Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Robin M. Meriweather
Nominee to be Judge on the United States Court of Federal Claims

1. **Are you a citizen of the United States?**

   Response: Yes.

2. **Are you currently, or have you ever been, a citizen of another country?**
   a. **If yes, state countries and dates of citizenship.**
   b. **If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**
      i. **If not, please explain why.**

   Response: No, I am not and have never been a citizen of another country.

3. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: No.

4. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: No.

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

   Response: If confirmed, it would only be appropriate for me to consider foreign law when interpreting the Constitution if the Supreme Court or the Federal Circuit has directed lower courts to consider foreign law when interpreting the relevant provision. For example, when interpreting certain constitutional provisions, the Supreme Court has cited the historical laws in England. *See, e.g.*, *District of Columbia v Heller*, 554 U.S. 570 (2008).

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

Response: I disagree with this statement. I would interpret the Constitution based on its text and controlling precedent from the United States Supreme Court and the Court of Federal Claims. My values and personal beliefs would not factor into that analysis.

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

   Response: No. I am not familiar with the circumstances or context in which Judge Stephen Reinhardt made this statement. However, a lower court judge should base opinions on binding precedent.

8. **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 law student who publicly endorsed any terrorist organization.

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

   Response: Yes. I would not hire a law student who publicly characterized a terrorist attack as necessary resistance or blamed the targeted nation for the victims' deaths.

10. **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: *Students for Fair Admissions, Inc. v. University of North Carolina*, 143 S. Ct. 2141 (2023), involved a challenge to the University of North Carolina's consideration of race as part of its college admissions practices. *Students for Fair Admissions, Inc. v. Presidents & Fellows of Harvard College*, 143 S. Ct. 2141 (2023), involved a challenge to Harvard College's consideration of race as a factor in its college admissions practices.

The Court resolved the cases together and held that both institutions' consideration of race in college admission was unconstitutional and violated the Equal Protection Clause.

11. **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 a Magistrate Judge I hire law clerks and interns and solicit applications for both positions. As Deputy Chief of the Civil Division of the United States Attorney's Office for the District of Columbia, I participated in decisions on whether to hire Assistant United States Attorneys and interviewed candidates for those positions. As an associate at Jenner & Block LLP, I participated in interviews for summer associates and associates.

12. **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.

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

    Response: No. I have not solicited applications for employment based on applicants' race, ethnicity, religion, or sex. As a magistrate judge, I encourage all qualified applicants to apply for clerkships and internships, regardless of their race, ethnicity, religion, or sex.

14. **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, to my knowledge none of my prior employers gave preferences to candidates for employment or other benefits based on race, ethnicity, religion, or sex. As a college student, I worked for the University of Michigan, which awarded a variety of scholarships; I do not know whether any of the scholarships that the University of Michigan awarded at that time gave preferences based on race, ethnicity, religion, or sex.

    If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given.

Please state whether you played any part in the employer's decision to grant the preference.

Response: Not applicable.

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

Response: *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), involved a challenge to the enforcement of a Colorado anti-discrimination law that would require a graphic designer to create wedding websites that conveyed messages contrary to the designer's religious beliefs about same-sex marriage. The Supreme Court held that the First Amendment prohibits Colorado from enforcing a law that would require the designer to create expressive designs that convey messages contrary to the designer's faith, and that Colorado could not force the designer to create wedding websites for same-sex couples.

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, 642 (1943), has not been reversed and is still binding precedent. It has been cited with approval more recently, such as in *Agency for International Development v. Alliance for Open Society International, Inc.,* 133 S. Ct. 2321, 2332 (2013), where the Supreme Court quoted that statement from *Barnette*, and noted that the Court "cannot improve upon what Justice Jackson wrote for the Court 70 years ago." The Supreme Court also cited *Barnette* favorably in *303 Creative LLC v. Elenis*, 600 U.S. 570, 584–85 and *Janus v. American Fed. of State, County, and Mun. Employees*, 138 S. Ct. 2448, 2463 (2018).

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: If presented with that question as a judge on the Court of Federal Claims, I would apply binding precedent from the Supreme Court and Federal Circuit. A law is "content based" if it "applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2227 (2015). To determine whether a law is "content neutral," courts must first ask whether

the law is facially context neutral, *i.e.*, whether the text of the law limits its application to particular speech based on the topic discussed or the idea or message expressed. *See Reed*, 135 S. Ct. at 2228. If it does not, the court also must determine whether the law can be "justified without reference to the content of the regulated speech" or was adopted by the government because of the message conveyed. *Id.*

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

Response: "'True threats' of violence" are "historically unprotected" by the First Amendment. *Counterman v. Colorado*, 143 S. Ct. 2106, 2114 (2023). A "true threat" is a "serious expression[] conveying that a speaker means to commit an act of unlawful violence." *Id.* Whether a statement is a threat "depends not on 'the mental state of the author' but on 'what the statement conveys'" to the person to who it is directed. *Id*. Statements understood to be made in jest or as hyperbole, such as "I'll kill you if you don't take me to the movies," are not "true threats." *See id.* To criminally prosecute a person for communicating a "true threat," the state must prove that the defendant "consciously disregarded a substantial risk that his communications would be viewed as threatening violence." *Id.* at 2112; *see also id.* at 2118.

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

Response: The Supreme Court has defined a "fact" as "questions of who did what, when or where, how or why." *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Village At Lakeridge LLC*, 583 U.S. 38, 394 (2018). The Supreme Court has noted that "the appropriate methodology for distinguishing questions of fact from questions of law has been . . elusive," and the Supreme Court has not yet "arrive[d] at a rule of principle that will unerringly distinguish a factual finding from a legal conclusion." *Miller v. Fenton*, 474 U.S. 104, 114 (1985). The Federal Circuit typically uses the term "question of law" to refer to issues that present purely legal questions and require the interpretation of a law or regulation without regard to facts. *See Ingalls Shipbuilding, Inc. v. O'Keefe*, 986 F.2d 486, 488 (Fed. Cir. 1993). For example, when reviewing challenges to the application of tariffs to specific merchandise, the Federal Circuit has noted that the meaning of the relevant tariff provision presents a question of law, whereas whether the relevant merchandise falls within the scope of that provision presents a question of fact. *See Marubeni Am. Corp. v. United States*, 35 F.3d 530, 535 (Fed. Cir. 1994).

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

Response: As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, it is not appropriate for me to comment on whether a Supreme Court decision from the last 50 years is "well reasoned."

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

Response: A s a sitting Magistrate Judge and a nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, it is not appropriate for me to comment on whether a Federal Circuit decision from the last 50 years is "well reasoned."

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

Response: 18 U.S.C. § 1507 makes it a class A misdemeanor offense for a 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" to "picket[] or parade[] on or near a building housing a court of the United States, or in or a near a building or residence occupied or used by such judge, juror, witness, or court officer," or to, with such intent, use "any sound-truck or similar device or resort[] to any other demonstration in or near any such building or residence."

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

Response: To my knowledge, the Supreme Court and federal courts of appeals have not addressed whether 18 U.S.C. § 1507 is constitutional. In *Cox v. Louisiana*, 379 U.S. 559, 562, the Supreme Court upheld the constitutionality of a state statute that was modeled on 18 U.S.C. § 1507. The United States Court of Appeals for the D.C. Circuit, whose precedent is binding for me in my current position as a magistrate judge, has held that a different federal statute, 40 U.S.C. § 6135, which makes it unlawful to "parade, stand, or move in procession or assemblages in the Supreme Court Building or grounds" is a constitutionally permissible viewpoint-neutral "means of vindicating the government's important interests in the Supreme Court plaza," and is not unconstitutionally vague. *Hodge v. Talkin*, 799 F.3d 1145, 1170, 1173 (D.C. Cir. 2015). Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts, and I therefore cannot comment on whether the analysis in *Cox* or *Hodge* extends to 18 U.S.C. § 1507, or broadly opine on the constitutionality of 18 U.S.C. § 1507.

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

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

Response: Yes. As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. However, the question of the legality of segregated schools is sufficiently well settled that it is not likely to come before the courts again. As such, I believe that I can provide my opinion that *Brown v. Board of Education* was correctly decided.

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

Response: Yes. As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. However, the question of the legality of laws prohibiting interracial marriage is sufficiently well settled that it is not likely to come before the courts again. As such, I believe that I can provide my opinion that *Loving v. Virginia* was 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 a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States

Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, I cannot provide my personal views on whether the cases listed in questions 24(c) through (m) were "correctly decided." With respect to question 24(d) and (e), I note that the Supreme Court overturned *Roe v. Wade* and *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

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

Response: The question of whether a regulation or statute infringes on Second Amendment rights is not likely to be presented to me if I were confirmed as a judge on the Court of Federal Claims, given that Court's limited jurisdiction. However, if presented with the issue, I would look to the text of the Constitution and follow Supreme Court precedent interpreting the scope of Second Amendment rights, such as *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*, 597 U.S. 1 (2022). The Supreme Court has clarified that if the government issues a regulation that is within the scope of the plain text of the Second Amendment, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022).

26. 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: Not to my knowledge.

27. **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: Not to my knowledge.

28. **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?**
       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.

    b. **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.

    c. **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: Not to my knowledge.

29. **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: Not to my knowledge.

30. **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: Not to my knowledge.

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

Response: On October 3, 2023 officials from the White House Counsel's office informed me that I was being considered for a vacancy on the United States Court of Federal Claims and invited me to interview. On October 5, 2023, I interviewed with officials from the White House Counsel's Office. On October 10, 2023, an attorney from the White House Counsel's Office advised me that the White House would like to proceed with the next steps in the vetting process. Since October 10, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me.

32. 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.

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

Response: No.

34. 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.

35. 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.

36. 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.

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

Response: While preparing my Senate Judiciary Committee Questionnaire attorneys from the Department of Justice's Office of Legal Policy provided advice about whether information was or was not responsive to the Committee's requests.

a. If yes,

i. Who?

Response: See my response above.

ii. What advice did they give?

Response: See my response above.

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

Response: See my response above.

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

Response: On October 3, 2023 officials from the White House Counsel's Office informed me that I was being considered for a vacancy on the United States Court of Federal Claims and invited me to interview. On October 5, 2023, I interviewed with officials from the White House Counsel's Office. On October 10, 2023, an attorney from the White House Counsel's Office advised me that the White House would like to proceed with the next steps in the vetting process. Since October 10, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me. Since December 19, 2023 I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice regarding the transmission of my nomination and Senate Judiciary Questionnaire to the Senate and the logistics of and preparation for the January 24, 2024 hearing before the Senate Judiciary Committee.

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

Response: I read each question, conducted legal research where necessary, reviewed opinions and record materials from cases that were the subject of questions, and drafted answers to the questions. I provided a copy of my draft answers to the Department of Justice, Office of Legal Policy and received oral comments about the draft. I

subsequently proofread and finalized my draft answers before submitting them to the Committee.

Senator Hirono Questions for the Record for the January 24, 2024, Hearing in the Senate Judiciary Committee entitled "Nominations."

QUESTIONS FOR ROBIN MICHELLE MERIWEATHER

Sexual Harassment

As part of my responsibility as a member of this committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

QUESTIONS:

1. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

   Response: No.

2. **Have you ever faced discipline or entered into a settlement related to this kind of conduct?**

   Response: No.

Senator Jon Ossoff
Question for the Record for Judge Robin M. Meriweather
January 24, 2024

1. **Will you pledge to faithfully apply the law without bias and without regard for your personal policy or political preferences?**

   Response: Yes. If confirmed as a Judge for the United States Court of Federal Claims, I would faithfully apply the law without bias and without regard for my personal policy or political preferences.

Senator Mike Lee
Questions for the Record
Robin Michelle Meriweather, Nominee to be a Judge of the United States Court of Federal Claims

1. How would you describe your judicial philosophy?

Response: As a magistrate judge I believe it's critical to: give each issue presented to me as a judge careful consideration by understanding the relevant laws and rules and applying them to the facts and arguments presented; be fair and impartial in my decisions and how I treat every party who appears before me; efficiently and clearly resolve motions and cases presented to me; and hold myself to the highest standards of ethics reflected in the Code of Conduct for United States Judges. Those four principles serve as my lodestar, and I would continue to follow them if confirmed to be a Judge on the United States Court of Federal Claims.

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

Response: I would begin by determining whether the Supreme Court or the Federal Circuit had interpreted the relevant statutory provision. If either court had, I would follow that binding precedent. If neither court had addressed the issue, I would examine the text of the statute and follow its plain meaning. "[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. . . When the words of a statute are unambiguous, then, . . . 'judicial inquiry is complete.'" *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). If the statutory text were ambiguous, I would use other recognized tools of statutory construction and consider the structure of the statute, canons of statutory construction, and the limited types of legislative history that the Supreme Court and Federal Circuit have deemed reliable. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) (describing reliable sources of legislative history).

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

Response: I would begin by determining whether the Supreme Court or the Federal Circuit had interpreted the relevant constitutional provision. If either court had, I would follow that binding precedent. If neither court had addressed the interpretation of the constitutional provision, I would apply the method of interpretation that the Supreme Court and Federal Circuit have authorized. For example, in some contexts, the Supreme Court has directed lower federal courts to use interpretive methods that consider the history of the constitutional provision and the Founders' understanding. *See, e.g.*, *New York State Rifle & Pistol Ass'n , Inc. v. Bruen*, 59 U.S. 1 (2022) (2nd Amendment); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (Confrontation Clause).

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

Response: The text of a constitutional provision is the first thing that courts examine when interpreting the Constitution. The Supreme Court has held that the original meaning of constitutional provisions should be used to interpret the Constitution in several contexts. *See, e.g.*, *New York State Rifle & Pistol Ass'n , Inc. v. Bruen*, 59 U.S. 1, (2022) (2nd Amendment); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (Confrontation Clause).

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: Please see my response to Question 2.

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

Response: It is "a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute." *New Prime, Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) (internal quotation marks omitted). Consistent with that precedent, the Federal Circuit has held that "the best evidence of congressional intent is the plain meaning of the statutory language at the time Congress enacted the statute." *Strategic Housing Fin. Corp. v. United States*, 608 F.3d 1317, 1323–24 (Fed. Cir. 2010). If confirmed as a Judge on the Court of Federal Claims, I would follow that binding precedent and look to the understanding at the time of enactment when examining the "plain meaning" of a statute.

7. What are the constitutional requirements for standing?

Response: Article III standing is the standard a plaintiff must satisfy to bring a case in federal district courts. The plaintiff must show that he suffered a concrete and particularized injury in fact that is fairly traceable to the challenged conduct and is redressable by the court. *See Biden v Nebraska*, 143 S. Ct 2355, 2365 (2023); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). Although the Court of Federal Claims is an Article I court, it generally applies the Article III standing requirements. *See Weeks Marine, Inc. v. United States*, 575 F.3d 1352, 1359 (Fed. Cir. 2009). Congressional reference cases, however, can be heard in the Court of Federal Claims without regard to traditional standing requirements. *See* 28 U.S.C. § 1492.

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

Response: Article I of the Constitution enumerates Congress's powers. It "confers on Congress . . . only certain enumerated powers. Therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms." *Murphy v. NCAA*, 584 U.S. 453, 471 (2018). The Necessary and Proper Clause empowers Congress to "make all laws which shall be necessary and proper for carrying into execution" the powers vested in it by the Constitution. U.S. Const., art I, §8. Thus it "makes clear that the Constitution's grants of specific federal legislative authority are accompanied by broad power to enact laws that are convenient, or useful or conducive to the authority's beneficial exercise." *United States v. Comstock*, 560 U.S. 126, 133–34 (2010) (internal quotation marks omitted). Although the Clause gives Congress authority to "legislate on that vast mass of incidental powers which must be involved in the constitution," it does not license the exercise of any "great substantive and independent power[s]" beyond those specifically enumerated. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 559 (2012).

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

Response: The Supreme Court has held that "[t]he question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *National Fed'n of Independent Businesses v. Sebelius*, 567 U.S. 519, 570 (2012). If I were confirmed as a Judge on the Court of Federal Claims and presented with a challenge to the constitutionality of a law that Congress enacted without specifically referring to a specific enumerated power, I would evaluate the constitutionality of the law by first determining whether the Supreme Court or Federal Circuit has reviewed the constitutionality of the law; if either Court had done so, I would follow that binding precedent. In the absence of binding precedent, I would interpret the statute and relevant constitutional provisions consistent with my responses to Questions 2 and 3.

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

Response: The Ninth Amendment of the Constitution provides that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const., Am. 9. The Supreme Court has not defined the precise contours of which rights the people retain but has indicated that certain rights are reserved to the people and protected by the constitution. *See Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965) (right to marital privacy); *Obergefell v. Hodges*, 576 U.S. 644, 664 (2015) (right to marry); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (right to procreate); *Saenz v. Roe*, 527 U.S. 489, 498 (1999) (right to travel interstate). The Due Process Clause of the Fourteenth Amendment "guarantee[s] some rights that are not mentioned in the Constitution, but any such right must be 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022).

11. What rights are protected under substantive due process?

Response: The term "substantive due process" refers to the Supreme Court's interpretation of the Due Process Clause as protecting certain fundamental constitutional rights from government interference. "That provision has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022). The Supreme Court has not enumerated a list of rights that are protected under substantive due process. However, the right to marry and the right to engage in private consensual sexual acts have been recognized as fundamental rights protected by substantive due process. *See Obergefell v. Hodges*, 577 U.S. 644 (2015); *Lawrence v. Texas*, 539 U.S. 558 (2003).

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

Response: I do not have any personal opinions on whether substantive due process protects economic rights such as those at stake in *Lochner v. New York*, 198 U.S. 45 (1905), or personal rights such as a right to contraceptives. My understanding of the scope of rights that are protected by substantive due process is based solely on Supreme Court precedent. The Supreme Court has recognized that *Lochner v. New York* was overruled. *See Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963) ("The doctrine that prevailed in *Lochner* . . . has long since been discarded").

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

Response: The Commerce Clause allows Congress to "regulate Commerce with foreign nations, and among the several States, and with Indian Tribes." U.S. Const. art. I, § 8. That power, while broad, "is not without effective bounds." *United States v. Morrison*, 529 U.S. 598, 608 (2000). Congress's Commerce Clause powers extend to three areas: regulating "the use of the channels of interstate commerce;" regulating and protecting "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and regulating "those activities having a substantial relation to interstate commerce, . . . *i.e.*, those activities that substantially affect interstate commerce." *Id.*

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

Response: In its Equal Protection Clause jurisprudence, the Supreme Court has defined a "suspect class" as "one 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.'" *Massachusetts Bd. of Ret. v. Murgia,* 427 U.S. 307, 313 (1976). Race,

alienage, religion, and national origin have been recognized as suspect classes. *See id.*; *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Graham v. Richardson*, 403 U.S. 365, 371–32 (1971).

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

Response: The Supreme Court discussed the role of checks and balances and the separation of powers in *Miller v. French*, 530 U.S. 327, 341 (2000). The Court noted that the separation of powers among three branches of government exemplified in the "'very structure' of the Constitution." *Miller*, 530 U.S. at 341 (quoting *I.N.S. v. Chadha*, 462 U.S. 919, 946 (1983)). The separation of powers reflects the Framers' desire to "divide the delegated powers of the new federal government into three defined categories, legislative, executive and judicial, to assure, as nearly as possible, that each Branch of government would confine itself to its assigned responsibility." *Chadha*, 462 U.S. at 946. For example, the President's executive branch powers do not authorize him to enact laws. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 588–89 (1952).

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: If presented with a separation of powers case that challenged the constitutionality of the actions of a branch of government, I would first ascertain whether the case was justiciable. I would then look for guidance in Supreme Court and Federal Circuit precedent, which I would faithfully apply. In the absence of binding precedent, I would consider whether the Constitution authorized the branch of government to engage in the challenged conduct, applying the principles of constitutional interpretation discussed in my response to Question 3.

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

Response: When considering the merits of the claims and disputed issues in a case, a judge should focus solely on the facts, applicable law, binding precedent; in the absence of binding precedent, a judge may look to persuasive authority from other federal courts. Basing a decision on empathy would be contrary to Canon 3 of the Code of Conduct for United States Judges, which requires that judges perform the duties of office fairly and impartially.

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 undesirable. A judge should faithfully and impartially apply the Constitution and follow binding precedent.

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 examined the frequency with which the Supreme Court has invalidated federal statutes, and therefore have no opinion on the change described in this question. I do not believe that judicial review should be either "aggressive" or "passive." Judges should review the cases presented to them, consistent with Article III standing and other jurisdictional requirements and the applicable law and procedural rules.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial supremacy" as "[t] he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Judicial review refers to courts' review of the cases and controversies presented to them. Statutes and precedent define the prerequisites that a party must meet in order to obtain judicial review of the claims the party wishes to raise.

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: Elected federal officials, like judges, take an oath to uphold the Constitution. "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. . . . 'If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). How elected officials should balance that oath with their interpretation of judicial decisions and their interest in preserving the rule of law is a question outside the scope of my expertise or experience, and best reserved for policymakers like members of Congress. As a magistrate judge and nominee to be a judge on the Court of Federal Claims, it is my duty and committed purpose to issue decisions that faithfully follow the Constitution.

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: The statement that judges have "neither force nor will, but only judgment" is an important reminder that judges should be impartial arbiters of disputed questions of law and fact who memorialize their rulings in opinions and orders, thereby promoting the rule of law. Judges do not create laws, nor do they have the law enforcement powers that are the province of the executive branch.

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

Response: A lower court judge must follow controlling precedent from the Supreme Court and the relevant circuit. If confirmed as a judge on the Court of Federal Claims, I would faithfully apply Supreme Court and Federal Circuit precedent that is germane to the cases presented to me, irrespective of any personal opinion on the correctness of that binding precedent. If there was no precedent that spoke directly to the issue at hand, I would apply the most analogous precedent from the Supreme Court and Federal Circuit. Any personal views on the correctness of the Supreme Court and Federal Circuit precedent would not impact my assessment of whether that precedent should apply to analogous cases that present a question of first impression.

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. If confirmed as a Judge on the Court of Federal Claims, I would not sentence any individuals because that court's limited jurisdiction does not encompass criminal cases. A defendant's group identities should play no role in the judges' sentencing analysis, which must be guided by the factors set forth in 18 U.S.C. § 3553. As a magistrate judge, when sentencing criminal defendants convicted of misdemeanors, I have faithfully and fully applied the §3553 factors, without regard to the defendant's group identity.

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

Response: I am not familiar with the Biden Administration definition of "equity" provided in this question. I have no personal opinion on how "equity" should be defined in this context. Merriam Webster dictionary defines equity as "freedom from bias or favoritism" *Equity*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/equity (last visited Feb. 1, 2024).

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

Response: Merriam Webster dictionary defines equity as "freedom from bias or favoritism," and defines equality as "the quality or state of being equal." *Equity*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/equity (last visited Feb. 1, 2024); *Equality*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/equality (last visited Feb. 1, 2024).

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

Response: I am not familiar with the Biden Administration definition of "equity" provided in question 25. The Fourteenth Amendment does not contain the word equity.

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

Response: Merriam Webster Dictionary defines "systemic racism as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)." *Systemic Racism*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/systemic%20racism (last visited Feb. 1, 2024). That definition is consistent with my limited understanding of how some scholars have used the term "systemic racism," although I do not have a personal definition of this term.

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

Response: Merriam Webster Dictionary defines "critical race theory" as "a group of concepts (such as the idea that race is a sociological rather than biological designation, and that racism pervades society and is fostered and perpetuated by the legal system) used for examining the relationship between race and the laws and legal institution of a country and especially the United States. *Critical Race Theory*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/critical%20race%20theory (last visited Feb. 1, 2024). That definition is consistent with my limited understanding of how some scholars have used the term "critical race theory," although I do not have a personal definition of this term.

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

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

31. In the case of *United States v. Johnston*, the defendant had travelled across state lines to meet who he thought was the mother of a minor child with the intent of paying the mother to rape the young girl. Thankfully, this fictitious mother was an undercover law enforcement officer. This same defendant had been caught traveling to meet minors for sexual acts twice before, and had admitted to raping his own underage daughter. Despite the requirements of the Bail Reform Act, you decided to release him into the public awaiting trial so he could pursue cancer treatments.

Do you stand by your decision to release this child rapist into the community during the pretrial period? Why or why not?

Response: In February 2017, the Defendant in *United States v. Johnston* was detained without bond after having been charged with Travel With Intent to Engage in Illicit Sexual Conduct, in violation of 18 U.S.C. § 2423(b). While incarcerated, Mr. Johnston was diagnosed with colon cancer. Three months after his diagnosis, on September 4, 2017, Mr. Johnston filed a motion seeking a temporary transfer to home confinement with electronic monitoring and other conditions for the limited and exclusive purpose of obtaining immediate surgery to remove the cancerous growth. I carefully reviewed the medical records, which provided undisputed evidence that Mr. Johnston had an acute and immediate need for further diagnostic testing and treatment dating back to July 2017 but had not obtained it while in custody. The medical records also indicated, as early as June 2017, that any delay in treatment posed a risk that the cancer would spread locally and metastatically.

During and following a hearing on September 8, 2017, I requested additional information from the government regarding the nature and timing of treatment available to Mr. Johnston while in custody and from the Pretrial Services Agency regarding resources to supervise Mr. Johnston should he be transferred on the limited basis to home confinement. I subsequently continued resolution of Mr. Johnston's motion three times so the government could offer information about plans for providing Mr. Johnston with the long delayed medical care he sought. I held additional hearings on September 13, 2017 and September 19, 2017 in order to evaluate whether Mr. Johnston could receive his time-sensitive medical care while in custody and whether the Pretrial Services Agency could effectively monitor Mr. Johnston during a temporary transfer to home confinement for medical purposes. On September 21, 2017, I held a hearing to resolve Mr. Johnston's motion. By that point, he still had not received the medical care he needed. The record showed that although the Department of Corrections had initially moved swiftly towards surgery at the onset of Mr. Johnston's illness, he had not been scheduled for any appointments in July or August 2017. During an appointment in September 2017, Mr. Johnston was advised that the treatment available to him while in custody would require him to

further delay surgery for an indeterminate period pending additional review of records and diagnostic testing. By contrast, Mr. Johnston identified providers through private medical care who could schedule the time-sensitive surgery within less than a week.

I reviewed Mr. Johnston's motion under the Bail Reform Act, which required me to determine whether he had overcome the rebuttable presumption of detention triggered by the charges he faced and, if so, whether the United States had shown, by clear and convincing evidence, that the court could not craft release conditions that would reasonably assure the safety of the community and others during the proposed temporary period of home incarceration. I concluded, after balancing the four statutory factors — the nature and circumstances of the charged offense, the weight of the evidence, the defendant's history and characteristics, and the nature and seriousness of the potential danger to the community — that Mr. Johnston's need for prompt cancer testing and treatment, paired with a record showing that if he remained in Department of Corrections custody such treatment would be further delayed to a degree that could imperil his life, rebutted the statutory presumption of detention. With respect to the safety of the community, I concluded that, given Mr. Johnston's incentive to comply with release conditions so that he could obtain potentially life-saving medical treatment, I could reasonably ensure the safety of the community for the 21-day period of home incarceration by placing Mr. Johnston on stringent conditions that included: home incarceration confining him to his home (where no children resided) except for medical appointments and court appearances, GPS monitoring that would alert pretrial services if Mr. Johnston left his home, a prohibition against using any electronic device capable of accessing the internet during that home incarceration, a requirement that he allow pretrial services to install software that would monitor computer usage and trigger an alert if any household device was used for illicit purposes, a requirement that all electronic devices not compatible with that computer monitoring software be removed from the home, and placing his spouse under oath to serve as a third-party custodian sworn to ensure that he abided by his conditions and to report any violations to the Court and pretrial services. In so ruling, I cited a case in which another federal court had released a terminally ill defendant facing murder and racketeering charges because prison facilities could not adequately manage his medical condition.

In my ruling, I recognized that the nature and circumstances of the charged offense, which involved serious and deeply disturbing allegations of an attempt to meet with a fictitious child for illicit sexual activity, weighed in favor of pretrial detention, as did the strong evidence that Mr. Johnston engaged in online communications with the undercover agent and traveled to meet with the fictitious child. However, I concluded that Mr. Johnston's acute medical needs, which pertained to his history and characteristics, and the availability of stringent release conditions that could safeguard against him having any electronic or direct contact with minors, outweighed those factors.

If Mr. Johnston had received the time-sensitive cancer testing and treatment before I issued my decision, I would not have placed him on temporary home incarceration

and instead would have determined that he should remain detained. He did not receive that necessary medical care before I issued my ruling, despite the warnings I gave to the government during the detention hearings. I stand by my application of the law to the unique facts presented to me for the reasons described above. It would be inappropriate and contrary to the Code of Conduct for United States Judges for me to question the correctness of the district judge's ruling, on appeal under changed facts. My review of the record of the appeal indicates that Mr. Johnston was provided medical care between my ruling and the hearing on his appeal, and that the United States made additional arguments and factual proffers on appeal that were not presented to me. Mr. Johnston's receipt of treatment before the appeal was resolved rendered moot the reasoning on which I based my ruling.

If confirmed to the Court of Federal Claims, I would not have occasion to resolve similar motions because that court has a specialized, exclusively civil, docket.

32. In *United States v. Allen*, a case involving a man charged with conspiring to distribute thousands of fentanyl-laced counterfeit pills, you released Allen to the custody of his romantic partner even though you knew he had $1.2 million at his disposal and had been operating a drug organization spanning the United States. You thought he should return to the community pending trial. Do you stand by your reasoning to grant pre-trial release in *United States v. Allen*? Why or why not?

Response: I have issued more than 390 pretrial detention rulings, and *United States v. Allen* is one of a handful of such rulings that were reversed. I determined that three of Mr. Allen's co-defendants should be detained pending trial but concluded that the Bail Reform Act factors weighed in favor of releasing Mr. Allen. No evidence that Mr. Allen had $1.2 million at his disposal, or any significant funds, was presented to me; when I conducted his hearing, I was under the impression that Mr. Allen lacked significant financial means, as a different magistrate judge had recently deemed him eligible for court-appointed counsel.

I reviewed the government's pretrial detention motion under the Bail Reform Act, which required me to determine whether Mr. Allen had overcome the rebuttable presumption of detention triggered by the charges he faced and, if so, whether the United States had shown, by clear and convincing evidence, that the court could not craft release conditions that would reasonably assure the safety of the community and others if Mr. Allen were released pending trial. I concluded, after balancing the four statutory factors (the nature and circumstances of the charged offense, the weight of the evidence, the defendant's history and characteristics, and the nature and seriousness of the potential danger to the community), that stringent release conditions could adequately ensure the safety of the community. In so ruling, I noted that the nature and circumstances of the alleged offense—participation in a fentanyl trafficking conspiracy—was serious and weighed in favor of detention. I expressed

concern, however, regarding the weakness of the evidence in support of the charged drug trafficking offense relative to the evidence presented regarding the alleged co-defendants and in similar drug conspiracy cases, given that the evidence presented to me regarding Mr. Allen consisted solely of vague text messages using coded language to purportedly discuss the potential purchase and sale price of pills containing fentanyl, and records of his frequent travel to California. Unlike one co-defendant, the messages did not include photographs of pills. I concluded that Mr. Allen's history and characteristics weighed in favor of pretrial release because he had almost no criminal history except for a 'failure to holster' offense from 2019 which appeared to be a misdemeanor, had strong family support, and a letter of support from an organization where he mentored and coached youth. In light of his history and characteristics, the relative weakness of the evidence, and the fact that strict conditions such as home detention and GPS monitoring could protect against the charged conduct, I concluded that conditions of release could be fashioned to reasonably assure the safety of the community and his appearance as required.

On appeal, with a more robust factual proffer regarding Mr. Allen's role in the conspiracy, the district judge presiding over the case disagreed with my conclusion and ordered that Mr. Allen be detained. It would be inappropriate and contrary to the Code of Conduct for United States Judges for me to question the correctness of the district judge's ruling. So while I believe that my ruling, made at a time when presented with different evidence than the district judge, faithfully applied the Bail Reform Act factors to the evidence before me, I recognize that my ruling was reversed.

If confirmed to the Court of Federal Claims, I would not have occasion to resolve similar motions because that court has a specialized, exclusively civil, docket.

33. In *United States v. Patel*, you granted the defendant pretrial release, which was overruled by the district court. The district court rightly found that the defendant's $24 million dollars in Bitcoin and access to a Canadian passport might present a flight risk. In fact, you did not even require the defendant to surrender his passport as a condition of his pretrial release. Do you stand by your reasoning to grant pre-trial release to the defendant in *United States v. Patel?* Why or why not?

Response: I have issued more than 390 pretrial detention rulings, and *United States v. Patel* is one of a handful of such rulings that were reversed. I rejected the United States' motion that Mr. Patel be detained as a flight risk pending trial and concluded that the Bail Reform Act factors weighed in favor of concluding that, given Mr. Patel's history of appearing for court proceedings while on release in a prior matter, pretrial detention was not necessary to adequately ensure Mr. Patel's appearance at future hearings in the case pending before me. It was undisputed that, in prior criminal proceedings involving charges similar to the new charges for money

laundering and concealment of cryptocurrency proceeds, Mr. Patel complied with his pretrial release conditions and traveled from his home in Canada to engage with law enforcement and appear for court proceedings, including surrendering himself to serve a prison term that he had since completed. In his prior case in the District Court for the District of Columbia, the presiding district judge reversed a magistrate judge order detaining Mr. Patel and concluded that he should be released pending trial. In the case before me, I determined that this track record provided the best evidence of his likelihood of fleeing and demonstrated that Mr. Patel could reasonably be expected to appear for future proceedings. As such, I held that he did not present a serious risk of flight that warranted pretrial detention. I did not order Mr. Patel to surrender his passport because he resided in Canada.

On appeal, the district judge presiding over the case disagreed with my conclusion and ordered that Mr. Patel be detained. It would be inappropriate and contrary to the Code of Conduct for United States Judges for me to question the correctness of the district judge's ruling. So while I believe that my ruling faithfully applied the Bail Reform Act factors to the evidence before me and was consistent with a prior ruling by a different district judge, I recognize that my ruling was reversed.

If confirmed to the Court of Federal Claims, I would not have occasion to resolve similar motions because that court has a specialized, exclusively civil, docket.

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

Questions for the Record for Robin Michelle Meriweather, nominated to be Judge on the United States Court of Federal Claims

I. Directions

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

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

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

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

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

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

II. Questions

1. Is racial discrimination wrong?

Response: Yes. Racial discrimination is wrong, and some forms of discrimination violate the Constitution and federal civil rights laws.

2. Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?

Response: The Due Process Clause of the Fourteenth Amendment "guarantee[s] some rights that are not mentioned in the Constitution, but any such right must be 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022).

3. How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.

Response: As a Magistrate Judge I believe it's critical to: give each issue presented to me as a judge careful consideration by understanding the relevant laws and rules and applying them to the facts and arguments presented; be fair and impartial in my decisions and how I treat every party who appears before me; efficiently and clearly resolve motions and cases presented to me; and hold myself to the highest standards of ethics reflected in the Code of Conduct for United States Judges. Those four principles serve as my lodestar, and I would continue to follow them if confirmed to be a Judge on the United States Court of Federal Claims. I am not sufficiently familiar with the philosophies of Justices on the Warren, Burger, Rehnquist, and Roberts Courts to identify whose philosophy is most analogous to my judicial approach.

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

Response: Under originalism, judges look to the original meaning of the Constitution. No, I do not characterize myself as an adherent to a particular interpretive philosophy. If confronted with a question that required me to interpret a constitutional provision, I would begin by determining whether the Supreme Court or the Federal Circuit had interpreted the relevant constitutional provision. If either court had, I would follow that binding precedent. If neither court had addressed the interpretation of the constitutional provision, I would apply the method of interpretation that the Supreme Court and Federal Circuit have authorized. For example, in some contexts, the Supreme Court has directed lower federal courts to use interpretive methods that consider the history of the constitutional provision and the Founders' understanding. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (2nd Amendment); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (Confrontation Clause).

5. Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?

Response: Living constitutionalism regards the Constitution as "a being the development of which could not have been foreseen completely by the most gifted of its begetters." *Missouri v. Holland*, 252 U.S. 416, 433 (1920) (J. Holmes). No, I do not characterize myself as an adherent to a particular interpretive philosophy. If confronted with a question that required me to interpret a constitutional provision, I would begin by determining whether the Supreme Court or the Federal Circuit had interpreted the relevant constitutional provision. If either court had, I would follow that binding precedent. If neither court had addressed the interpretation of the constitutional provision, I would apply the method of interpretation that the Supreme Court and Federal Circuit have authorized. For example, in *Obergefell v. Hodges*, 576 U.S. 644, 664 (2020), the Supreme Court noted that when identifying fundamental rights, "[h]istory and tradition guide and discipline the inquiry but do not set its outer boundaries," and that the framers "did not presume to know the extent of freedom in all its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning." In other contexts, as noted in my response to question 4, the Supreme Court has held that the interpretation of the constitution should be grounded in the history and original understanding of its text.

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

Response: Yes, provided that the constitutional issue involved the interpretation of a provision to which the Supreme Court has directed courts to apply the original public meaning of the Constitution. The text of a constitutional provision is the first thing that courts examine when interpreting the Constitution. The Supreme Court has held that the original meaning of constitutional provisions should be used to interpret the Constitution in several contexts. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28–30 (2022) (2nd Amendment); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (Confrontation Clause).

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

Response: Yes, but rarely. It is relevant if a statute has been so recently enacted that the public's current understanding is reflective of the public meaning of the text at the time of enactment. *See Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1738 (2020). Otherwise, current public understanding generally is not relevant to the meaning of the Constitution or a previously enacted statute, which is fixed and is interpreted with reference to the plain text, its meaning at the time of ratification or

enactment, or applicable precedent.

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

Response: No. "[A]lthough its 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, 28 (2022).

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

Response: Yes, it is settled law and binding Supreme Court precedent.

a. Was it correctly decided?

Response: As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, I cannot provide my personal views on whether *Dobbs v. Jackson Women's Health Organization* was "correctly decided."

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

Response: Yes, it is settled law and binding Supreme Court precedent.

a. Was it correctly decided?

Response: As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, I cannot provide my personal views on whether *New York Rifle & Pistol Ass'n v. Bruen* was "correctly decided."

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

Response: Yes, it is settled law and binding Supreme Court precedent.

a. Was it correctly decided?

As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. However, the question of the legality of segregated schools is sufficiently well settled

that it is not likely to come before the courts again. As such, I believe that I can provide my opinion that *Brown v. Board of Education* was correctly decided.

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

Response: Yes, it is settled law and binding precedent.

a. Was it correctly decided?

Response: As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, I cannot provide my personal views on whether *Students for Fair Admissions v. Harvard* was "correctly decided."

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

Response: Yes, it is settled law and binding precedent.

a. Was it correctly decided?

Response: As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the Courts. As such, I cannot provide my personal views on whether *Students for Fair Admissions v. Harvard* was "correctly decided."

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

Response: The Bail Reform Act, 18 U.S.C. § 3141, enumerates the offenses that trigger a rebuttable presumption in favor of pretrial detention. As a Magistrate Judge I have evaluated this issue under D.C. Circuit precedent; criminal cases are outside the limited jurisdiction of the Court of Federal Claims and thus I would not make pretrial detention rulings if I were confirmed as a judge on that court. When there is probable cause to believe a defendant committed certain offenses enumerated at 18 U.S.C. § 3142(e)(3), a rebuttable presumption applies "that no condition or combination of conditions will reasonably assure the appearance of the [defendant] as required and the safety of the community." 18 U.S.C. § 3142(e)(3). Those offenses include: offenses arising under certain provisions of the Controlled Substances Act for which the maximum term of imprisonment of ten years or more, offenses involving the use of a firearm in connection with a crime of violence or drug trafficking crime, offenses involving conspiracy to murder, kidnap, or maim persons outside the United States, acts of terrorism transcending national boundaries, certain terrorism offenses for which the maximum term of imprisonment is ten years or more, and certain offenses involving minor

victims. *See id.*

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

Response: The Supreme Court has stated that the Bail Reform Act is not intended to punish dangerous individuals, and instead reflects Congress's perception that pretrial detention was "a potential solution to a pressing societal problem." *United States v. Salerno*, 481 U.S. 739, 748 (1987). Although the Supreme Court has not opined on the reasons underpinning the presumption of detention, other courts have reasoned that the presumption reflects "Congressional findings that certain offenders, including narcotics violators, as a group are likely to continue to engage in criminal conduct undeterred either by the pendency of charges against them or by the imposition of monetary bond or other release conditions." *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986).

15. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?

Response: The government cannot "base laws or regulations on a hostility to a religion or religious viewpoint" held by religious organizations or small businesses operated by observant owners. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. 617, 638 (2018). The Supreme Court has concluded that certain government requirements unconstitutionally infringe upon the First Amendment rights of observant business owners and religious organizations like Little Sisters of the Poor in the following cases: *See, e.g.*, *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023); *Fulton v. City of Phila.*, 141 S. Ct. 1868 (2021); *Masterpiece Cakeshop, Ltd.*, 584 U.S. 617 (2018); *Zubik v. Burwell*, 578 U.S. 403 (2016).

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

Response: No, the government may not discriminate against organizations or people on the basis of religion. The Supreme Court has observed that the Free Exercise Clause "protects religious observers against unequal treatment." *Church of Lukumi Bablu Aye Inc. v. City of Hialeah*, 508 U.S. 520, 542 (1993); *see also Tandon v. Newsom*, 539 U.S. 61 (2021); *Masterpiece Cakeshop, Ltd.*, 584 U.S. 617 (2018). In addition, Title VII of the Civil Rights Act of 1964 prohibits the federal government from discriminating against employees on the basis of their religion. *See* 42 U.S.C. § 2000e *et seq.*

17. In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that

this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, a Roman Catholic diocese sought an injunction to block the enforcement of a COVID-19 related executive order that would restrict attendance at house of worship; in a related case two Jewish synagogues sought the same relief. The religious entity applicants asserted that the attendance limits effectively precluded them from holding in-person worship services. The Supreme Court granted the preliminary injunction in a *per curiam* order. The Court reasoned that the religious entities were likely to succeed on the merits of their First Amendment claims because the regulations, which were subject to strict scrutiny because they "single out houses of worship for especially harsh treatment," 592 U.S. at 3, were not narrowly tailored to serve the compelling state interest in stemming the spread of COVID-19. *Id.* at 4. The enforcement of the restriction would irreparably harm people who were unable to participate in religious services. Finally, the Court concluded that granting the application would not harm the public, as there was no evidence that attending services caused the spread of COVID-19, or that less restrictive measures would imperil public health. *See id.* at 5. For those reasons, the Court enjoined enforcement of the restrictions on religious services.

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

Response: *Tandon v. Newsom*, 593 U.S. 61 (2021), involved a First and Fourteenth Amendment challenge to California's COVID-19 restrictions. The plaintiffs were individuals who wished to gather for at-home religious exercise during the COVID-19 pandemic, and they sought injunctive relief pending disposition of their appeal to the Ninth Circuit Court of Appeals. The Supreme Court granted the request for injunctive relief in a per curiam order. The Court identified four principles that guided its analysis. First, government regulations that treat any secular activity more favorably than religious activities must satisfy strict scrutiny. *Id.* at 62. Second, the comparability of secular and religious activities turns on the risks the activities pose, not "the reasons why people gather." *Id.* Third, to satisfy strict scrutiny, the government must show that less restrictive measures could not address the government's interest in reducing the spread of the COVID-19 virus. *Id.* at 62–63. Fourth, the withdrawal of a challenged regulation does not moot the case if the plaintiffs remain under threat that the restriction would be reinstated. *Id.* at 63. Applying those principles, the Supreme Court found that Plaintiffs were likely to succeed on the merits of a Free Exercise claim, given that California was treating some secular activities more favorably than at-home religious exercise, but the Ninth Circuit did not find that the permissible secular activities "pose[d] a lesser risk of transmission that applicants' proposed religious exercise at home." *Id.* at 63. The Court also found that Plaintiffs were "irreparably harmed by the loss of free exercise rights," and the State has not shown that their interest in protecting public health "would be imperiled by employing less restrictive measures." *Id.* at 64. Thus Plaintiffs were entitled to emergency injunctive relief

pending the resolution of their appeal to the Ninth Circuit.

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

Response: Yes. The Establishment Clause and Free Exercise Clauses of the Constitution do not restrict the right of religious freedom to individuals' homes and houses of worship. In addition, the Religious Freedom Restoration Act "protects the free exercise rights of corporations," and thereby "protects the religious liberty of the people who own and control these companies." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 707 (2014).

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

Response: In *Masterpiece Cakeshop*, the Court held that a Colorado State Commission's enforcement proceeding concerning an anti-discrimination law involving a cakeshop owner who refused to bake a cake for a same-sex couple's wedding reception, because of his religious beliefs, violated the Free Exercise Clause of the First Amendment. *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 584 U.S. 617 (2018). The Court found that the Commission's hostility and disfavor towards the baker's religious beliefs and objections during the proceedings violated the Free Exercise Clause's requirement of religious neutrality. *Id.* at 633–640.

21. Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?

Response: The question of whether an individual's sincerely held religious beliefs are protected if they are not closely tied to the doctrinal teachings of that individual's faith traditions has been and will be litigated in cases involving claims of religious discrimination. As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the courts. As such, I cannot opine on whether an individual's religious beliefs are protected if they are contrary to the teaching of the faith tradition to which the individual belongs. However, I can note that the Supreme Court has held that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)). That is, an individual's religious belief may be recognized as protected under the First Amendment as long as "they are, in [her] own scheme of things, religious." *United States v. Seeger*, 380 U.S. 163, 185 (1965).

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

Response: The question of the scope of individual's personal interpretations of religious or church doctrine that are protected as sincerely held religious beliefs has been and will be litigated in cases involving claims of religious discrimination. As a sitting Magistrate Judge and nominee for a position as a Judge on the Court of Federal Claims, Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the courts. As such, I cannot opine on whether there are "unlimited interpretations" of religious and church doctrine that courts can legally recognize. However, I can note that the Supreme Court has held that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)). That is, an individual's religious belief may be recognized as protected under the First Amendment as long as "they are, in [her] own scheme of things, religious." *United States v. Seeger*, 380 U.S. 163, 185 (1965).

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

Response: It is not a court's role to adjudicate whether one's religious belief is an "acceptable view or interpretation." The Supreme Court has explicitly held that "religious beliefs need not be *acceptable*, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)) (emphasis added). That is, any interpretation of religious or church doctrine that an individual holds as her religious belief may be recognized as protected under the First Amendment as long as "they are, in [her] own scheme of things, religious." *United States v. Seeger*, 380 U.S. 163, 185 (1965).

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

Response: I do not know, because I have no personal knowledge of the official position of the Catholic Church regarding abortion. I believe that the clergy and theologians are best suited to opine about the morality and acceptability of abortion under Catholic doctrine.

22. In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.

Response: In *Our Lady of Guadalupe*, the Court reaffirmed that the First Amendment bars a court from hearing an employment discrimination claim brought by any employees

of a religious institution that have a "role in conveying the Church's message and carrying out its mission," under the "ministerial exception." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2603 (2020) (quoting *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 192 (2012)). The Court concluded that the First Amendment foreclosed the adjudication of employment discrimination claims brought by two former Catholic School teachers who were "obligated to provide instruction about the Catholic faith . . . [and] expected to guide their students, by word and deed, toward the goal of living their lives in accordance with the faith." *Our Lady of Guadalupe*, 140 S. Ct. at 2066. The Court specifically rejected a "rigid test" for applying the ministerial exception for many of the proposed factors, such as the employee's religious training or the significance of their religious role, "would risk judicial entanglement in religious issues." *Our Lady of Guadalupe*, 140 S. Ct. at 2067-69

23. In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.

Response: In *Fulton*, the Court held that "[t]he refusal of Philadelphia to contract with CSS [Catholic Social Services] for the provision of foster care services unless it agrees to certify same-sex couples as foster parents cannot survive strict scrutiny, and violates the First Amendment." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1882 (2021). The conflict centered on the contract's nondiscrimination clause prohibiting the rejection of adoptive or foster parents on the basis of sexual orientation. The Court held that the clause lacked general applicability because it permitted individual exemptions yet was applied in a manner that burdened a Catholic agency's observance of the religious belief that marriage is a sacred bond between a man and a woman. *See Fulton*, 141 S. Ct. at 1878-1879 (citing *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 884 (1990)). Because it was not generally applicable, the clause had to satisfy strict scrutiny. The Court held that it did not because the City failed to offer a compelling reason why denying an exemption to a Catholic agency, but no others, would serve its interest in the equal treatment of prospective foster parents and children. *See Fulton*, 141 S. Ct. at 1882. The Court also dismissed the City's claimed interest in maximizing the number of foster parents, though important, because the City failed to show how granting the Catholic agency an exemption would put this interest at risk. The Court also dismissed the City's interest in avoiding liability for discrimination against same-sex couples as speculative. *Id.* at 1881-82.

24. In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.

Response: In *Carson*, the Court held that a Maine law granting tuition assistance payments to families that reside in communities without a public school for attendance at

only "nonsectarian" private schools violates the Free Exercise Clause of the First Amendment. The Court reiterated that "a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits." *Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 778 (2022). That is because a law that in effect disqualifies an entity from a neutral public benefit or program "solely because of their religious character . . . effectively penalizes the free exercise of religion." *Carson*, 596 U.S. at 780 (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 461 (2017)). The Court specifically rejected the argument that the funding restriction did not offend the Court's precedent because it was merely "use-based," *i.e.* prohibiting use in a religious manner by *any* type of school, because it found no meaningful distinction between use and status in a religious school. *Carson*, 596 U.S. at 787-88

25. Please explain your understanding of the U.S. Supreme Court's holding and reasoning in *Kennedy v. Bremerton School District*.

Response: *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022), involved a constitutional challenge to a school district's decision to terminate a football coach because he prayed at midfield at football games. The Court concluded that the school district's decision violated both the Free Speech and Free Exercise Clause of the Constitution. The Court concluded that the prohibition on prayer targeted religious conduct and did not apply a neutral rule, and that the school district did not provide a valid justification for that discriminatory treatment of religious observances that would withstand strict scrutiny or intermediate scrutiny. *See id.* at 542.

26. Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.

Response: *Mast* involved a petition for certiorari regarding the question of whether requiring Amish citizens to comply with a regulation requiring residents to have modern septic systems violated the federal Religious Land Use and Institutionalized Persons Act. In his concurrence to the grant of the writ of certiorari, Justice Gorsuch notes that the statute requires the application of strict scrutiny, and concludes that the County and lower court erred by treating the County's general interest in sanitation regulations as "compelling" without reference to the specific application of those rules to the Swartzentruber Amish community. *Mast v. Fillmore Cnty. Minn.,* 141 S. Ct. 2430, 2432 (2021) (J. Gorsuch, concurring). Justice Gorsuch notes that the Court's recent decision in *Fulton* explains that strict scrutiny demands "a more precise analysis." *Id.* (citing *Fulton v. City of Phila. Pa.*, 141 S.Ct. 1868 (2021)). Gorsuch also writes that the lower courts erred in failing to give due weight to exemptions that other groups enjoy in determining whether the County has offered a compelling reason why the same exemptions cannot be extended to the Amish. *Mast*, 141 S. Ct. at 2432.

27. Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of

the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?

Response: The Court of Federal Claims' limited jurisdiction does not include criminal cases, and it is unlikely that I would be presented with that issue if confirmed to be a judge on that court. However, as a sitting Magistrate Judge for the U.S. District Court for the District of Columbia I handle criminal cases, and the interpretation of 18 U.S.C. § 1507 is an issue that could be presented to me. Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the courts. As such, I cannot opine on how I would interpret 18 U.S.C. § 1507 in the context of protests in front of the homes of U.S. Supreme Court Justices, as that would appear to prejudge an issue and draw my impartiality into question. If presented with that statutory interpretation question, I would apply and follow precedent from the Supreme Court and binding circuit precedent.

28. Would it be appropriate for the court to provide its employees trainings which include the following:

a. One race or sex is inherently superior to another race or sex;

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

29. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

Response: In my experience, judges do not have oversight over the training of court employees beyond the training of law clerks and their chambers staff. If confirmed as a judge to the Court of Federal Claims, I commit that I would not train my law clerks using materials that teach that meritocracy, work ethic, and self-reliance are inherently racist or sexist. I disagree with the premise that meritocracy, work ethic, and self-reliance are inherently racist or sexist.

30. Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?

Response: Yes. If confirmed as a judge to the Court of Federal Claims, I commit that I would not engage in racial discrimination when selecting and hiring other staff. As a Magistrate Judge I have hired several law clerks and interns and have not engaged in racial discrimination when making those hiring decisions.

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

Response: As a Magistrate Judge, principles of separation of powers and the political question doctrine prevent me from opining on the factors that the executive or legislative branches should consider when making a political appointment. In addition, the constitutionality of consideration of skin color or sex in hiring decisions is an issue that is routinely litigated in courts. Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the courts. As such, I cannot opine on how I would interpret the constitutionality of a political appointment based in part on the consideration of skin color or sex, if such a question were presented to me as a justiciable controversy.

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

Response: The Supreme Court has recognized the concept of a "disparate impact" claim, observing that "antidiscrimination laws must be construed to encompass disparate impact claims when their text refers to the consequences of actions and not just the mindset of actors." *Texas Dep't of Housing & Comm. Affairs v. Inclusive Comms. Project*, 576 U.S. 519, 533 (2015). Disparate impact claims based on a racially disparate outcome can be raised under Title VII of the Civil Rights Act of 1964 and the Fair Housing Act. *See id.* at 533–34.

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

Response: It is my understanding that legislation that would add seats to the U.S. Supreme Court has been introduced in Congress. As a sitting Magistrate Judge and nominee to be a Judge on the Court of Federal Claims, the Judicial Code of Conduct does not permit me to engage in political activity. Providing a personal opinion on the desirability or undesirability of pending legislation would be improper political activity.

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

Response: No. The Supreme Court Justices were nominated by the President and appointed with the consent of the Senate, and no currently sitting Justice has been

impeached.

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

Response: The Supreme Court has held that the original public meaning of the Second Amendment was to confer upon individuals a right to bear arms in self defense outside the home. *See District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).

36. What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?

Response: In *Heller*, the Supreme Court recognized that the Second Amendment confers an individual right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *McDonald*, the Supreme Court recognized that this right is enforceable against state and local governments, in addition to the federal government. *McDonald v. Chicago*, 561 U.S. 742. In *Bruen*, the Supreme Court held that the Second Amendment protects individuals' right to bear arms outside the home, for self defense, and that any restrictions on that right are only constitutionally permissible if the restriction is consistent with the historical tradition of gun regulation. *New York State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1 (2022).

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

Response: Yes. The Supreme Court has recognized that the Second Amendment confers "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).

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

Response: No. The constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022). Courts should apply all constitutional provisions faithfully and impartially regardless of the specific right that is at issue.

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

Response: No. The constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022). Courts should apply all constitutional provisions faithfully and impartially regardless of the specific right that is at issue.

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

Response: The Supreme Court has held that "[t] he Attorney General and United States Attorneys retain "'broad discretion'" to enforce the Nation's criminal laws. . . They have this latitude because they are designated by statute as the President's delegates to help him discharge his constitutional responsibility to 'take Care that the Laws be faithfully executed.'" *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (citations omitted). That discretion is, however, "subject to constitutional constraints." *Id.* The Supreme Court recently observed that "in both Article III cases and Administrative Procedure Act cases, this Court has consistently recognized that federal courts are generally not the proper forum for resolving claims that the Executive Branch should make more arrests or bring more prosecutions." *United States v. Texas*, 599 U.S. 670, 680 (2023). As a Magistrate Judge and judicial nominee, principles of separation of powers, the political question doctrine, and Canon 3A of the Code of Conduct for United States Judges prevent me from opining on the appropriateness of executive actions.

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

Response: In *Department of Homeland Sec. v. Regents of the University of California*, 140 S. Ct. 1891 (2020), the Supreme Court distinguished between an agency's decision not to institute enforcement proceedings, which is unreviewable under the Administrative Procedure Act, and the agency's recission of a program that "conferred affirmative immigration relief." *Id.* at 1906–07. The contours of that distinction is an issue that is pending or impending in federal court litigation. Canon 3A of the Code of Conduct for United States Judges does not permit me to comment on issues that are pending or impending before the courts. As such, I cannot opine on how I would interpret the distinction between acts of mere prosecutorial discretion and substantive administrative rule changes, beyond noting that I would apply Supreme Court and Federal Circuit precedent if confronted with a case that presented that issue.

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

Response: No, the legislative branch would have to pass a law to fully abolish the death penalty. The President and his subordinates in the executive branch have discretion to determine whether to seek the death penalty in certain criminal prosecutions.

43. Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS.*

Response: The Court held that the CDC exceeded its authority in imposing a

nationwide moratorium on evictions of tenants in response to the COVID-19 pandemic and granted the application to vacate the stay. *Ala. Ass'n of Realtors v. Dep't of Health & Human Services*, 141 S. Ct. 2485 (2021). In analyzing the statute upon which the CDC relied in imposing the moratorium, Public Health Service Act § 361(a), 42 U.S.C. § 264(a), the Court held that the CDC's moratorium related to interstate infection of COVID-19 too indirectly, which is different from the "direct[]" targeting of disease language in the statute. *See id.* at 2488. The Court also found that the CDC's moratorium was an exercise of "expansive authority" under Section 361(a), and that Congress must speak clearly when authorizing an agency to exercise powers of "vast economic and political significance," which it did not do in Section 361(a). *See id.* at 2489 (citing *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)).

Senator John Kennedy
Questions for the Record

Robin Meriweather

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

   Response: Yes. The U.S. Supreme Court is the highest court in the land, and its decisions are binding on all lower courts.

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

   Response: Yes. The Supreme Court Justices were nominated by the President and appointed with the consent of the Senate, and no currently sitting Justice has been impeached.

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

   Response: As a Magistrate Judge I believe it's critical to: give each issue presented to me as a judge careful consideration by understanding the relevant laws and rules and applying them to the facts and arguments presented; be fair and impartial in my decisions and how I treat every party who appears before me; efficiently and clearly resolve motions and cases presented to me; and hold myself to the highest standards of ethics reflected in the judicial code of conduct. Those four principles serve as my lodestar, and I would continue to follow them if confirmed to be a Judge on the United States Court of Federal Claims.

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

   Response: Yes. Under originalism, judges look to the original meaning of the Constitution. If confronted with a question that required me to interpret a constitutional provision, I would begin by determining whether the Supreme Court or the Federal Circuit had interpreted the relevant constitutional provision. If either court had, I would follow that binding precedent. If neither court had addressed the interpretation of the constitutional provision, I would apply the method of interpretation that the Supreme Court and Federal Circuit have authorized. For example, in some contexts, the Supreme Court has directed lower federal courts to use interpretive methods that consider the history of the constitutional provision and the Founders' understanding. *See, e.g.*, *New York State Rifle & Pistol Ass'n , Inc. v. Bruen*, 597 U.S. 1 (2022) (2nd Amendment); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (Confrontation Clause).

5. **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: If neither the Supreme Court nor the Federal Circuit had addressed the constitutional question with which I was faced, I would review the text of the constitutional provision and apply the method of interpretation that the Supreme Court and Federal Circuit have authorized in the most analogous context. For example, in some contexts, the Supreme Court has directed lower federal courts to use interpretive methods that consider the history of the constitutional provision and the Founders' understanding. *See, e.g.*, *New York State Rifle & Pistol Ass'n , Inc. v. Bruen*, 59 U.S. 1 (2022) (2nd Amendment); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (Establishment Clause); *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (Confrontation Clause).

6. **Is textualism a legitimate method of statutory interpretation?**

Response: Yes. The Supreme Court "has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020).

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

Response: "[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. . . When the words of a statute are unambiguous, then, . . . 'judicial inquiry is complete.'" *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992); *see also Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1749 (2020). If the statutory text were ambiguous, and in the absence of Supreme Court or Federal Circuit precedent interpreting the statute or provision, I would use other recognized tools of statutory construction and consider the structure of the statute, canons of statutory construction, and the limited types of legislative history that the Supreme Court and Federal Circuit have deemed reliable. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) (describing reliable sources of legislative history).

8. **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: No. "[A]lthough its 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, 28 (2022).

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

Response: In Part II(A) of *Brown v. Davenport*, the Court outlined the history of writs of habeas corpus at common law and various shifts in federal habeas practice in the United States. 596 U.S. 118, 127–31 (2022). The Court began by explaining the origin and early application of the writs starting with the founding era and remarked how the "most notable" "Great Writ" was an "instrument by which due process could be insisted upon." *Id.* at 128 (citations omitted). The Court explained the writ's limits in this country, however, and the Court's jurisprudence policing the writ's boundaries. *Id.* at 129. The Court next identified a shift in practice where "the traditional distinction between jurisdictional defects and mere errors in adjudication no longer restrained federal habeas courts" and how this shift resulted in an "exploding caseload of habeas petitions from state prisoners." *Id.* at 130–31.

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

Response: In Part IV of *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, the Court evaluated Harvard and University of North Carolina's race-based admissions programs and concluded that both programs failed to survive strict scrutiny and comply with the Court's precedents. 600 U.S. 181, 213–225 (2023). First, the Court found that both Harvard and UNC's admissions programs did not survive strict scrutiny. *Id.* at 214. It found the schools' stated goals were "not sufficiently coherent," and the programs failed to "articulate a meaningful connection between the means they employ and the goals they pursue." *Id.* at 214–16. Next, the Court found that the admissions programs did not satisfy the Equal Protection Clause's "twin commands" that race cannot be used as a negative and cannot act as a stereotype. *Id.* at 218. Finally, the Court reasoned that the schools were unable to articulate a "logical end point" to their admission programs. *Id.* at 221 (citations omitted).

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

Response: In Part III of *303 Creative LLC v. Elenis*, the Court held that the wedding website designer's creations constituted speech and that protected speech under the First Amendment cannot be trumped by state public accommodations law. 600 U.S. 570, 587 (2023). The Court stated that it primarily agreed with the Tenth Circuit's analysis and its conclusions that the wedding websites are speech and that they are the designer's speech specifically. *Id.* But it disagreed with the Circuit Court's conclusion that followed—that Colorado could compel the designer's speech. *Id.* at 588. The Court stated, citing precedent in support, that public accommodations laws, such as Colorado's, are not "immune from the demands of the Constitution." *Id.* at 592

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

Response: In Part II of *Dobbs*, the Court addressed "whether the Constitution, properly understood, confers a right to obtain an abortion." *Dobbs v. Jackson Women's Health*

Org., U.S. 215, 234 (2022). Because abortion is not mentioned in the text of the Constitution, the Court specifically considered whether abortion is one of the fundamental rights protected by the Due Process Clause of the Fourteenth Amendment, as the opinions of the Court in *Roe* and *Casey* suggested. Fundamental rights are not mentioned in the Constitution but "deeply rooted in [our Nation's] history and traditions" and essential to our "scheme of ordered liberty." *Id.* at 237 (quoting *Timbs v. Indiana*, 139 S. Ct. 682, 686 (2019)). Upon review of this Nation's long history of criminalizing abortion in common law and statute, *see id.* at 245-250, the Court concluded that the right to abortion is not deeply rooted in our Nation's history and traditions. The Court also distinguished the decisions in *Roe* and *Casey* from the precedent cited therein, various cases granting Constitutional protection on the basis of liberty and privacy interests, specifying that none of those cases "involved the critical moral question posed by abortion." *Id.* at 257. The Court concluded that, "without support in history or relevant precedent," the holding in *Roe* is incorrect.

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

Response: In Part III of *Dobbs*, the Court considered whether, despite the lack of constitutional basis for a right to abortion, *Roe* and *Casey* must continue to be upheld under the doctrine of *stare decisis*. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 263 (2022). *Stare decisis* calls for adherence to prior decisions, unless circumstances call for reconsideration of an erroneous constitutional decision. *Id.* at 264. The Court identified five factors that should be considered in overruling precedent from its prior decisions, all of which weighed in favor of overruling *Roe* and *Casey*: the nature of the court's error, the quality of their reasoning, the "workability" of the rules imposed, their disruptive effect on other areas of the law, and the absence of concrete reliance in later decisions. *Id.* at 268-290

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

Response: In *Rivas-Villegas v. Cortesluna*, the Court considered whether Petitioner, Officer Rivas-Villegas, was entitled to qualified immunity in an excessive force lawsuit. The Court recognized that "qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021). The Court found that Officer Rivas-Villegas' conduct was not an "obvious case" of excessive force, where every reasonable official would know that their conduct violates a clearly established right. Rather, it required consideration of the specific facts and circumstances of the event, like the severity of the crime and whether the suspect poses an immediate threat to others. *Id.* at 5-6. The Court therefore reversed the Ninth Circuit's determination that Officer Rivas-Villegas was not entitled to qualified immunity because

the Circuit and the plaintiff below failed to identify a case that put Officer Rivas-Villegas on notice that his specific conduct was unlawful. *Id.* at 7.

15. Is there ever a circumstance in which a lower court judge may seek to circumvent a published precedent of the U.S. Court of Appeals under which it sits or the U.S. Supreme Court?

Response: No. Lower court judges must faithfully apply precedent from the U.S. Court of Appeals under which they sit or the U.S. Supreme Court.

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

Response: If confirmed, I would follow Federal Circuit precedent, pursuant to which courts are "obligated to follow the Supreme Court's explicit and carefully considered statements," even if those statements are dicta. *DaimlerChrysler Corp. v. United States*, 361 F.3d 1378, 1385 n.3 (Fed. Cir. 2004); *see also Ins. Co. of the West v. United States*, 243 F.3d 1367, 1372 (Fed. Cir. 2001).

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

Response: None.

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

Response: During the past ten years, I have had an account with Twitter/X (May 2023 to present), Facebook (approximately 2009 to present), Reddit (approximately November 2023 to present), Instagram (October 2022 to present), and LinkedIn (deleted in 2017 after becoming a magistrate judge). I have not had a Threads or TikTok account.

19. Why should Senator Kennedy support your nomination?

Response: I believe Senator Kennedy should support my nomination because my combined twenty-four years of experience as a civil litigator and a Magistrate Judge make me highly qualified to be a Judge on the U.S. Court of Federal Claims. First, I spent 17 years litigating complex civil cases involving challenges to decisions made by regulatory agencies and the federal government. Those cases required that I interpret and apply complex statutory regimes and the Constitution and assess the reasonableness of agency decisionmaking in areas including administrative law and employment law. Second, I have judicial experience, as a Magistrate Judge, and have reviewed numerous motions in cases that also require the

interpretation of federal statutes, consideration of employees' wage and hour claims, and assessing the reasonableness of decisions from administrative decisionmakers under the APA and other standards of review. Third, as a Magistrate Judge and litigator I have a track record of quickly familiarizing myself with new legal issues and applying them to the cases before me. For example, despite my civil background, as a Magistrate Judge I quickly learned the relevant rules, statutes, and constitutional requirements applicable to my criminal docket. Collectively, those experiences have prepared me to handle the specialized civil docket at the Court of Federal Claims and to resolve cases impartially, in accordance with the law and binding precedent.

It would be an honor to have Senator Kennedy's support, and I thank him for his consideration of my nomination.