

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Leon Schydlower
Nominee to be United States District Judge for the Western District of Texas

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.

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: No.

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. Constitutional interpretation should be based on adherence to binding precedent and not a judge’s personal value judgments.

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: I am neither familiar with this statement nor the context in which it was made. To the extent it suggests that Supreme Court precedent can and should be ignored, I disagree with it. If I am confirmed as a United States District Judge I will adhere to binding Supreme Court and Fifth Circuit precedent, as I do now in my capacity as a United States Magistrate Judge.

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.

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.

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

Response: A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence. 28 U.S.C § 2255(a). A federal prisoner may also seek a writ of habeas corpus challenging the constitutionality of his conviction or sentence under 28 U.S.C. § 2241.

11. **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: The plaintiffs in these companion cases challenged the race-based admissions programs at Harvard and the University of North Carolina under Title VI and the Equal Protection Clause of the Fourteenth Amendment, respectively. The Supreme Court held that the race-based admissions programs of both schools failed the strict scrutiny test as set forth in *Grutter v. Bollinger*, 539 U.S. 306 (2003).

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

Response: Yes.

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

Response: I was in charge of hiring support staff for my law firm when I was in private practice. As a United States Magistrate Judge, I hired my chambers staff and courtroom deputy, and hire law clerks.

13. **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.

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

Response: No.

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

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

Response: No.

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

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

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

Response: The Supreme Court held that a private website designer had a First Amendment right to refuse to design wedding websites for same-sex couples as mandated by the Colorado’s Anti-Discrimination Act. The Court found that Colorado unconstitutionally interfered with the website designer’s right to participate in the “uninhibited marketplace of ideas” when it sought to force her to produce a message that was contrary to her religious beliefs.

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

Is this a correct statement of the law?

Response: The Supreme Court included this quote from *Barnette* in *303 Creative LLC v. Elenis*, 600 U.S. 570, 585 (2023), and *Barnette* remains good law. If confirmed as a district judge, I will faithfully apply all binding Supreme Court precedent in matters that come before me.

19. **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: I would review the law’s text and apply the applicable Supreme Court and Fifth Circuit precedent. “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). To gauge whether speech is “content based” a court will “consider whether a regulation of speech ‘on its face’ draws distinctions based on the message a speaker conveys.” (*Id.*). “By contrast, laws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content-neutral.” *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 643 (1994).

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

Response: True threats “encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). “The existence of a threat depends not on the ‘mental state of the author,’ but on ‘what the statement conveys’ to the person on the other end.” *Counterman v. Colorado*, 600 U.S. 66, 72 (2023)

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

Response: Whereas questions of fact are “questions of who did what, when or where, how or why,” *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 U.S. 387, 394 (2018), questions of law are “issue[s] to be decided by the judge, concerning the application or interpretation of the law.” BLACK’S LAW DICTIONARY (11th ed. 2019).

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

Response: The statute which lists the factors a judge must consider when imposing a sentence, 18 U.S.C. § 3553(a), incorporates all four of these listed purposes of punishment. Congress did not prioritize any of these factors in the statute and there is no Supreme Court or Fifth Circuit precedent indicating that one of the primary purposes of sentencing is more important than the others. I will follow Supreme Court and Fifth Circuit precedent when imposing sentences pursuant to § 3553(a).

23. 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 United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on the quality of the Supreme Court’s reasoning in a particular case. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

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

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting

on the quality of the Fifth Circuit's reasoning in a particular case. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

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

Response: Section 1507 of Title 18 provides that, "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both. Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

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

Response: I am unaware of any Supreme Court or Fifth Circuit precedent addressing the constitutionality of 18 U.S.C. § 1507. *See also Cox v. Louisiana*, 379 U.S. 559 (1965) (holding a similar Louisiana statute "on its face is a valid law.") If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent with respect to any constitutional challenge to § 1507.

27. 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. The courts are unlikely to revisit the constitutionality of racial segregation in schools. Accordingly, as a sitting United States Magistrate Judge and United States District Judge nominee I believe it is permissible for me to assert that the case was correctly decided.

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

Response: Yes. The courts are unlikely to revisit the constitutionality of interracial marriage. Accordingly, as a sitting United States Magistrate Judge and United States District Judge nominee I believe it is permissible for me to assert that the case was correctly decided.

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

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from

commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

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

Response: The Supreme Court overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). *Dobbs* is binding precedent and I will apply it fully and faithfully.

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

Response: The Supreme Court overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). *Dobbs* is binding precedent and I will apply it fully and faithfully.

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

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

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

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

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

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

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

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly

decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

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

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

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

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

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

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

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

Response: As a sitting United States Magistrate Judge and United States District Judge nominee, the Code of Conduct for United States Judges prohibits me from commenting on whether a particular Supreme Court opinion was correctly decided. If confirmed, I will follow Supreme Court and Fifth Circuit binding precedent.

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

Response: According to the Supreme Court, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, 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); *see also* *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023).

29. Demand Justice is a progressive organization dedicated to “restor[ing] ideological balance and legitimacy to our nation’s courts.”

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

34. **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 June 20, 2023, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Western District of Texas. On August 25, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. I interviewed with Senator Cruz on September 27, 2023, and with Senator Cornyn on September 28, 2023. On October 24, 2023, I interviewed with attorneys from the White House Counsel’s Office. Since October 27, 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. On January 10, 2024, the President sent my nomination to the United States Senate.

- 35. 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.

- 36. 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.

- 37. 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

- 38. 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

- 39. 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

- 40. Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?**
- a. If yes,**
 - i. Who?**
 - ii. What advice did they give?**
 - iii. Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

Response: No

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

Response: On June 20, 2023, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Western District of Texas. On August 25, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. I interviewed with Senator Cruz on September 27, 2023, and with Senator Cornyn on September 28, 2023. On October 24, 2023, I interviewed with attorneys from the White House Counsel's Office. Since October 27, 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. On January 10, 2024, the President sent my nomination to the United States Senate.

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

Response: I received these questions from the Office of Legal Policy at the Department of Justice on January 31, 2024. I prepared my responses and submitted a draft of those responses to the Office of Legal Policy. I made additional minor revisions in response to comments from the Office of Legal Policy. I then finalized and submitted these responses.

**Senate Judiciary Committee
Nominations Hearing
January 24, 2023
Questions for the Record
Senator Amy Klobuchar**

For Leon Schydlower, nominee to be U.S. District Judge for the Western District of Texas

In 2015, you were appointed as a magistrate by the sitting Article III judges of the Western District of Texas, who were appointed by presidents of both parties. You have since presided over six trials that have gone to verdict or judgment, approximately 33 civil consent cases, and have issued over 34,000 orders, reports, and recommendations.

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

Response: My last eight years as a United States Magistrate Judge has been invaluable in preparing me to be a United States District Judge if I am so fortunate as to be confirmed. In leaving the practice of law to become a judge, I successfully made the transition from advocate to neutral arbiter. My job is to faithfully apply the law to the facts of the individual case before me, without bias or prejudice. In doing so, I treat the litigants and counsel before me with the utmost respect and dignity and afford all those with cases and controversies before me a full and fair opportunity to be heard. I am a public servant charged with serving as a neutral arbiter before whom the parties can efficiently and fairly resolve their cases. I will continue to employ this judicial philosophy should I be confirmed as a United States District Judge.

- **How has your experience as a magistrate judge informed your view on the role of a federal district court judge?**

Response: In serving as a United States Magistrate Judge for the last eight years on a busy border court, I have been steeped in the very types of cases the district judges with whom I work handle every single day. I issue search and arrest warrants, sign criminal complaints, conduct initial appearances, preside over contested preliminary and detention hearings, and preside over guilty plea hearings for the district judges. In short, in guilty plea cases I preside over every single stage of the case except the sentencing hearing. The district judges preside over criminal jury trials, but even in those cases I will preside over jury selection when needed. Of course, in civil cases where the parties consent to my jurisdiction as a magistrate judge, I perform the exact same role as a district judge. And in cases where there is no such consent, I will often preside over the bulk of the case short of trial or final disposition. Finally, I have had the opportunity to work with and be mentored by the seasoned and experienced district judges with whom I work. These experiences have not only informed my view on the role of a federal district judge, they have afforded me invaluable insight and experience on which I can call should I be so fortunate as to be confirmed as one.

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

QUESTIONS FOR LEON SCHYDLOWER

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
Questions for the Record for Judge Leon Schydlower
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.

- 2. How will you approach First Amendment cases?**

Response: I will approach each case individually, apply binding Supreme Court and Fifth Circuit precedent, and bear in mind that the framers of the Constitution believed that the exercise of First Amendment rights “lies at the foundation of free government by free men.” *Schneider v. New Jersey*, 308 U.S. 147, 150-51 (1939).

- a. In your view, why are First Amendment protections of freedom of speech, publication, assembly, and exercise of religion vital in our society?**

Response: The spirit of the First Amendment encapsulates the very spirit of America: Freedom. The right to free expression, to publish our ideas, to join in support or protest of our values, to petition our government for change, and to practice our faith freely are the quintessential freedoms that define what it is to be American.

- 3. In your experience, why is it critical that indigent defendants have access to public defense under the Sixth Amendment right to counsel and precedent set in *Gideon v. Wainwright*?**

Response: From 2002 through 2015 I deliberately set aside a large portion of my private practice of law to represent indigent criminal defendants in federal and state trial and appellate courts. Indeed, I represented several hundred such indigent criminal defendants, some all the way to the United States Supreme Court. I also recruited, trained, and mentored dozens of lawyers to join me in this endeavor. I estimate that almost 50 percent of my private practice was devoted to service in this regard. We have an adversarial system of justice and it is critical that indigent defendants have access not only to counsel, but *effective* counsel, to vindicate the Sixth Amendment and to inspire confidence in our criminal justice system.

- 4. In your experience, what are the challenges faced by parties in civil or criminal proceedings for whom English is not their first language?**

Response: As a litigator on the Texas-Mexico border for nearly twenty years and as a United States Magistrate Judge on the border for more than eight years, I am happy to report that challenges in this regard in my division are minimal. I would estimate that 75% of the litigants in my division do not speak English, but we have an outstanding

court interpreter program and a seasoned corps of attorneys well-versed in communicating with their non-English speaking clients.

a. What do you see as the role of language access in courts in protecting due process rights and ensuring access to justice?

Response: Language access is critical to ensure that all litigants are afforded their due process rights. In this regard, the federal courts in my division handle cases in which approximately 75% of litigants do not speak English. Indeed, the outstanding court interpreter staff in my division has secured language access for litigants who speak languages as diverse as Spanish, Chinese, Serbian, and Turkish, all the way to indigenous non-Spanish Guatemalan dialects spoken only in remote villages and districts.

Senator Mike Lee
Questions for the Record
Leon Schydlower, Nominee for District Court Judge for the Western District of Texas

1. How would you describe your judicial philosophy?

Response: As a sitting United States Magistrate Judge, I faithfully apply the law to the facts of the individual case before me, without bias or prejudice. In doing so, I treat the litigants and counsel before me with the utmost respect and dignity and afford all those with cases and controversies before me a full and fair opportunity to be heard. I am a public servant charged with serving as a neutral arbiter before whom the parties can efficiently and fairly resolve their cases. I will continue to employ this judicial philosophy should I be confirmed as a United States District Judge.

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

Response: I would faithfully apply Supreme Court and Fifth Circuit precedent to determine the meaning of a statute or provision. In the absence of such precedent, I would review the text itself. If the text is unambiguous, no further analysis would be necessary. If the text is ambiguous, I would follow Supreme Court and Fifth Circuit precedent with respect to authorized statutory construction methods.

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

Response: I would faithfully apply Supreme Court and Fifth Circuit precedent to determine the meaning of the constitutional provision. In the unlikely absence of such precedent, I would turn to an analysis of the original public meaning of the text. *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (“...*the public understanding* of a legal text in the period after its enactment or ratification...is a critical tool of constitutional interpretation.”) (emphasis in original). If the text is unambiguous, no further analysis would be necessary. If the text is ambiguous, I would follow Supreme Court and Fifth Circuit precedent with respect to authorized statutory construction methods.

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

Response: Originalism is the “doctrine that words of a legal instrument are to be given the meanings they had when they were adopted.” BLACK’S LAW DICTIONARY (11th ed. 2019). The Supreme Court recognizes originalism as a legitimate method of constitutional interpretation because it employed the doctrine when analyzing the meaning of the Sixth Amendment’s Confrontation Clause in *Crawford v. Washington*, 541 U.S. 36 (2004). It subsequently reinforced originalism’s legitimacy as a constitutional interpretational method when it employed the doctrine to analyze the meaning of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570

(2008). With respect to text, Courts are to interpret a statute in accord with the ordinary public meaning of its terms at the time of its enactment. *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). Finally, “when the meaning of a statute’s terms is plain, our job is at an end.” *Id.* at 1749.

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

Response: I turn first to Supreme Court and Fifth Circuit precedent to determine the meaning of a statute. In the absence of such precedent, I review the text of the statute itself. If the text is unambiguous, no further analysis is necessary.

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

Response: The Supreme Court interprets statutes and constitutional provisions in accord with the ordinary public meaning of its terms at the time of its enactment. *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). *See also District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (“[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.”).

7. What are the constitutional requirements for standing?

Response: The Supreme Court explains that “[u]nder Article III of the Constitution, a plaintiff needs a ‘personal stake’ in the case.” *Biden v. Nebraska*, 143 S. Ct. 2355, 2365 (2023). “That is, the plaintiff must have suffered an injury in fact – a concrete and imminent harm to a legally protected interest, like property or money – that is fairly traceable to the challenged conduct and likely to be redressed by the lawsuit.” *Id.*

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

Response: Yes. Congress is authorized to pass laws “necessary and proper” to execute its enumerated powers. *McCulloch v. Maryland*, 17 U.S. 316, 411-12 (1819). *See also Nat. Fed. of Ind. Bus. v. Sebelius*, 567 U.S. 519, 559 (2012) (“Although the [Necessary and Proper 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 powers beyond those specifically enumerated.”) (internal quotations omitted); Constitution, Art. I, § 8, cl. 18.

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

Response: In *Nat. Fed. of Ind. Bus. v. Sebelius*, 567 U.S. 519 (2012), the Supreme Court 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.” *Id.* at 570. I would follow Supreme Court and Fifth Circuit precedent if presented with this issue.

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

Response: The Supreme Court has recognized that the Due Process Clause of the Fifth and Fourteenth Amendments “specially protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition’ and ‘implicit in the concept of ordered liberty.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). The Court listed many of these fundamental rights in *Dobbs*: the right to marry a person of a different race; the right to marry while in prison; the right to obtain contraceptives; the right to reside with relatives; the right to make decisions about the education of one’s children; the right not to be sterilized without consent; the right in certain circumstances not to undergo involuntary surgery, forced administration of drugs, or other substantially similar procedures; the right to engage in private, consensual sexual acts; and the right to marry a person of the same sex. *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 256-57 (2022).

11. What rights are protected under substantive due process?

Response: Please see my response to Question 10.

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

Response: The Supreme Court rejected the *Lochner* analysis in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), and established in *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965), the fundamental right to use contraceptives. The remaining personal fundamental rights listed in my answer to Question 10 all remain good law. If confirmed, I will follow this and all other Supreme Court and Fifth Circuit precedent.

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

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

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

Response: The Supreme Court defines 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.” *San Antonio Ind. School Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Suspect classes include alienage, nationality, race, and religion. *New Orleans v. Dukes*, 427 U.S. 297, 304 (1976) (race, religion, and alienage); *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971) (alienage, nationality, and race).

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 stated that the “separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch,” *United States v. Lopez*, 514 U.S. 549, 552 (1995).

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

Response: I would follow binding Supreme Court and Fifth Circuit precedent, noting that “[i]n the framework of our Constitution, the President’s power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952).

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

Response: If confirmed, I would make decisions based upon binding Supreme Court and Fifth Circuit precedent applied to the facts of each individual case. Judicial decisions should not be based upon a judge’s personal beliefs or opinions.

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

Response: Neither outcome is desirable. If confirmed, I would faithfully apply binding Supreme Court and Fifth Circuit to the facts of the individual case before me to avoid these outcomes.

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 cannot opine on this trend because I have not researched the issue. If confirmed, however, I would apply binding Supreme Court and Fifth Circuit to the facts of the individual case before me.

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

Response: Black's Law Dictionary defines "judicial review" as "[a] court's power to review the actions of other branches or levels of government." BLACK'S LAW DICTIONARY (11th ed. 2019). By contrast, Black's Law Dictionary defines "judicial supremacy" as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." BLACK'S LAW DICTIONARY (11th ed. 2019).

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

Response: The Supreme Court explained the need for elected officials to respect federal court decisions: "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... A Governor who asserts a power to nullify a federal court order is similarly restrained. If he had such power...it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land." *Cooper v. Aaron*, 358 U.S. 1, 18-19 (1958).

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

Response: Whereas the legislative and executive branches make and enforce the law, a court's limited role is to interpret the law and faithfully apply it to the facts of the individual case before it.

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: If confirmed as a United States District Judge my duty would be to follow binding Supreme Court and Fifth Circuit precedent. Only the Supreme Court can overturn or extend its own precedent.

- 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, I would utilize the sentencing factors set forth in 18 U.S.C. § 3553(a).

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

Response: I am not familiar with this definition of equity. Black's Law Dictionary defines "equity" as "[f]airness; impartiality; evenhanded dealing." BLACK'S LAW DICTIONARY (11th ed. 2019). I have not developed my own definition of "equity."

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

Response: According to the Merriam-Webster Dictionary "equity" refers to fairness and the absence of prejudice or favoritism, and "equality" means the quality or state of being equal.

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

Response: As I explained in my response to Question 25, I am not familiar with the Biden Administration's definition of equity. The Fourteenth Amendment's Equal Protection Clause provides for "equal protection of the laws." If confirmed, I would faithfully follow Supreme Court and Fifth Circuit precedent when applying the Fourteenth Amendment's Equal Protection Clause.

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

Response: I do not have a personal definition for this term. According to the Merriam-Webster Dictionary "systemic racism" refers to "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.)"

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

Response: I do not have a personal definition for this term. According to the Merriam-Webster Dictionary "critical race theory" refers to "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 institutions of a country and especially the United States."

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

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

**Senator John Kennedy
Questions for the Record**

Leon Schydlower

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

Response: Yes. 18 U.S.C. § 3591 lists federal offenses for which a defendant may be sentenced to death, and §§ 3592-3599 outline the procedures a court must follow in a federal death penalty case. If confirmed and presented with a death penalty case, I will faithfully follow §§ 3591-3599 and relevant binding Supreme Court and Fifth Circuit precedent.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: As a sitting United States Magistrate Judge, I faithfully apply the law to the facts of the individual case before me, without bias or prejudice. In doing so, I treat the litigants and counsel before me with the utmost respect and dignity and afford all those with cases and controversies before me a full and fair opportunity to be heard. I am a public servant charged with serving as a neutral arbiter before whom the parties can efficiently and fairly resolve their cases. I will continue to employ this judicial philosophy should I be confirmed as a United States District Judge.

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

Response: Yes. Originalism is the "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." BLACK'S LAW DICTIONARY (11th ed. 2019). The Supreme Court recognizes originalism as a legitimate method of constitutional interpretation because it employed the doctrine when analyzing the meaning of the Sixth Amendment's Confrontation Clause in *Crawford v. Washington*,

541 U.S. 36 (2004). It subsequently reinforced originalism's legitimacy as a constitutional interpretational method when it employed the doctrine to analyze the meaning of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008).

6. **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: I would begin with an analysis of the original public meaning of the text. *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (“...the public understanding of a legal text in the period after its enactment or ratification...is a critical tool of constitutional interpretation.”) (emphasis in original). I would then turn to persuasive precedent from other circuits, Supreme Court and Fifth Circuit precedent interpreting similar provisions, and permissible interpretative tools and canons of construction as provided in Supreme Court and Fifth Circuit precedent.

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

Response: Yes. Courts are to interpret a statute in accord with the ordinary public meaning of its terms at the time of its enactment. *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). Moreover, “when the meaning of a statute’s terms is plain, our job is at an end.” *Id.* at 1749.

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

Response: I would faithfully apply Supreme Court and Fifth Circuit precedent to determine the meaning of a statute or provision. In the absence of such precedent, I would review text itself. If the text is unambiguous, no further analysis would be necessary. If the text is ambiguous, I would follow Supreme Court and Fifth Circuit precedent with respect to authorized statutory construction methods.

9. **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. The Constitution’s meaning is fixed according to the understandings of those who ratified it. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 27-28 (2022).

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

Response: The Supreme Court traced the historical development of federal habeas corpus practice regarding state court convictions from its original narrow focus on jurisdictional defects to today’s “exploding caseload of habeas petitions from state

prisoners” seeking “[f]ull-blown constitutional error correction.” *Brown v. Davenport*, 596 U.S. 118, 130-31 (2022).

11. 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: The Supreme Court found that the race-based admissions programs at Harvard and the University of North Carolina violated the Fourteenth Amendment’s Equal Protection Clause because they failed the strict scrutiny test. *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 213 (2023). The Court found, as an initial matter, that the stated justifications for separating students based on race were so nebulous as to be immeasurable. *Id.* at 214-15. Next, the Court found that the race-based admissions programs operated as an impermissible “negative” because they resulted in fewer Asian American and white students being admitted. *Id.* at 218-19. They also impermissibly relied on stereotypes predicated on skin color. *Id.* at 219-21. Finally, the Court found that the universities’ race-based admissions programs violated the Equal Protection Clause because, as designed, they were permanent and contemplated no end point. *Id.* at 221-25.

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

Response: The Supreme Court held that Colorado could not compel a private wedding website designer to create websites for same-sex couples when doing so would interfere with her religious beliefs. The Court held that the websites the designer created constituted First Amendment-protected speech, *303 Creative LLC v. Elenis*, 600 U.S. 570, 587-88 (2023), and long-established Supreme Court precedent proscribed the compelled speech Colorado sought to impose on her. *Id.* at 588-90.

13. 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 the decision the Court analyzed whether the Constitution confers a right to an abortion. The Court first explains that a supposed fundamental right must be “deeply rooted in this Nation’s history and tradition.” *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 239 (2022). It then traced the history of abortion, all the way back to common law, and concluded it was not deeply rooted in the Nation’s history and traditions. *Id.* at 241-250. Finally, the Court found no sound precedential basis for the right to an abortion. *Id.* at 255-259.

14. 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 the decision the Court analyzed the following factors when gauging whether to overrule *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992): the nature of the error in the prior cases; the quality of the

opinions' reasoning; the "workability" of the rules the opinions imposed on the country; the disruptive effect of the opinions on other areas of the law, and absence of concrete reliance. *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 268 (2022). Finding all five factors militated "strongly" for overruling *Roe* and *Casey*, *id.* at 268, the *Dobbs* decision did so. *Id.* at 292.

- 15. 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: The petitioner, a police officer, was sued for using excessive force when arresting a suspect. The excessive force alleged was "briefly plac[ing] his knee on the left side of the [suspect's] back." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 2 (2021). A police officer is entitled to qualified immunity when his or her "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 5. The Court sided with the police officer and held that he was entitled to qualified immunity because existing precedent did not establish that he violated a clearly established right. *Id.* at 7-8.

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

Response: Federal Rule of Civil Procedure 65 governs when and how federal courts issue injunctions generally. Although district courts have issued injunctions with nationwide effect, I am unaware of Supreme Court or Fifth Circuit precedent bearing on when such injunctions can be issued.

- 17. Is there ever a circumstance in which a district 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.

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

Response: If confirmed I will follow binding Supreme Court and Fifth Circuit precedent. Dicta is not binding precedent. *See also Cohens v. Virginia*, 19 U.S. 264, 399 (1821) ("It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.").

- 19. To the best of your recollection, please list up to 10 cases in which you served as lead counsel in a bench trial in federal district court or a case tried before a jury in federal district court.**

Response:

1. *United States v. Bedolla-Talavera*, 3:13-CR-1695-KC (W.D. Tex. 2014) (Jury trial)
2. *United States v. Williams*, 3:13-CR-00902-DB (W.D. Tex. 2013) (Jury trial)
3. *United States v. Lara Madrid*, 3:11-CR-03020-FM (W.D. Tex. 2012) (Jury trial)
4. *United States v. Chavez*, 2:13-CR-00988-RB (D.N.M. 2013) (Jury trial)
5. *United States v. Clark*, 3:09-CR-02453-KC (W.D. Tex. 2010) (Jury trial)
6. *United States v. Diaz*, 3:07-CR-01456-DB (W.D. Tex. 2008) (Jury trial)
7. *United States v. Jimenez-Montoya*, 3:07-CR-02909-FM (W.D. Tex. 2008) (Jury trial)
8. *Bolanos v. Gadsden I.S.D.*, 2:05-CV-01062 (D.N.M. 2007) (Jury trial)
9. *United States v. Shorts*, 1:99-CR-00148-SOM (D.Haw. 1999) (Jury trial)
10. *United States v. Souza*, 1:96-CR-00608-DAE (D.Haw. 1998) (Jury trial)

20. 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.

21. 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: I currently have a Tiktok account which I created approximately nine months ago and have never posted anything on it. I had a Twitter account for a short period of time in 2016 or 2017, never posted anything on it, and deleted it in approximately 2018 or 2019 because I did not use it. I opened a Facebook account sometime in the 2009 to 2012 timeframe, deleted it because I did not use it, and cannot remember when I deleted it but it may have been in approximately 2013 or 2014.

22. Why should Senator Kennedy support your nomination?

Response: I have been honored to serve as United States Magistrate Judge for the Western District of Texas for more than eight years. During this time I have tried to create the kind of federal court I always wanted to appear before during my nearly twenty years as a federal court litigator. Our court focuses on the needs and requirements of the litigants and counsel, and we try to fulfill our duties as public servants. I handle each case individually, fully and fairly apply the correct law to the established facts, treat all litigants and counsel with dignity and respect, and ensure that all with business before the court have a full and fair opportunity to be heard. I hope to continue these policies and practices if confirmed as a United States District Judge.