Senator Lindsey Graham, Ranking Member
Questions for the Record
Mr. Amir Hatem Mahdy Ali
Nominee to be United States District Judge for the District of Colombia

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?**

   Response: Yes.

   a. **If yes, list all countries of citizenship and dates of citizenship.**

      Response:

      United States of America, 2019 to present.

      Canada, 1985 to present.

   b. **If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**

      Response: In a naturalization ceremony that took place in front of the original U.S. Constitution, Bill of Rights, and Declaration of Independence, I proudly took the following oath:

      > I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

      If I am so fortunate to be confirmed, I would take any further steps to renounce my Canadian citizenship as needed to fulfill my duties, including if such steps were required by law.

      i. **If not, please explain why.**

Response: See answer above.

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

   Response: If I am so fortunate to be confirmed, I would not base the decision whether to grant oral argument on an immutable characteristic.

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

   Response: If I am so fortunate to be confirmed, I would not base the decision whether to grant additional oral argument time on an immutable characteristic.

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: In the event U.S. Supreme Court or D.C. Circuit precedent instructs courts to consider foreign law in constitutional interpretation, then it would be appropriate. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), for instance, the Supreme Court extensively considered English law in interpreting the original meaning of the Second Amendment. *Id*. at 592-94, 598-600.

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: To the extent this quotation implies that judicial decision making should be influenced in any way by a judge's personal views, then I strongly disagree with it. A judge must decide issues based on an impartial and objective application of the law to the record before the court.

7. **In a concurrence in the denial of rehearing en banc in *Al–Bihani v. Obama* then-Judge Kavanaugh wrote: "international-law norms are not domestic U.S. law in the absence of action by the political branches to codify those norms." Is this a correct statement of law?**

   Response: Consistent with then-Judge Kavanaugh's concurrence, the Supreme Court has recognized that "not all international law obligations automatically constitute binding federal law enforceable in United States courts." *Medellin v. Texas*, 552 U.S. 491, 504 (2008). If I am so fortunate to be confirmed, I would apply all binding precedent on the

relation between international-law norms and domestic U.S. law, including the Supreme Court's opinions in *Medellin*, *Boumediene v. Bush*, 553 U.S. 723 (2008), *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), and *Murray v. Schooner Charming Betsy*, 6 U.S. 64 (1804), as well as any binding precedent of the D.C. Circuit.

8. **You were the signatory on a letter supporting Judge Kasubhai's nomination to be a United States District Judge for the District of Oregon.**

    a. **Please explain why you signed this letter.**

    Response: I signed the referenced letter to highlight Judge Kasubhai's qualifications and experience for service as a federal district judge.

    b. **Did you conduct any due diligence on Judge Kasubhai's qualifications before signing this letter? If so please explain what due diligence you conducted.**

    Response: Before signing this letter, I researched Judge Kasubhai's qualifications, reviewed a recommendation written by a local bar association familiar with Judge Kasubhai's work and reputation, and had discussions with experienced attorneys familiar with Judge Kasubhai's work and reputation.

    c. **Judge Kasubhai's "courtroom rules" state that "[p]arties and counsel are instructed to address each other in all written documents and court proceedings by those previously identified pronouns and honorifics."**

        i. **Is this an appropriate courtroom rule for a federal judge to impose?**

        Response: I have not appeared before Judge Kasubhai in my legal practice and I am not familiar with his individual courtroom rules. As a current judicial nominee, it would be inappropriate for me to comment on the courtroom practices of a sitting federal judge.

        ii. **Will you adopt similar courtroom rules if appointed as a District Judge?**

        Response: If I am so fortunate to be confirmed, I anticipate reviewing the individual rules of other federal district judges, with a particular focus on federal district judges who serve in D.C. To the extent that I develop any individual courtroom rules, they would be based on that research and consultation with other judges.

    d. **While serving as a federal magistrate judge Judge Kasubhai stated that the United States is "deeply Islamophobic." Do you agree with his assessment?**

Response: While I am not familiar with the referenced comment, I do not hold the view that the United States as a country is deeply Islamophobic. I denounce hatred toward any person based on their religion.

e. **In a 1994 essay published in "The Weekly Dissent," Judge Kasubhai argued in favor of "integrating" Marxist theory with that of Locke and Bentham, in order to engage in a "creative struggle" to "redefin[e] property." Have you ever advocated for integrating Marxist theory into our conception of property?**

Response: No.

f. **In his article *Destabilizing Power in Rape: Why Consent Theory in Rape Law Is Turned on Its Head* Judge Kasubhai cites Professor MacKinnon's "illuminat[ing]" theory that "sexuality itself is a power web in which heterosexual relations *per se* are infused with violence and control." Do you agree with this statement?**

Response: I am not familiar with this article or statement, or with the underlying work by Professor MacKinnon, and I do not understand the meaning of the statement as it is presented.

g. **In the same article, Judge Kasubhai cites Professor MacKinnon's belief that "sexuality is to feminism what work is to Marxism." Do you agree with this statement?**

Response: I am not familiar with this article or statement, or with the underlying work by Professor MacKinnon, and I do not understand the meaning of the statement as it is presented.

9. **In 2017, you co-authored an article with Prof. Leah Litman, titled "Justice Gorsuch, Executive Power, and Muslim Ban 2.0" that appeared in "Take Care." Do you still agree with the views you expressed in this article?**

Response: I co-authored this article in my role as an advocate while representing clients that were challenging the constitutional basis for the Executive Orders discussed in the article. The article was written in response to some commentators who had suggested that Justice Gorsuch's views prior to being on the Supreme Court dictated a particular outcome in a case that would come before him as a Justice. The article argued that it was a mistake to assume how Justice Gorsuch would rule based on those prior views and pointed out that, in making their argument, those commentators had oversimplified Justice Gorsuch's prior experience. I still agree that it was wrong to make assumptions about how Justice Gorsuch would rule based on views he expressed prior to being a Justice.

10. In the same 2017 article you wrote that "[i]n his time in the Bush administration, Judge Gorsuch was both a proponent and an architect of aggressive uses of executive power, particularly in the name of national security, and he also defended very limited (if not non-existent) judicial review of executive power." You argued that this work "gives no reason to think that Judge Gorsuch would seriously question the constitutionality of Trump's [travel ban]."

a. Do you have a reason to believe that Justice Gorsuch lacks the ability to differentiate his prior role as an advocate from his current role as a jurist?

Response: No.

i. If not, was it appropriate to imply that he would be unable to differentiate his prior role as an advocate from his current role as a jurist?

Response: As explained above and in the article's first paragraph, it was written in response to commentators who had suggested that Justice Gorsuch's views prior to being on the Supreme Court would dictate a particular outcome in a case that would come before him as a Justice. The article argued that it was a mistake to assume how Justice Gorsuch would rule based on those prior views and pointed out that, in making their argument, those commentators had oversimplified Justice Gorsuch's prior experience. The article was intended to push back on those commentators' assumptions about how Justice Gorsuch would rule as a Supreme Court Justice, not to imply that Justice Gorsuch would be unable to differentiate between the role of an advocate from the role of a jurist.

b. Should the Senate Judiciary Committee view your past legal work as indicative of how you will rule on the bench?

Response: No. Like Justice Gorsuch, I have a profound appreciation for the fundamentally different roles of advocate and judge. If I am so fortunate to be confirmed, I will resolve cases based on an impartial and objective application of Supreme Court and D.C. Circuit precedent to the record before me.

11. In a 2019 article for "The Appeal" you expressed your opposition to Qualified Immunity stating it "permits law enforcement and other government officials to violate people's constitutional rights with virtual impunity." Do you still agree with this statement?

Response: In 2017, Justice Thomas authored a concurring opinion stating that the doctrine of qualified immunity has "diverged from the historical inquiry mandated by statute" and that the doctrine may substitute judicial "policy preferences for the mandates of Congress." *Ziglar v. Abbasi*, 582 U.S. 120, 158-60 (2017). The MacArthur Justice

Center has participated in advocacy as part of a broad coalition of organizations, including law enforcement and organizations like the Cato Institute, Alliance Defending Freedom, and Second Amendment Foundation to encourage the Supreme Court to revisit its qualified immunity jurisprudence. The referenced article was co-authored with another MacArthur Justice Center colleague as part of that advocacy.

I have a profound appreciation for the fundamental difference between advocacy and the role of a judge. Unless the Supreme Court or Congress say otherwise, qualified immunity is the law of the land. If I am so fortunate to be confirmed, I will apply all binding precedent of the Supreme Court and D.C. Circuit, including qualified immunity, impartially and objectively to the record before the court.

12. In your Amicus Brief in *Trump v. Hawaii* you stated that "the government's argument to this Court presses for judicial abdication that would be matched only by cases like *Korematsu v. United States*, 323 U.S. 214 (1944), and *Dred Scott v. Sandford*, 60 U.S. 393 (1857)" Do you consider the Court's ultimate decision in *Trump v. Hawaii* to be part of the Court's "anticanon"?

Response: The referenced amicus brief was advocacy authored on behalf of a client raising a constitutional challenge to executive authority. I understand the term "anticanon" to refer to a small subset of decisions that may not have been formally overturned, but are believed to be so wrong that the Supreme Court has nonetheless limited, repudiated, or refused to rely on them as precedent in future cases. Based on that definition, I do not consider *Trump v. Hawaii* to be anticanon. If I am so fortunate to be confirmed, I will faithfully apply all Supreme Court and D.C. Circuit precedent impartially and objectively to any relevant case that comes before me.

13. You represented Rogers LaCaze in *LaCaze v. Louisiana*.

a. Please explain the factual background of this case.

Response: I was not involved in the development of the facts in this case, or any arguments about the crime at issue. I first became involved over two decades later to present constitutional issues of broad importance in the U.S. Supreme Court.

The criminal trial, which I was not involved in, pertained to an officer-on-officer shooting in 1995, in which New Orleans Police Department ("NOPD") Officer Antoinette Frank tragically shot and killed NOPD Officer Ronald Williams and two civilian bystanders. Upon being arrested, Officer Frank implicated Rogers Lacaze as her accomplice in the crime. Officer Frank and Mr. Lacaze were convicted of first-degree murder.

In 2015, the Criminal District Court for Orleans Parish in Louisiana reviewed Mr. Lacaze's trial record and concluded that his trial violated the Sixth Amendment's guarantee of an impartial jury. The court found that one of the jurors "did not

honestly answer questions at voir dire" and there was "simply no excuse" for the juror's dishonesty. Because honest answers would have "provided a valid basis for a challenge for cause," the court held that the Constitution required a new trial. That decision was reversed on appeal on the basis that the trial court's finding of dishonesty did not constitute a "structural error." I was not involved in these proceedings before the district court or state appellate courts.

b. Please explain this case's procedural history. In particular, explain when you first became involved in this case and when your involvement ended.

Response: I first became involved in this case in 2017, to prepare a petition for certiorari to the U.S. Supreme Court raising issues of broad importance to the legal system under the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment. Consistent with the MacArthur Justice Center's arguments in this case, the Supreme Court granted that petition for certiorari, vacated the lower court's order, and remanded the case for further review of whether the trial comported with due process. On remand, the Louisiana Supreme Court reaffirmed its prior decision and the Supreme Court denied certiorari in 2018, at which point my involvement in the case ended.

c. Briefly summarize the arguments you made before the Supreme Court in this case.

Response: The 2017 and 2018 petitions for certiorari asked the U.S. Supreme Court to consider two issues of broad importance to the legal system. First, the petitions asked the Supreme Court to resolve the lower courts' conflicting interpretations of *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548 (1984), concerning the legal standard for evaluating juror dishonesty. Second, the petitions asked the Supreme Court to clarify whether the due process standard articulated in *Williams v. Pennsylvania*, 579 U.S. 1 (2016), requires a judge who was questioned as a witness in the investigation of a case to disclose that to the parties.

d. What was the ultimate outcome of this case?

Response: The Supreme Court denied certiorari after the Louisiana Supreme Court on remand reaffirmed is prior decision.

14. You represented Nathaniel Lambert in *Lambert v. Louisiana*.

a. Please explain the factual background of this case.

Response: I was not involved in the development of the facts in this case, or any arguments about the crime at issue. I became involved over two decades later to present a constitutional issue of broad importance in the U.S. Supreme Court.

At a 1997 criminal trial, which I was not involved in, Mr. Lambert was convicted of aggravated burglary, aggravated rape, and aggravated crime against nature. At the time of Mr. Lambert's trial, Louisiana law allowed a person to be convicted even when the jury failed to reach a unanimous verdict of guilt. Following Mr. Lambert's conviction, the trial court sentenced Mr. Lambert to life without the possibility of parole for one of his convictions, but declined to formally sentence Mr. Lambert on his other two convictions. Because Mr. Lambert had not received a sentence, he was precluded from enrolling in any educational or vocational programs in prison for nearly twenty years. Mr. Lambert argued that the denial of access to education and vocational programs for twenty years based on his unsentenced counts violated his right to due process, and Louisiana state courts rejected his argument. I was not involved in these proceedings before the district court or state appellate courts.

b. Please explain this case's procedural history. In particular, explain when you first became involved in this case and when your involvement ended.

Response: I first became involved in this case in 2020, while it was pending on a petition for certiorari to the U.S. Supreme Court related to the delay in sentencing Mr. Lambert that had deprived him of access to education and vocational programs while incarcerated.

While Mr. Lambert's petition was pending, the Supreme Court decided *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), holding that Louisiana's practice of allowing non-unanimous verdicts violated the Sixth Amendment right to a jury trial. Consistent with the MacArthur Justice Center's position, the U.S. Supreme Court granted Mr. Lambert's petition, vacated the lower court's decision, and remanded for further consideration of whether he was entitled to relief under *Ramos*. On remand, the Louisiana Supreme Court reaffirmed its prior decision and the Supreme Court denied certiorari in 2022, at which point my involvement as counsel ended.

Following the Supreme Court's remand in this case, other attorneys who have reviewed and investigated the record in Mr. Lambert's case have raised concerns related to his innocence. I have not served as counsel in those claims, which remain pending.

c. Briefly summarize the arguments you made before the Supreme Court in this case.

Response: The 2020 and 2022 briefs in support of certiorari asked the Supreme Court to resolve a conflict among lower courts as to "[w]hat test applies to excessive sentencing delay claims under the Due Process Clause, including whether prejudice is required and what prejudice counts." The briefing also asked the Supreme Court to consider whether a defendant who was convicted on

multiple counts by a non-unanimous jury, but had not yet received a final sentence on all counts was entitled to relief under *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020).

d. What was the ultimate outcome of this case?

Response: The Supreme Court denied certiorari after the Louisiana Supreme Court on remand reaffirmed its prior decision.

15. You represented William Miller in *Miller v. United States.*

a. Please explain the factual background of this case.

Response: I was not involved in the development of the facts in this case, or any arguments about the crime at issue. I became involved when the case reached the U.S. Supreme Court to present a constitutional issue of broad importance to the legal system.

In *United States v. Jones*, 565 U.S. 400 (2012), Justice Scalia held that the government's trespass on property "would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted" in addition to the modern reasonable-expectations of privacy test. *Id*. at 404-05. In *United States v. Ackerman*, 831 F.3d 1292 (10th Cir. 2016), then-Judge Gorsuch applied *Jones* to a warrantless search of emails containing child pornography. Then-Judge Gorsuch held that such a search was "exactly the type of trespass to chattels that the framers sought to prevent when they adopted the Fourth Amendment" and accordingly held that the district court erred in denying the motion to suppress the evidence of child pornography. *Id*. at 1307.

Like the defendant in *Ackerman*, Mr. Miller was convicted for possessing child pornography following the warrantless search of his emails and sought to suppress the evidence under the trespass approach articulated by Justice Scalia in *Jones*. The district court and Sixth Circuit declined to apply the trespass test to Mr. Miller's case, in conflict with then-Judge Gorsuch's opinion in *Ackerman*. I had no involvement in Mr. Miller's case at the district court or circuit court.

b. Please explain this case's procedural history. In particular, explain when you first became involved in this case and when your involvement ended.

Response: I first became involved in this case in a February 2021 petition for certiorari asking the U.S. Supreme Court to clarify the application of Justice Scalia's opinion in *United States v. Jones*, 565 U.S. 400 (2012), to the warrantless search of emails. Multiple civil libertarian organizations filed amicus briefs in support of this argument, including Reason Foundation, the DKT Liberty Project,

and Restore the Fourth. My involvement ended in June 2021 when the Supreme Court denied certiorari.

c. Briefly summarize the arguments you made before the Supreme Court in this case.

Response: The petition for certiorari asked the Supreme Court to clarify the application of *United States v. Jones*, 565 U.S. 400 (2012), to the warrantless search of emails and argued that the Sixth Circuit's decision conflicted with then-Judge Gorsuch's opinion in *Ackerman*.

d. What was the ultimate outcome of this case?

Response: The Supreme Court denied certiorari.

16. You represented Mark Ringland in *Ringland v. United States.*

a. Please explain the factual background of this case.

Response: I was not involved in the development of the facts in this case, or any arguments about the crime at issue. I became involved after the federal circuit court issued its opinion, to raise a constitutional issue of broad importance to the legal system.

In *United States v. Jones*, 565 U.S. 400 (2012), Justice Scalia held that the government's trespass on property "would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted" in addition to the modern reasonable-expectations of privacy test. *Id*. at 404-05. In *United States v. Ackerman*, 831 F.3d 1292 (10th Cir. 2016), then-Judge Gorsuch applied *Jones* to a warrantless search of emails containing child pornography. Then-Judge Gorsuch held that such a search was "exactly the type of trespass to chattels that the framers sought to prevent when they adopted the Fourth Amendment" and accordingly held that the district court erred in denying the motion to suppress the evidence of child pornography. *Id*. at 1307.

Like the defendant in *Ackerman*, Mr. Ringland was convicted for possessing child pornography following the warrantless search of his emails and sought to suppress the evidence under the approach articulated by Justice Scalia in *Jones*. The district court and a panel of the Eighth Circuit did not address Mr. Ringland's arguments under the trespass approach, in conflict with then-Judge Gorsuch's opinion in *Ackerman*. I had no involvement in the district court or before the Eighth Circuit panel.

b. Please explain this case's procedural history. In particular, explain when you first became involved in this case and when your involvement ended.

Response: I first became involved in this case in 2020 to file a petition for rehearing *en banc*, asking the Eighth Circuit to address the application of *Jones* to the warrantless search of emails and resolve the conflict with then-Judge Gorsuch's opinion in *Ackerman*. After the Eighth Circuit denied rehearing, the MacArthur Justice Center filed a petition for certiorari in the Supreme Court seeking review of the Eighth Circuit's decision. Multiple civil libertarian organizations joined an amicus brief in support of this argument, including Reason Foundation, the DKT Liberty Project, and the Due Process Institute. My involvement ended in June 2021 when the Supreme Court denied certiorari.

c. Briefly summarize the arguments you made before the Supreme Court in this case.

Response: The petition for certiorari asked the Supreme Court to clarify the application of *United States v. Jones*, 565 U.S. 400 (2012), to the warrantless search of emails and argued that the Sixth Circuit's decision conflicted with then-Judge Gorsuch's opinion in *Ackerman*.

d. What was the ultimate outcome of this case?

Response: The Supreme Court denied certiorari.

17. You filed an Amicus Brief in *Edwards v. Vannoy*.

a. Please explain the factual background of this case.

Response: I was not involved in the development of the facts in this case, or any arguments about the crime at issue. I became involved after the U.S. Supreme Court granted certiorari in the context of filing an amicus brief addressing a legal principle that favored neither party.

In *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), Justice Gorsuch's opinion for the Supreme Court held that "the Sixth Amendment right to a jury trial—as incorporated against the States by way of the Fourteenth Amendment—requires a unanimous verdict to convict a defendant of a serious offense." *Id*. at 1394. The defendant in *Edwards* had been convicted of serious offenses, including armed robbery, rape, and kidnapping, based on a jury verdict that was not unanimous. Through counsel, he argued that the Supreme Court's decision in *Ramos* should be applied retroactively to his conviction. After the Supreme Court granted certiorari to resolve that issue, the MacArthur Justice Center filed an amicus brief in support of neither party related to a broader principle of federalism. I was not in any way involved in Mr. Edwards' case at the district or circuit level.

b. Please explain this case's procedural history.

Response: In May 2020, the Supreme Court granted certiorari in *Edwards* to decide whether the rule announced in *Ramos* applies retroactively. In July 2020, the MacArthur Justice Center filed an amicus brief in support of neither party before the Supreme Court. In May 2021, The Supreme Court issued its opinion holding that *Ramos* was not retroactive.

c. Briefly summarize the arguments you made before the Supreme Court in this case.

Response: The MacArthur Justice Center filed an amicus brief in the Supreme Court in support of neither party to raise an important background principle of federalism. The brief encouraged the Court to recognize that, in addition to any federal rule regarding retroactivity, states remained free to fashion their own retroactivity rules under *Danforth v. Minnesota*, 552 U.S. 264 (2008).

d. What was the ultimate outcome of this case?

Response: The Supreme Court held that its decision in *Ramos* was not retroactive. The Supreme Court's opinion included a footnote adopting the position of the MacArthur Justice Center's amicus brief that "States remain free, if they choose, to retroactively apply the jury unanimity rule as a matter of state law in state post-conviction proceedings. *See Danforth v. Minnesota*, 552 U.S. 264, 282 (2008)." *Edwards v. Vannoy*, 593 U.S. 255, 271 n.6 (2021).

e. Why did you decide to write this Amicus Brief?

Response: I wrote the amicus brief in my role as an attorney for the MacArthur Justice Center. My understanding is that the MacArthur Justice Center decided to file this brief in support of neither party to aid the Supreme Court by identifying an important background principle of federalism that was unlikely to be addressed by the parties themselves. As noted above, the Supreme Court's opinion authored by Justice Kavanaugh, and joined by Chief Justice Roberts and Justices Thomas, Alito, Gorsuch, and Barrett, adopted the point of law offered by the MacArthur Justice Center's brief.

18. In your article "An Appeal to Books" you wrote "The unstated assumption, of course, is that the Supreme Court can reliably ascertain the 'teachings of history' in the first place. Looking at the institution on its face, there's little reason to think it's well suited to do that."

a. If confirmed as a federal district judge, are you equipped to apply the "history and tradition" analysis that the Supreme Court has explicitly required in resolving important constitutional questions?

Response: Yes, based on my extensive litigation experience, which includes recently arguing and succeeding in a Supreme Court case that turned on historical analysis, I am very well equipped to apply the Supreme Court's "history and tradition" approach. While the referenced article described uncertainty that lower court judges have voiced in how to apply the "history and tradition" analysis applied in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), the Supreme Court has since granted certiorari in *United States v. Rahimi*, No. 22-915, to provide further guidance. My article does not reflect any personal opinions about the validity of applying a "history and tradition" analysis. As this question correctly notes, the Supreme Court has explicitly required such analysis in certain contexts. My article recognized the same: That "the Supreme Court's word is binding in the legal system" and, accordingly, lower court judges are "required to accept" that approach.

b. Please explain how you will approach such analysis.

Response: If I am so fortunate to be confirmed, I would faithfully apply a "history and tradition" analysis in all contexts required by Supreme Court or D.C. Circuit precedent. In the context of the Second Amendment, for instance, this would involve the application of *Bruen*, *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), as well as any further guidance that the Supreme Court provides in *United States v. Rahimi*, No. 22-915. That approach involves applying the Second Amendment's plain text, as informed by history, and considering whether the regulation at issue "is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 597 U.S. at 19.

19. What is the process for determining if someone is an enemy combatant under our law?

Response: The Supreme Court has recognized that the term "enemy combatant" does not have a fixed meaning and there is "debate as to the proper scope of this term." *Hamdi v. Rumsfeld*, 542 U.S. 507, 516 (2004). In *Hamdi*, the plurality opinion stated that "[t]he permissible bounds of the [enemy combatant] category will be defined by the lower courts as subsequent cases are presented to them." *Id*. at 522 n.1. Following *Hamdi*, the Defense Department established Combatant Status Review Tribunals to determine whether individuals detained were "enemy combatants," as the Department defined that term. *Boumediene v. Bush*, 553 U.S. 723, 733 (2008). In *Boumediene*, the Supreme Court held that the Military Commission Act's prohibition on judicial review for anyone detained as an enemy combatant was an unconstitutional suspension of the writ of habeas corpus. *Id*. In 2009, the United States announced that it would stop employing the term "enemy combatant." *See* Press Release, Department of Justice, Department of Justice Withdraws "Enemy Combatant" Definition for Guantanamo Detainees (Mar. 13, 2009). The D.C. Circuit has held that the Authorization for Use of Military Force's (AUMF's)

detention authority "includes those who are part of forces associated with Al Qaeda or the Taliban or those who purposefully and materially support such forces in hostilities against U.S. Coalition partners." *Al-Bihani v. Obama*, 590 F.3d 866, 872 (D.C. Cir. 2010). If so fortunate to be confirmed, I would faithfully apply binding Supreme Court and D.C. Circuit caselaw to the record before me.

a. Does the Due Process Clause place limits the length and purpose of detention of foreign enemy combatants? If so, please explain those limits.

Response: To my knowledge, neither the Supreme Court or D.C. Circuit have resolved whether the Due Process Clause applies to the detention of foreign enemy combatants. *See Al-Hela v. Biden*, 66 F.4th 217, 225 (D.C. Cir. 2023) (en banc) (explaining that "whether the Due Process Clause applies to a habeas petition filed by a foreign national detained at the Guantanamo Bay military base as an alleged enemy combatant is a question that the Supreme Court has not yet answered" and declining to resolve the issue). As a nominee for judicial office, the Code of Conduct for United States Judges precludes me from expressing an opinion on an issue that could come before me as a judge. If so fortunate to be confirmed, I would faithfully apply binding Supreme Court and D.C. Circuit caselaw to the record before me.

b. Does the Authorization for Use of Military Force place limits the length and purpose of detention of foreign enemy combatants? If so, please explain those limits.

Response: The Supreme Court has said that Congress's grant of authority in the AUMF authorizes detention of foreign enemy combatants "for the duration of the particular conflict in which they were captured." *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004) (plurality opinion). The D.C. Circuit has similarly stated that "[t]he AUMF authorizes detention for the duration of the conflict between the United States and the Taliban and al Qaeda." *Al-Alwi v. Trump*, 901 F.3d 294, 299 (D.C. Cir. 2018). As a nominee for judicial office, the Code of Conduct for United States Judges precludes me from expressing an opinion on an issue that could come before me as a judge. If so fortunate to be confirmed, I would faithfully apply binding Supreme Court and D.C. Circuit caselaw to the record before me.

20. You previously served as a Law Clerk on the Supreme Court of Canada.

a. Please explain the "living tree doctrine."

Response: As I understand the living tree doctrine, it says that the Canadian Constitution and Charter should be interpreted in a manner that adapts to changing circumstances.

b. Does a similar doctrine exist in U.S. Constitutional interpretation?

Response: The U.S. Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). Thus, "[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). For example, in *Kyllo v. United States*, 533 U.S. 27 (2001), and *United States v. Jones*, 565 U.S. 400, 406 (2012), Justice Scalia's opinions for the Supreme Court recognized that the original meaning of the Fourth Amendment must be applied to new technologies to "assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted." *Jones*, 565 U.S. at 406 (2012) (quoting *Kyllo*, 533 U.S. at 34).

c. What benefits do you believe your experience clerking for Justice Rothstein will give you in relation to your potential service on the bench?

Response: My experience clerking for Justice Rothstein has given me a clear and profound appreciation for the differences between legal practice in the United States compared to other legal systems. Based on that experience, I will never take for granted those aspects that make our U.S. legal system exceptional.

21. In *Carter v Canada* the Canadian Supreme Court wrote that "stare decisis is not a straitjacket that condemns the law to stasis."

a. Do you agree with this view of stare decisis?

Response: During my one-year as a law clerk in the Supreme Court of Canada, I did not have occasion to study its approach to stare decisis. The U.S. Supreme Court has often stated that "stare decisis is 'not an inexorable command.'" *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478 (2018) (quoting *Pearson v. Callahan*, 555 U.S. 223, 233 (2009)). At the same time, courts "must apply the [Supreme] Court's precedents—limits and all—wherever they can, rather than widen them unnecessarily at the first opportunity." *Collins v. Yellen*, 141 S. Ct. 1761, 1801 (2021) (Kagan, J., concurring). The Supreme Court has set forth several factors that it will consider in deciding whether to overrule its prior precedent, including the quality of the decision's reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision. *Janus*, 138 S. Ct. at 2748-49.

b. In the American legal system, under what circumstances may District Courts reconsider settled Circuit or Supreme Court precedent?

Response: It is never the role of a federal district judge to reconsider settled circuit or Supreme Court precedent. A federal district judge is bound to follow such precedent, and to apply it impartially and objectively to the record before the court.

22. In *Heyer v. United States Bureau of Prisons*, the MacArthur Justice Center filed a brief arguing that a deaf prisoner should have videophone access, notwithstanding his convictions for child molestation and child pornography and his admission to molesting more than forty children. Did you have any involvement in drafting, reviewing, or approving any aspect of this matter? If yes, please describe your involvement in detail.

Response: I did not have any involvement in drafting, reviewing, or approving any aspect of this matter.

23. You are a member of "The Capital Area Muslim Bar Association" ("CAMBA")

a. Are you aware that CAMBA was a signatory on a November 13, 2023 letter which condemned U.S. law firms for showing "[o]penly one-sided support for Israel"? If yes, do you agree with the letter's statements?

Response: No, I am not aware of this.

24. In response to SJQ 16 (D) you appear to state that you have never been lead counsel on any case that was tried to verdict. What steps will you take to prepare to serve as a District Court Judge in light of this lack of trial leadership experience?

Response: Over the course of my career, I have served as lead or secondary counsel in over 90 different cases, in both the civil and criminal contexts, and as the leader of a national litigation firm, I have been supervisory counsel over numerous cases tried to final judgment. I have served as lead counsel in arguing issues that arise from every stage of trial litigation, including pleadings, preliminary injunctions, discovery, dispositive motions, voir dire and jury selection, scope of opening/closing statements, evidentiary issues, jury instructions, special verdicts, post-trial motions, and appeals. I have presented argument at all stages of federal litigation, including trial courts, circuit courts and multiple arguments before the U.S. Supreme Court. I also regularly help experienced attorneys prepare for hearings and am consulted by attorneys around the country on complex litigation issues. If confirmed, I will be fortunate to draw from this broad experience in federal litigation.

In past years, I have been both a presenter and attendee at training seminars organized by the Federal Judicial Center. I would continue that commitment to constant learning as a judge, by attending educational opportunities offered by the FJC.

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

Response: The role of a federal judge is to follow binding Supreme Court and circuit court precedent, and to apply it impartially and objectively to the record before the court. A federal judge should never resolve a case in a manner that is inconsistent with binding precedent and neutral application of the law simply because the judge calculates that the decision will not be reversed.

26. 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. If I am so fortunate to be confirmed, I will expect my law clerks to have sound judgment, and the endorsement or praise for a Foreign Terrorist Organization would be disqualifying.

27. 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. If I am so fortunate to be confirmed, I will expect my law clerks to have sound judgment, and statements attempting to justify terrorist acts would be disqualifying.

28. 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: Under 28 U.S.C. § 2255, a prisoner in custody under a sentence of a federal court may seek and receive relief "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." 28 U.S.C. § 2255(a). Such a prisoner must file their motion for relief within the applicable one-year statute of limitations. *Id.* § 2255(f). A second or successive motion for relief under § 2255 must be

authorized by a federal circuit court pursuant to 28 U.S.C. §§ 2244, 2255(h). A federal prisoner may seek relief by filing an application for a writ of habeas corpus under 28 U.S.C. § 2241 only where a motion under § 2255 is "is inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255(e); *Jones v. Hendrix*, 599 U.S. 465, 475 (2023).

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

Response: In these cases, the Supreme Court considered claims that Harvard and the University of North Carolina violated Title VI of the 1964 Civil Rights Act and the Equal Protection Clause of the Fourteenth Amendment by considering race as part of their admissions processes. The Supreme Court held that Students for Fair Admissions had Article III standing to bring its challenge and that strict scrutiny applied to the consideration of race in admissions processes. The Supreme Court held that the connection between race-conscious admissions and the schools' articulated purpose of achieving the educational benefits of diversity did not survive strict scrutiny. The Court accordingly concluded that the schools' admissions programs violated Title VI and the Constitution.

30. 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 have participated in hiring decisions in every role I have had since graduating from law school.

31. 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. In every hiring decision I have participated in, the decision was made based on who was most qualified for the position.

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

Response: No.

33. 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: Not to my knowledge.

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.

34. Under current Supreme Court and D.C. Circuit precedent, are government classifications on the basis of race subject to strict scrutiny?

Response: Yes. The Supreme Court has held that "all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995).

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

Response: In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held that a Colorado public accommodations law requiring a website designer to create websites for same-sex couples in conflict with the designer's sincerely held religious beliefs constituted compelled speech that violated the First Amendment's free speech guarantees.

36. 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: Yes. *Barnette* is binding precedent and has been cited by the Supreme Court as recently as last year.

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

Response: In determining whether a law that regulates speech is "content-based" or "content-neutral," I would follow the approach set forth by Supreme Court and D.C. 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). Even a law that is not content-based on its face may be considered content-based if it "cannot be justified without reference to the content of the regulated speech" or was "adopted by the government because of disagreement with the message the speech conveys." *Id*. at 164 (quotation marks and alterations omitted). In such cases, the law is unconstitutional unless it satisfies strict scrutiny. *Id*.

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

Response: As the Supreme Court reiterated last term, "[t]rue threats are serious expressions conveying that a speaker means to commit an act of unlawful violence." *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (quotation marks and alterations omitted).

39. Under Supreme Court and D.C. 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 generally divided questions into three categories: questions of law, questions of fact, and questions of mixed law and fact. In determining the appropriate category, courts consider whether Congress has spoken to the issue. *See Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1070 (2020). The Court has noted that "the appropriate methodology for distinguishing questions of fact from questions of law has been, to say the least, elusive" and "in those instances in which Congress has not spoken and in which the issue falls somewhere between a pristine legal standard and a simple historical fact, the fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Miller v. Fenton*, 474 U.S. 104, 113-14 (1985).

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

Response: Under 18 U.S.C. § 3553(a), a federal district judge is required to consider all of these purposes, as one of seven factors in imposing a sentence in a particular case. Congress has not directed that one of these purposes is more important than any other.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the merits of binding precedent of the Supreme Court, all of which I will faithfully apply if I am so fortunate to be confirmed.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from commenting on the merits of binding precedent of the D.C. Circuit, all of which I will faithfully apply if I am so fortunate to be confirmed.

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

Response: 18 U.S.C. § 1507 prohibits any individual from picketing, parading, using a sound-truck or similar device, or any other similar demonstration in or near a United States courthouse or residence occupied by a judge, juror, witness, or court officer, in the discharge of his duty with the intent of interfering with, obstructing, or impeding the administration of justice.

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

Response: In *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court upheld a bill modeled after 18 U.S.C. § 1507; however, to my knowledge, neither the Supreme Court nor D.C. Circuit has specifically considered the constitutionality of 18 U.S.C. § 1507. As a nominee for judicial office, the Code of Conduct for United States Judges precludes me from expressing an opinion on an issue that could come before me as a judge.

45. 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 federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the merits of binding Supreme Court precedent, which I would faithfully apply as a judge, or from expressing an opinion on an issue that could come before me.

Consistent with the practice of prior judicial nominees, however, *Brown v. Board of Education* falls within a small class of cases that is so unlikely to ever come before me and I can therefore state that *Brown* was correctly decided.

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

Response: Yes. As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the merits of binding Supreme Court precedent, which I would faithfully apply as a judge, or from expressing an opinion on an issue that could come before me.

Consistent with the practice of prior judicial nominees, however, *Loving v. Virginia* falls within a small class of cases that is so unlikely to ever come before me and I can therefore state that *Loving* was correctly decided.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the merits of binding Supreme Court precedent, which I would faithfully apply as a judge, or from expressing an opinion on an issue that could come before me.

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

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health* overturned *Roe v. Wade*.

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

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health* overturned *Planned Parenthood v. Casey*.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the merits of binding Supreme Court precedent, which I would faithfully apply as a judge, or from expressing an opinion on an issue that could come before me.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the merits of binding Supreme Court precedent, which I would faithfully apply as a judge, or from expressing an opinion on an issue that could come before me.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the merits of binding Supreme Court precedent, which I would faithfully apply as a judge, or from expressing an opinion on an issue that could come before me.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the merits of binding Supreme Court precedent, which I would faithfully apply as a judge, or from expressing an opinion on an issue that could come before me.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the merits of binding Supreme Court precedent, which I would faithfully apply as a judge, or from expressing an opinion on an issue that could come before me.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the merits of binding Supreme Court precedent, which I would faithfully apply as a judge, or from expressing an opinion on an issue that could come before me.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the merits of binding Supreme Court precedent, which I would faithfully apply as a judge, or from expressing an opinion on an issue that could come before me.

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

Response: As a federal judicial nominee, the Code of Conduct for United States Judges precludes me from expressing an opinion on the merits of binding Supreme Court precedent, which I would faithfully apply as a judge, or from expressing an opinion on an issue that could come before me.

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

Response: If I am so fortunate to be confirmed, I would approach any case concerning the Second Amendment consistent with the Supreme Court's decisions in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), as well as any further guidance that the Supreme Court provides in *United States v. Rahimi*, No. 22-915. This would involve applying the Second Amendment's plain text, as informed by history, and considering whether the regulation at issue "is part of the

historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 597 U.S. at 19.

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

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: Not to my knowledge.

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

Response: Not to my knowledge.

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

Response: I have attended panels in which Demand Justice employee Chris Kang provided general advice about the application process for judicial nominees and subsequently received general advice about the process.

48. 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: Not to my knowledge.

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

Response: Not to my knowledge.

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

Response: See above regarding attendance of panels in which Demand Justice employee Chris Kang provided general advice about the application process for judicial nominees and subsequently receiving general advice.

49. 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: Not to my knowledge.

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: Not to my knowledge.

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: Not to my knowledge.

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: Not to my knowledge.

50. 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: Not to my knowledge.

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

Response: Not to my knowledge.

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

Response: Not to my knowledge.

51. 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: In 2022, Gabe Roth of Fix the Court notified me of the opportunity to join a letter from Supreme Court Practitioners asking Chief Justice Roberts to continue the practice of livestreaming oral argument audio to the public and making audio available to the public on the afternoon following a Court session.

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

Response: Not to my knowledge.

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

Response: See above description of being notified of a letter from Supreme Court Practitioners concerning the continuation of providing livestream and post-argument audio.

52. 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 September 22, 2023, I submitted an application to the judicial screening committee for Congresswoman Eleanor Holmes Norton. On October 2, 2023, I interviewed with Congresswoman Norton's screening committee. On October 20, 2023, I interviewed with Congresswoman Norton. On October 25, 2023, I interviewed with attorneys from the White House Counsel's Office, who informed me on November 13, 2023, that I would be moving forward in the selection process. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 10, 2024, the President announced his intent to nominate me and on February 1, 2024, the President formally nominated me.

53. 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: Not to my knowledge.

54. 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: Not to my knowledge.

55. 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: Not to my knowledge.

56. 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: Not to my knowledge.

57. 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: Not to my knowledge.

58. 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: No.

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?

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

Response: On September 22, 2023, I submitted an application to the judicial screening committee for Congresswoman Eleanor Holmes Norton. On October 2, 2023, I interviewed with Congresswoman Norton's screening committee. On October 20, 2023, I interviewed with Congresswoman Norton. On October 25, 2023, I interviewed with attorneys from the White House Counsel's Office, who informed me on November 13, 2023, that I would be moving forward in the selection process. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 10, 2024, the President announced his intent to nominate me and on February 1, 2024, the President formally nominated me.

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

Response: I received these questions from the Office of Legal Policy on February 15, 2024. I reviewed the questions, consulted my records, prepared answers, and reviewed my answers. The Office of Legal Policy provided limited feedback on my draft answers, which I implemented to the extent I agreed with them. I then transmitted these answers to the Office of Legal Policy for submission to the Senate Judiciary Committee.

Senate Judiciary Committee
Nominations Hearing
February 8, 2024
Questions for the Record
Senator Amy Klobuchar

For Amir Ali, nominee to be U.S. District Judge for the District of Columbia

Your practice has been focused on representing clients and being an advocate. If confirmed as a trial court judge you will be charged with maintaining a fair and impartial courtroom.

- **Can you describe what qualities you have that will give confidence to those who appear before you in court that you will be a fair and unbiased jurist?**

  Response: First and foremost, I have a profound respect for our constitutional framework, and that includes a deep appreciation for the distinct roles of an advocate and a judge in our legal system. If I am so fortunate to be confirmed, I pledge to fully leave behind my role as an advocate and embrace the role of impartial and neutral arbitrator. A judge's only client is the law and the fair administration of justice.

  Throughout my career, I have been privileged to have many experiences that prepare me for this role. I began my career as a law clerk for Judge Raymond C. Fisher on the Ninth Circuit. Judge Fisher, himself an advocate for many years prior to joining the bench, taught me that being a fair and unbiased jurist is not just an ideal, it is a very practical thing that a judge must commit to every day. It requires a judge to be eminently prepared by carefully considering the submissions of both parties with an open mind, diligently reviewing the relevant law, and scrupulously reviewing the record before the court in each case. And it requires the hard work of ensuring that cases on the court's docket move forward efficiently, so that everyone can be heard.

  In my own practice, I have had the privilege of representing everyone from corporate clients whose businesses were at stake, to indigent people whose lives or liberty were at stake. While the role of an advocate could not be more different from that as a judge, there is one trait I have practiced throughout my career that would serve me well as a judge: listening. As different as my corporate clients and indigent clients might seem at first blush, by listening carefully to them I have learned firsthand that they all walk into the courtroom wanting the same thing: the opportunity to be heard. If I am so fortunate to be confirmed, I will conduct my courtroom in a manner that conveys to all parties and counsel that their arguments have been heard. That includes writing clear judicial opinions that give due consideration to the parties' arguments, and which explain the result under the law and the legal authorities that dictate that result.

Senator Jon Ossoff
Questions for the Record for Amir Ali
February 8, 2024

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

   Response: Yes. I have a profound respect for our constitutional framework and that includes the role of a judge as a fair and neutral arbitrator. If I am so fortunate to be confirmed, I will apply the law impartially and objectively to the parties' arguments and the record before me, without regard to any personal views or political preferences.

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

   Response: I will approach First Amendment cases, and all other cases, by consulting the relevant Supreme Court and D.C. Circuit precedent and applying it impartially and objectively to the parties' arguments and the record before me.

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

      Response: As Justice Jackson famously recognized, "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." *W. Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). The freedom to speak, publish, assemble, and exercise religion that the Framers enshrined in the very first provision of the Bill of Rights is essential to individual liberty and to democracy.

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: In *Gideon*, the Supreme Court recognized that the promise of our Constitution and the Bill of Rights cannot be met unless litigants are afforded the assistance of counsel when they cannot afford it. Our legal system, and therefore the rule of law in our country, is premised on an adversarial system whose integrity depends on every defendant before the court being afforded counsel. As Justice Black put it:

   > [O]ur state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

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: A core component of our adversarial system is that parties be able to participate meaningfully and make decisions in their own case. In my experience as a practicing lawyer, I have seen that limited English proficient parties can face an extra obstacle in that endeavor, if they are not able to fully understand the pleadings and proceedings unfolding before them. In such circumstances, it has required extra care and attention to ensure that my clients are fully apprised of the circumstances in their case and able to make informed decisions about their case.

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

      Response: The Judicial Conference of the United States has recognized that "[m]any who come to the courts also have limited proficiency in English, and resources to provide interpretation and translation services are limited, particularly for civil litigants and bankruptcy participants" and has recommended that "continued efforts are needed." Judicial Conference of the United States, Strategic Plan for the Federal Judiciary 22 (2020). In the Court Interpreters Act, 28 U.S.C. §§ 1827-1828, Congress required the Director of the Administrative Office of the U.S. Courts to establish a program to "facilitate the use of certified and otherwise qualified interpreters" in judicial proceedings. 28 U.S.C. § 1827(a). The Act provides, among other things, that federal courts use interpreters for limited English proficient participants in criminal cases and in civil cases brought by the U.S. government. *Id*. § 1827(d)(1). In accordance with that Act and other applicable laws, courts should strive to ensure that parties are heard in accordance with due process and the right to be heard.

5. **You have substantial experience working with criminal defendants. How would you approach cases involving law enforcement officers, if confirmed?**

   Response: Throughout my career as a lawyer, I have had the privilege of representing clients of all types, including large companies, military veterans, victims of crime, and indigent criminal defendants. I have also had the privilege of working closely with law enforcement organizations, individual law enforcement officers, and prosecutors at all levels on issues related to public safety and accountability, several of whom have written in support of my nomination.

   If I am so fortunate to be confirmed, I would ensure that all parties, counsel, and witnesses who appear before are treated equally and with respect. I pledge to apply the law impartially and objectively to the parties' arguments and the record before the court.

Senator Mike Lee
Questions for the Record
Amir Hatem Mahdy Ali, Nominee for District Court Judge for the District of Columbia

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

Response: If so fortunate to be confirmed, my judicial philosophy would be informed by three core tenets. The first one recognizes that in our constitutional framework, the role of a federal judge is a limited one. A federal judge must strictly adhere to that limited role and, as a federal district judge, this requires faithful adherence to all binding precedent of superior courts.

The second tenet recognizes the work that goes into providing a fair, equal, and open opportunity to be heard. I believe fairness is not just a lofty ideal; it is practical. It requires a judge to be eminently prepared by carefully considering the submissions of both parties with an open mind, diligently reviewing the relevant law, and scrupulously reviewing the record before the court in each case. And it requires the hard work of ensuring that cases on the court's docket move forward efficiently, so that everyone can be heard.

The third tenet is clear communication with parties and their counsel. This includes writing judicial opinions that convey to both parties that their arguments have been heard and inform them of the result under the law, including the legal authorities which dictate that result.

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

Response: First and foremost, I would look at the text of the statute. As in all cases as a federal district judge, I would take my lead from the Supreme Court and D.C. Circuit, and apply any precedent interpreting the text, which would be binding on me. If the meaning of the statute is plain upon reviewing its text and binding precedent, then the task is complete. If not, then I would look to canons of interpretation and, in appropriate cases and subject to limitations imposed by the Supreme Court and D.C. Circuit, would also consider persuasive authority from other courts and legislative background.

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

Response: First and foremost, I would turn to the text of the constitutional provision. A district court judge must heed Supreme Court and D.C. Circuit precedent, so I would look to see whether there is binding precedent that governs the interpretation of the provision. If the proper interpretation of the constitutional provision is clear upon reviewing its text and binding precedent, then the task is complete. If the answer is not clear based on the provision's language and binding precedent, I would consult Supreme Court and D.C. Circuit caselaw to determine the appropriate methodology

for interpreting the constitutional provision. In many cases, for instance, the Supreme Court has instructed that the meaning of a constitutional provision is dictated by its original public meaning, guided by text, history, and tradition. *See, e.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (Second Amendment); *United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment).

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

Response: The Supreme Court has held that the text and original meaning governs the interpretation of constitutional provisions in various contexts. *See, e.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (Second Amendment); *United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). If I am so fortunate to be confirmed, I would faithfully apply all Supreme Court and D.C. Circuit precedent concerning the role of text and original meaning when interpreting constitutional provisions.

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: "It is well established that when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) (quotation marks omitted). I would accordingly start by examining the text of the statute. As in all cases as a federal district judge, I would take my lead from the Supreme Court and D.C. Circuit, and apply any precedent interpreting the text, which would be binding on me. If the plain meaning of the statute is clear upon reviewing its text and binding precedent, then the task is complete. If not, then I would look to canons of interpretation and, in appropriate cases and subject to limitations imposed by the Supreme Court and D.C. Circuit, would also consider persuasive authority from other courts and legislative background.

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 has stated that courts should interpret "a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cnty*., 590 U.S. 644, 654 (2020). The Supreme Court has also recognized that the Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). Thus, "[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." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). For example, in *Kyllo v. United*

States, 533 U.S. 27 (2001), and *United States v. Jones*, 565 U.S. 400 (2012), Justice Scalia's opinions for the Supreme Court recognized that the original meaning of the Fourth Amendment must be applied to new technologies to "assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted." *Jones*, 565 U.S. at 406 (quoting *Kyllo*, 533 U.S. at 34).

7. What are the constitutional requirements for standing?

Response: The Supreme Court has held that Article III standing requires a plaintiff to demonstrate (i) an injury-in-fact (ii) that was likely caused by the defendant and (iii) would be redressed by judicial relief. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021).

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

Response: The Supreme Court has said that "Congress's authority is limited to those powers enumerated in the Constitution." *United States v. Lopez*, 514 U.S. 549, 566 (1995). In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court held that the Necessary and Proper Clause enumerated in Article I, § 8 includes the power to enact laws necessary to implement its enumerated powers.

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 *National Federation of Independent Businesses v. Sebelius*, 567 U.S. 519 (2012), the Supreme Court stated that the "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. If I am so fortunate to be confirmed, I would follow Supreme Court and D.C. Circuit precedent in evaluating any case concerning the constitutionality of a law enacted without reference to an enumerated power.

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

Response: The Supreme Court has held that the Constitution's Due Process Clauses protect certain unenumerated "fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (quotation marks and citations omitted). The Supreme Court has recognized these rights as including the right to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, and to bodily integrity. *Id*. at 719-20. In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the Supreme Court held that this does not include the right to abortion.

11. What rights are protected under substantive due process?

Response: Please see my response to Question 10, which describes the rights referred to as substantive due process.

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: If so fortunate to be confirmed as a federal district judge, I would follow Supreme Court and the D.C. Circuit precedent concerning the types of rights that are subject to due process protection. In *West Coast Hotel Company v. Parrish*, 300 U.S. 379 (1937), the Supreme Court rejected the recognition of a substantive due process right of freedom to contract in *Lochner*. However, the Supreme Court has continued to recognize that the Due Process Clause protects other personal rights. *See Dobbs v. Jackson's Women's Health Org*., 597 U.S. 215, 289-90 (2022).

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

Response: The Commerce Clause in Article I, § 8 of the Constitution grants Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The Supreme Court has held that this authorizes Congress to "regulate the channels of interstate commerce, persons or things in interstate commerce, and those activities that substantially affect interstate commerce." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012) (quotation marks omitted).

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

Response: The Supreme Court has said that "suspect class" is 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 Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Suspect classes include race, religion, national original, and alienage. *See City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

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

Response: The Supreme Court has explained that the Constitution's system of checks and balances and separation of powers "was regarded by the Framers as 'a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.'" *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (quoting *Buckley v. Valeo*, 424 U.S. 1, 122 (1976)). This system is "designed to preserve the liberty of all the people." *Collins v. Yellen*, 141 S. Ct. 1761, 1780 (2021).

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 so fortunate to be confirmed, I would decide such a case by researching the applicable Supreme Court and D.C. Circuit precedent and applying it to the particular record before me. For example, if the question related to Congress's authority, it would generally be "limited to those powers enumerated in the Constitution," *United States v. Lopez*, 514 U.S. 549, 566 (1995), including those powers necessary to implement its enumerated powers, *McCulloch v. Maryland*, 17 U.S. 316 (1819). If the question related to the President's authority, it might implicate "Justice Jackson's familiar tripartite framework." *Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015) (discussing Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952)). Under that framework, the President's authority is at its maximum when he acts pursuant to authorization from Congress, in a "zone of twilight" when he acts in an area of concurrent authority with Congress but without its authorization, and must rely on his exclusive and conclusive constitutional powers when he takes measures incompatible with the will of Congress. *Id*.

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

Response: If I am fortunate to be confirmed, I will decide cases based on an impartial and objective application of the law. I will apply the law equally to all parties before the court without regard to any personal views.

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

Response: Both circumstances are equally undesirable.

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: Although I have not studied the reasons for any change in the frequency of invalidating federal statutes in these time periods, I believe a judge's role should be to apply the law impartially and objectively to the record before the court without regard to being "aggressive" or "passive." If I am fortunate to be confirmed, I will faithfully apply Supreme Court and D.C. Circuit precedent with respect to the scope of judicial review.

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

Response: Judicial review describes "a court's review of a lower court's or an administrative body's factual or legal findings." Black's Law Dictionary (11th ed. 2019). Judicial supremacy describes "the 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." *Id*.

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

Response: The Constitution provides that all executive, legislative, and judicial officers of the federal and state governments are "bound by Oath or Affirmation, to support [the United States] Constitution." U.S. Const., Art. VI. In *Marbury v. Madison*, 5 U.S. 137 (1803), Chief Justice Marshall explained that in our constitutional framework, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Id*. at 177. Thus, "the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). Elected officials are thus required to follow judicial decisions interpreting the Constitution and, to the extent they believe an alternative rule would be preferable, they may pursue amendment under Article V of 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: As reflected in my answer to Question 1, I believe federal judges should begin their work with a recognition that the role of a judge in our constitutional framework is a limited one. The Constitution commits decisions of policy to the other branches and the role of a judge is simply to apply the law impartially and objectively to the record before the court. If I am so fortunate to be confirmed, this would be an indispensable part of my judicial philosophy.

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: On this point, the Supreme Court has instructed: "If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, [a lower court] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989). Accordingly, if I am so fortunate to be confirmed, I would be bound to apply Supreme Court and D.C. Circuit precedent irrespective of my view of that precedent's underpinnings.

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: These factors should not play any role in determining an individual's sentence. *See* U.S.S.G. § 5H1.10. A sentence should be imposed based on consideration of the seven factors provided 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 and I do not have a personal definition for it. Merriam-Webster Dictionary defines equity as "justice according to natural law or right; specifically: freedom from bias or favoritism."

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

Response: I do not have a personal definition for these words. Merriam-Webster Dictionary defines equity as "justice according to natural law or right; specifically: freedom from bias or favoritism" and defines equality as "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: I am not aware of any Supreme Court or D.C. Circuit case that uses the definition of "equity" provided in Question 25. The Fourteenth Amendment's Equal Protection Clause states that, "No State shall . . . deny to any person within its

jurisdiction the equal protection of the laws." If I am so fortunate as to be confirmed, I would impartially and objectively apply Supreme Court and D.C. Circuit precedent governing interpretation of the Fourteenth Amendment to the record before me.

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

Response: I do not have a personal definition for systemic racism. 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)."

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

Response: I do not have a personal definition for critical race theory. Oxford English Dictionary describes critical race theory as: "A movement or theoretical approach within jurisprudence which holds that racial bias is inherent to the justice system as a result of its basis in beliefs and practices that benefit white people; (now also more generally) a theoretical framework for examining the influence of racial bias on social and cultural institutions and practices."

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

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

31. You were one of six signatories of a letter in support of Judge Mustafa Kasubhai, a recent nominee to be district judge for the District of Oregon. Judge Kasubhai was discovered to have said that "diversity, equity, and inclusion are the heart and soul of the court system." Do you similarly believe that DEI, or the aims of those pushing DEI policies, are the heart and soul of the court system? If not, giving specifics, how do you disagree with Judge Kasubhai's statement? What role do DEI policies have in the court system?

Response: I do not believe that DEI, or the aims of those pushing DEI policies, are the heart and soul of the court system. While I am not familiar with the referenced statements by Judge Kasubhai, I believe the core purpose of the court system is to provide a fair, neutral, and objective forum to adjudicate legal disputes. As a federal district judge, that means affording every person who appears before the court an equal opportunity to be heard without regard to their race, ethnicity, gender, religion, or any other protected characteristic, and applying the law impartially and objectively to the record before the court.

32. In a 2017 article you co-authored, you indicated that the positions Justice Gorsuch took while serving in the Bush administration would dictate his positions as a judge. If confirmed, would you expect parties who appear in your court to fairly assume that your prior positions and your prior writings would dictate your judgements?

Response: No. Like Justice Gorsuch, I have a profound appreciation for the fundamentally different roles of advocate and judge. If I am so fortunate to be confirmed, I will resolve cases based on the impartial and objective application of Supreme Court and D.C. Circuit precedent to the record before me.

I co-authored this article in my role as an advocate while representing clients that were challenging the constitutional basis for the Executive Orders discussed in the article. As the article's first paragraph indicates, it was written in response to some commentators who had suggested that Justice Gorsuch's views prior to being on the Supreme Court dictated a particular outcome in a case that would come before him as a Justice. The article argued that it was a mistake to assume how Justice Gorsuch would rule based on those prior views and pointed out that, in making their argument, those commentators had oversimplified Justice Gorsuch's prior experience. The article was intended to push back on those commentators' assumptions about how Justice Gorsuch would rule as a Supreme Court Justice, not to imply that Justice Gorsuch's prior writings would dictate his judgments.

33. You authored a series of sharp critiques of President Trump's executive orders that placed heightened scrutiny on travelers from seven Muslim-majority countries—countries previously identified by the Obama administration to address the growing threat from foreign terrorist fighters—stating that President Trump "engaged in an open, sustained, and targeted attack on people of the Muslim faith." Would you consider travel restrictions on any country with a predominant religion as an explicit attack on that predominant religion? Why do you believe that President Trump excluded the five most populous Muslim countries from the list of seven if President Trump was "engag[ed] in an open, sustained, and targeted attack on people of the Muslim faith"?

Response: I would not consider travel restrictions on any country with a predominant religion as an explicit attack on that predominant religion. The referenced critiques took place in the course in my role as an advocate while representing clients that were challenging the constitutional basis for several Executive Orders. Throughout my career I have represented clients raising constitutional and statutory challenges adverse to both Democratic and Republican administrations. In this particular case, clients included an interfaith coalition of advocacy groups and the MacArthur Justice Center, and their particular arguments alleged discrimination in violation of the Equal Protection Clause.

In *Trump v. Hawaii*, 585 U.S. 667 (2018), the Supreme Court stated that the list of countries selected by the President began with seven "that had been previously identified by Congress or prior administrations as posing heightened terrorism risks." *Id*. at 676. The list was further informed by "the results of a worldwide review process undertaken by multiple Cabinet officials and their agencies" and "in each case the determinations were justified by the distinct conditions in each country." *Id*. at 707. If I am so fortunate to be confirmed, I will faithfully apply all Supreme Court and D.C. Circuit precedent impartially and objectively to any relevant case that comes before me.

34. You criticized President Trump based on rumors that the Trump administration intended to reinstate the NSEERS program, calling it "clear and specific intention to attack people of the Muslim Faith." That program was first instituted shortly after the terror attacks of September 11th, 2001, and was continued up through the majority of President Obama's first term as president. Was the Obama administration also expressing a "clear and specific intention to attack people of the Muslim faith" for the three years that it continued the NSEERS program?

Response: The referenced statement took place in the course of representing clients that were challenging the scope of executive authority. Like many lawyers, throughout my career I have represented clients with interests adverse to the government, including both Democratic and Republican administrations. In particular, the MacArthur Justice Center was representing a group of 13 interfaith advocacy organizations and community organizations arguing that the Constitution and relevant statutory law required detention decisions to be based on an individualized assessment of the detainee's circumstances. If so fortunate to be confirmed, I would faithfully apply binding Supreme Court and D.C. Circuit caselaw to the record before me.

35. In a 2023 Michigan Law Review article, you criticized state legislatures that have passed laws establishing a removal mechanism for books that are inappropriate for certain audiences, and wrote that we should "resist[] these efforts to censor [certain books from schools]." Are there any books that you would consider too sexually graphic or violent for elementary schools? Should we resist efforts to remove sexual or violent materials from the children's area of public institutions?

Response: The referenced article does not question the propriety of removing sexual or violent materials from elementary schools or the children's area of public institutions. In *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982), the Supreme Court recognized in context of secondary education "that local school boards have a substantial legitimate role to play in the determination of school library content." *Id*. at 869-70.

Senator John Kennedy
Questions for the Record

Amir Ali

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

   Response: Yes. Congress has enacted the federal death penalty and set forth the circumstances in which a criminal defendant may be properly sentenced to death under the law in 18 U.S.C. § 3591. If I am so fortunate to be confirmed, I would faithfully apply this law and relevant Supreme Court and D.C. Circuit precedent to the record before me.

2. **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.

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

   Response: Yes.

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

   Response: Yes.

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

   Response: If I am so fortunate to be confirmed, my judicial philosophy would be informed by three core tenets. The first one recognizes that in our constitutional framework, the role of a federal judge is a limited one. A federal judge must strictly adhere to that limited role and, as a federal district judge, this requires faithful adherence to all binding precedent of superior courts.

   The second tenet recognizes the work that goes into providing a fair, equal, and open opportunity to be heard. I believe fairness is not just a lofty ideal; it is practical. It requires a judge to be eminently prepared by carefully considering the submissions of both parties with an open mind, diligently reviewing the relevant law, and scrupulously reviewing the record before the court in each case. And it requires the hard work of ensuring that cases on the court's docket move forward efficiently, so that everyone can be heard.

   The third tenet is clear communication with parties and their counsel. This includes writing judicial opinions that convey to both parties that their arguments have been heard

and inform them of the result under the law, including the legal authorities which dictate that result.

6. Is originalism a legitimate method of constitutional interpretation?

Response: Yes. The Supreme Court has held that original public meaning governs the interpretation of constitutional provisions in various contexts. *See, e.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (Second Amendment); *United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). If I am so fortunate to be confirmed, I would faithfully apply all Supreme Court and D.C. Circuit precedent concerning the role of original meaning when interpreting constitutional provisions.

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

Response: First and foremost, I would turn to the text of the constitutional provision to familiarize myself with it. Second, even if there is no precedent directly on point, it would be incumbent upon me as a federal district judge to consult Supreme Court and D.C. Circuit caselaw for guidance on the appropriate methodology for interpreting the constitutional provision. In many cases, for instance, the Supreme Court has instructed that the meaning of a constitutional provision is dictated by its original public meaning, guided by text, history, and tradition. *See, e.g.*, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (Second Amendment); *United States v. Jones*, 565 U.S. 400 (2012) (Fourth Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment). I would faithfully apply such methodology to the relevant constitutional provision to ascertain its meaning.

8. Is textualism a legitimate method of statutory interpretation?

Response: Yes. The Supreme Court has said that "[t]he starting point in discerning congressional intent is the existing statutory text." *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004). And "[i]t is well established that when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Id*. (quotation marks omitted). If I am so fortunate to be confirmed, I would faithfully apply this methodology to interpreting statutes relevant to the cases that come before me.

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

Response: My first step when determining the meaning of a statute would be to look at its text. As in all cases as a federal district judge, I would take my lead from the Supreme Court and D.C. Circuit, and apply any precedent interpreting the text, which would be

binding on me. If the meaning of the statute is plain upon reviewing its text and binding precedent, then the inquiry is complete. If not, I would look to canons of interpretation and, in appropriate cases and within limits imposed by the U.S. Supreme Court and D.C. Circuit, would also consider persuasive authority from other courts and legislative background.

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

Response: No. The Supreme Court has recognized that the Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). Thus, "[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." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022).

11. 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 Supreme Court applied the rule that in Section 1983 cases, a defendant will be entitled to qualified immunity absent an "obvious" violation of the law or "a case that put [the defendant] on notice that his specific conduct was unlawful." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021). The Supreme Court held that the plaintiff failed to show that the defendant committed an obvious violation and that the Ninth Circuit's precedent in *LaLonde v. County of Riverside*, 204 F.3d 947 (9th Cir. 2000), was materially distinguishable and therefore did not govern the facts of the case.

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

Response: District courts have generally relied on Federal Rule of Civil Procedure 65 as the rule governing the issuance of injunctions. Congress has also authorized federal courts to "set aside" unlawful agency action under the Administrative Procedure Act, 5 U.S.C. § 706(2). The Supreme Court has said that "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). If I am so fortunate to be confirmed, I would apply Supreme Court and D.C. Circuit precedent to evaluate the propriety and scope of a party's request for injunctive relief.

13. 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.

14. Will you faithfully apply all precedents of the U.S. Supreme Court and the U.S. Court of Appeals for the D.C. Circuit?

Response: Yes.

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

Response: Supreme Court dicta should be given persuasive, but not controlling, weight. The Supreme Court has instructed, for instance, that courts should "resort to the text of the statute" rather than an "isolated comment" in a Supreme Court opinion that "was unquestionably dictum because it was not essential to [the Court's] disposition of any of the issues." *Central Green Co. v. United States*, 531 U.S. 425, 431 (2001).

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

Response: If I am so fortunate to be confirmed, I will select law clerks based solely on which applicant is most qualified for the position, based on their prior experience, academic record, and demonstrated judgment.

17. Why should Senator Kennedy support your nomination?

Response: I believe Senator Kennedy will find meaningful my qualifications to serve as a federal judge. Over the course of my career, I have served as lead or secondary counsel in over 90 different cases, in both the civil and criminal contexts, and as the head of a national litigation firm, I have been supervisory counsel over numerous cases tried to final judgment. I have served as lead counsel in arguing issues that arise from every stage of trial litigation, including pleadings, preliminary injunctions, discovery, dispositive motions, voir dire and jury selection, scope of opening/closing statements, evidentiary issues, jury instructions, special verdicts, post-trial motions, and appeals. I have presented argument at all stages of federal litigation, including trial courts, circuit courts and multiple arguments before the U.S. Supreme Court. I have succeeded in over 90% of the appeals I have argued in the federal courts, including in all three cases that I have had the privilege to argue before the Justices of the Supreme Court.

I also believe Senator Kennedy will find meaningful that my work as an advocate has been decidedly non-partisan. It has included collaborating with the Alliance Defending Freedom, the Second Amendment Foundation, Americans for Prosperity, the American Conservative Union, the Cato Institute, and the Institute for Justice. I believe Senator Kennedy will find meaningful that my nomination is supported by law enforcement organizations and individual police officers, senior national security officials and prosecutors, and legal professionals across the ideological spectrum. And I believe

Senator Kennedy will find meaningful that my work has ranged from commercial litigation, including representing the Chamber of Commerce in furtherance of economic liberty, to advocating for religious liberty, including on behalf of Christian men who were denied access to a Holy Bible while incarcerated. In short, as an advocate, I have shown all people respect and sought common ground regardless of political or religious beliefs.

I understand Senator Kennedy evaluates judicial nominees for appropriate qualifications and from a non-partisan perspective, and I appreciate his consideration of the above.