion of these were dedicated to pro bono work?

Response: There is no way for me to determine the number of hours of pro bono work I performed during my 15 years in private practice.

31. Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."

a. What do you understand this statement to mean?

Response: Because judges must rule without regard to the result, a judge who likes the results of all her opinions is likely a judge that improperly considers the results in reaching a decision. A judge that considers the results in reaching a decision is not faithfully applying the facts to the law in an impartial matter.

32. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

Response: I understand this statement to mean that judges are to abide by precedent, statutes, and the relevant rules when arriving at decisions without regard to their personal opinions.

b. Do you agree or disagree with this statement?

Response: I agree with the statement as I have described it in my Response to Question 32(a).

33. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

Response: A judge should not make decisions based on the judge's own personal opinions or sympathy, or to reach a desired result.

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: I agree with the statement as I have described it in my Response to Question 33(a).

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

a. If yes, please provide appropriate citations.

Response: No.

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

Response: No.

36. What were the last three books you read?

Response: (1) *The Year of Magical Thinking* by Joan Didion, (2) *Apples Never Fall* by Liane Moriarty, (3) *Bored and Brilliant* by Manoush Zomorodi.

37. Do you believe America is a systemically racist country?

Response: No.

38. What case or legal representation are you most proud of?

Response: Although I am very proud of the entire body of work I created while I was a lawyer, I was most honored to be part of the team of prosecutors from the United States Attorney's Office for the Southern District of Florida who supported federal law enforcement's investigation of the September 11th attacks. Because the hijackers were living in South Florida shortly before the terrorist attack, we investigated their activities before the attack, as well as conducted investigations in an effort to keep the community safe in the weeks after the attack.

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

Response: Yes.

a. How did you handle the situation?

Response: I put aside my personal views and represented my client as required by the rules of professional conduct.

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

Response: Yes.

40. What three law professors' works do you read most often?

Response: I do not regularly read work by law professors.

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

Response: Although I had the opportunity to read many of the Federalist Papers in college and law school, no one Federalist Paper has most shaped my views of the law.

42. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: I cannot recall a particular opinion or article that changed my mind on an issue, but I have had occasion to change my initial opinion after completing my research into the precedents that control a certain issue.

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

Response: The issue of whether an unborn child is a human being for purposes of determining legal rights is one that is currently raised before our federal courts. As a magistrate judge and a nominee for a district judge, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I will apply Supreme Court and Eleventh Circuit precedent to any case before me that involves a determination of whether an unborn child is a human being.

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

Response: No.

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

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

Response to all subparts: No.

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

a. Apple?
b. Amazon?
c. Google?
d. Facebook?
e. Twitter?

Response to all subparts: No.

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

Response: No.

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

Response: Not applicable.

48. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

Response: Not applicable.

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

Response: Judicial nominees are expected to answer all questions truthfully and to the best of their ability.

Senator John Kennedy
Questions for the Record

Jacqueline Becerra
Nominee, U.S. District Judge for the Southern District of Florida

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

   Response: Yes, a defendant is eligible for a capital sentence in a federal criminal case if the defendant is convicted of a crime for which the death penalty is a legally authorized sanction under Title 18 U.S.C. Section 3591, aggravating and mitigating factors are present to justify imposition of the penalty, and in a murder case where the defendant has been found to have the requisite intent for imposition of capital punishment

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

      Response: No.

2. **Except when a statutory maximum controls, when is it appropriate for a sentencing judge to impose a sentence below the range provided by the Sentencing Guidelines?**

   Response: In determining a sentence that is sufficient but not greater than necessary, a district judge is bound to consider the factors set forth in Title 18 U.S.C. Section 3553(a). Although no longer mandatory, a district must also consider the advisory guideline range provided for by the U.S. Sentencing Guidelines, and may depart from the guideline range if mitigating factors exists. If a district judge departs from the guideline range, the judge must explain what factors warranted the increased or decreased sentence.

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

   Response: Yes.

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

   Response: Yes.

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

   Response: My judicial philosophy is rooted in the principle that judges should be scrupulous in both the review of the record and the facts of a case, and should diligently apply the law. Based on the record and facts of a specific case and the applicable law, a judge should then proceed to impartially decide the matter and communicate that decision in a way that is clear to the parties and the public.

6. Is originalism a legitimate method of constitutional interpretation?

Response: Yes, the Supreme Court has used this interpretative approach to resolve certain Constitutional matters. *See New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022); *McDonald v City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004).

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

Response: As a magistrate judge, and if confirmed as a district judge, in resolving a constitutional question of first impression with no applicable precedents from either the Supreme Court or Eleventh Circuit, I would begin by examining the text of the Constitutional provision at issue. If the text of the Constitutional provision is unambiguous, I would apply its plain meaning. If the text of the provision is ambiguous, I would look to other methods of statutory interpretation including the decisions of other Circuit and District Courts, as well as the canons of construction. If these additional resources do not provide sufficient guidance, I would look to legislative history of the provision at issue but only to the extent such analysis is permitted under applicable precedent of the Supreme Court and Eleventh Circuit.

8. Is textualism a legitimate method of statutory interpretation?

Response: Yes, the Supreme Court has used this interpretative approach to resolve issues of statutory interpretation. *See Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020).

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

Response: See Response to Question 7.

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

Response: The meaning of the U.S. Constitution does not change over time. Indeed, "although [the Constitution's] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 3 (2022).

11. What is the role of legislative history in determining a statute's meaning?

Response: If confirmed as a district judge, I would first look to any precedent from the Supreme Court and Eleventh Circuit that has already interpreted the legal text at issue. If there is no binding precedent, I would examine the text of the statute. If the text of the statute is unambiguous, I would apply the plain meaning of the statute. If the text of the statute is ambiguous, I would look to other methods of statutory interpretation including the decisions of other Circuit and District Courts and the canons of construction. If these additional resources do not provide sufficient guidance, I would look to legislative history but only to the extent such analysis is permitted under applicable precedent of the Supreme Court and Eleventh Circuit. As such, the role of legislative history in determining a statute's meaning, if at all permissible, is very limited.

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

Response: Although the Supreme Court has not ruled on this issue, *see Griffin v. HM Fla.-ORL, LLC,* No. 23A366, 2023 WL 7928928, at *1 (U.S. Nov. 16, 2023), Rule 65 of the Federal Rules of Civil Procedure would be the starting point for addressing whether the authority exists to issue a nationwide injunction. Generally, "a plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Baldwin v. Express Oil Change, LLC,* No. 22-10611, 2023 WL 8441086, at *6 (11th Cir. Dec. 6, 2023). It should be noted, however, that injunctions are "a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). As to the circumstances under which a nationwide injunction against the implementation of federal laws or policies would be proper, that issue currently comes before federal courts. Therefore, as a magistrate judge and judicial nominee, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I would apply Supreme Court and Eleventh Circuit precedent in addressing a case involving a request for a nationwide injunction.

13. Is there ever an appropriate circumstance in which a district judge may ignore or seek to circumvent a precedent set by the circuit court under which it sits or the U.S. Supreme Court?

Response: No.

14. Would you faithfully apply all precedents of the U.S. Supreme Court?

Response: Yes.

15. Please describe the analysis you would use to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

Response: To evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment, the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation. *New York State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1, 19 (2022).

16. When should a district judge deem a previously unrecognized unenumerated right to be "fundamental" and therefore entitled to protection under the Fourteenth Amendment?

Response: Certain substantive rights, though not specifically enumerated in the Constitution, are entitled to due process protection where those rights are deeply rooted in our history and tradition and are essential to the scheme of ordered liberty. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2246 (2022); *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997).

17. Should a district judge give deference to an agency's interpretation of a statute that imposes criminal penalties? Please explain.

Response: The issue of what deference a court should give to an agency's interpretation of a statute that imposes criminal penalties is one that comes before our federal courts. *See United States v. Dupree*, 57 F.4th 1269, 1274 (11th Cir. 2023). As a magistrate judge and a nominee for district judge, I am precluded from making a "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed as a district judge, I will apply Supreme Court and Eleventh Circuit precedent addressing deference to an agency's interpretation of a statute that imposes criminal penalties.

18. Please describe how courts determine whether an agency's action violates the Major Questions Doctrine.

Response: The Supreme Court in *W. Virginia v. Env't Prot. Agency*, 142 S. Ct. 2587, 2609 (2022) recently articulated the Major Questions Doctrine by explaining that "[i]n extraordinary cases ... there may be reason to hesitate" before accepting a reading of a statute that would, under more "ordinary" circumstances, be upheld. (citing *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 159). Specifically, the Court reasoned that if an agency seeks to decide an issue of major national significance, its action must be supported by clear congressional authorization.

19. Please identify one member of the federal judiciary, current or former, whose service on the bench most inspires you and explain why.

Response: As a woman and mother I admire the service of Justice Sandra Day O'Connor.

20. You have been nominated to serve as a federal district judge. To the best of your recollection, please list up to 10 cases in which you served as lead counsel in a case tried before a jury in federal district court.

Response: In private practice, I tried one civil case to a jury in federal court, *Morris Hatchery, Inc. v. Interlink Grp. Corp. USA, Inc.*, No. 1:10-cv-24480-MARTINEZ (S.D. Fla. 2010). The majority of my trial experience was as an Assistant United States Attorney (1997-2004), where I tried over 25 criminal cases to verdict before a jury. I have limited records from that time period and can only provide name and case numbers for the following: *United States v. Gracia*, 1:00-cr-00320-GOLD (S.D. Fla. 2000)*, United States v. Genois*, 1:00-cr-00435-SEITZ (S.D. Fla. 2000), *United States v. Schlaen*, 1:99-cr-00689-GOLD (S.D. Fla. 1999), *United States. v. Castillo*, 1:99-cr-00595-UNGARO (S.D. Fla. 1999), *United States v. Cabanas*, 1:99-cr-00588-LENARD (S.D. Fla. 1999).

21. To the best of your recollection, please list up to 10 instances in which you presented oral argument before a U.S. Court of Appeals panel.

Response: I have not presented oral argument before a U.S. Court of Appeals panel. In my career as a trial lawyer, I handled two appeals as an Assistant United States Attorney and neither case was selected for oral argument.

22. Please describe the process by which you prepared for your hearing before the U.S. Senate Committee on the Judiciary, including materials or sources provided to you or consulted by you.

Response: In order to prepare for my hearing before the U.S. Senate Committee on the Judiciary, I reviewed: (1) videos of prior nomination hearings, (2) my Senate Judiciary Questionnaire, (3) seminal Supreme Court cases, (4) summaries of Supreme Court decisions from the last two years, (5) summaries of cases currently pending before the Supreme Court this term, and (6) a constitutional law outline I purchased from a bookstore.

23. Why should Senator Kennedy support your nomination?

Response: In the five years I have served as a magistrate judge I have demonstrated that I have the temperament and judgment to serve as district court judge. I apply the facts to the law after rigorous and careful review and provide the parties with ample opportunity to be heard before I reach a decision. My written decisions are clear and demonstrate my deep respect for the rule of law.

Questions from Senator Thom Tillis
For Jacqueline Becerra, nominee to be United States District Judge for the Southern District of Florida

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: A judge's personal views and background are irrelevant in interpreting and applying the law.

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

   Response: Impartiality is not only required by the Code of Conduct for United States Judges, it is critical to the rule of law. It is an expectation not merely an aspiration.

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

   Response: Black's Law Dictionary defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." In addition, I would consider rulings that are beyond what the facts and record of the case before the court to also constitute judicial activism. As defined, "judicial activism" is not appropriate and inconsistent with the rule of law.

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: A judge's duty is to apply the facts to the law without regard to the outcome. Whether an outcome is desirable to the judge is not a factor that may be considered by 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 confirmed as a district judge, I would apply the precedent of the Supreme Court and Eleventh Circuit, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Association, Inc. v. Bruen*, 596 U.S. 1 (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: Qualified immunity shields government officials from liability to the extent "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (internal quotation marks omitted). If the government official shows that he was acting within the scope of his discretionary authority at the time the allegedly wrongful conduct occurred, "the burden shifts to the plaintiff to show that the official's conduct (1) violated federal law (2) that was clearly established at the relevant time." *Spencer v. Benison*, 5 F.4th 1222, 1230 (11th Cir. 2021); *see also Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011). If I were confirmed as a district judge, I would apply the Supreme Court and Eleventh Circuit precedent to any qualified immunity case that was before me.

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: The application of qualified immunity is an issue regularly addressed by federal courts. As a magistrate judge and judicial nominee, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I would apply Supreme Court and Eleventh Circuit precedent in addressing any qualified immunity case that was before me.

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

Response: See Response to Question 8.

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

Response: Congress has the power under the Intellectual Property Clause, contained in Article I of the Constitution, to grant "authors and inventors the exclusive right to their respective writings and discoveries" for a limited time. U.S. Const. art. I, § 8. Intellectual property cases are regularly addressed by federal courts. As a magistrate judge and judicial nominee, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I would apply Supreme Court and Eleventh Circuit precedent in addressing any intellectual property case that came 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: The Southern District of Florida randomly assigns cases to its judges, and as such, a litigant cannot request that their case be heard within a particular division. As to the practice of "forum shopping" or "judge shopping," issues regarding proper venue arise regularly in our federal courts. Therefore, as a magistrate judge and judicial nominee, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I would apply Supreme Court and Eleventh Circuit precedent to any venue issue before me.

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: If confirmed as a district judge, I would be bound to apply Supreme Court and Eleventh Circuit precedent on all matters, including those concerning patents. Patent eligibility is a matter that is regularly heard by federal courts. Therefore, as a magistrate judge and judicial nominee, I am precluded from making "public comment on the merits of a matter pending or impending in any court." *See* Code of Conduct for United States Judges, Canon 3(A)(6). Indeed, providing an opinion on a matter that could be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I would apply Supreme Court and Eleventh Circuit precedent in addressing any intellectual property case that came before me.