Senator Lindsey Graham, Ranking Member
Questions for the Record
Ms. Krissa Lanham
Nominee to be United States District Judge for the District of Arizona

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, state all countries of citizenship and dates of citizenship.**

   Response: United States, 1980 to present.

   Australia, 1980 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: If confirmed, I will renounce my Australian citizenship if doing so is necessary or helpful in fulfilling my duties as a district court judge or is otherwise required by law.

   i. If not, please explain why.

   Response: See answer to subpart (b) above.

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

   Response: No.

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

   Response: No.

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

   Response: It would only be appropriate for a district court judge to consider foreign law in constitutional interpretation when the Supreme Court or Ninth Circuit has so indicated.

For example, the Supreme Court considered pre-founding English law in interpreting the Second Amendment in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 42-45 (2022).

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

   Response: I do not agree with this statement. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

   Response: No. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

   Response: Yes.

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

   Response: Yes.

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

    Response: At least three mechanisms are available to prisoners seeking relief from federal sentences. They may file motions under 28 U.S.C. § 2255 alleging that the

sentence was imposed in violation of the Constitution or laws of the United States. In very unusual circumstances—where it is impossible or impracticable to seek relief from the sentencing court under 28 U.S.C. § 2255—they may also file motions under 28 U.S.C. § 2241. *See Jones v. Hendrix*, 599 U.S. 465 (2023). They may also file motions to reduce or modify a term of imprisonment if they meet the statutory criteria provided in 18 U.S.C. § 3582(c).

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

    Response: In *Students for Fair Admissions v. Pres. & Fellows of Harvard Coll.*, 600 U.S. 181 (2023), a nonprofit organization brought claims against Harvard College and the University of North Carolina arguing that their admissions processes—which considered applicants' race at certain points—violated the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court held that the admissions policies did not survive strict scrutiny under the Equal Protection Clause and Title VI of the Civil Rights Act because they discriminated based on race while lacking "sufficiently focused and measurable objectives" and "meaningful end points." *Id*. at 230.

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

    Response: Yes.

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

    Response: As the Deputy Appellate Chief and then the Appellate Chief, I have been a member of the hiring committee that considers AUSA candidates for the U.S. Attorney's Office for the District of Arizona since 2016. In those same roles, I have also hired support staff for the Appellate Division since 2015.

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

    Response: No.

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

    Response: No.

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

    Response: No, 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.

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

    Response: Yes. Both the Supreme Court and the Ninth Circuit use strict scrutiny to review classifications based on race. *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995) ("[A]ll racial classifications, imposed by whatever federal, state or local government actor, must be analyzed by a reviewing court under strict scrutiny."); *Mitchell v. Washington*, 818 F.3d 436, 444 (9th Cir. 2016) ("[T]he general rule is that when a state actor explicitly treats an individual differently on the basis of race, strict scrutiny is applied.").

17. **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, 588-92 (2023), the Supreme Court held that if Colorado were to invoke the Colorado Anti-Discrimination Act to require a graphic design business to create bespoke wedding websites for same-sex couples in violation of the owner's sincerely-held religious conviction, that compelled speech would violate the First Amendment.

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

    Is this a correct statement of the law?

    Response: Yes, the quoted passage from *W. Va. St. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943), remains a correct statement of the law. A portion of the passage was

quoted as recently as last year in *303 Creative LLC v. Elenis*, 600 U.S. 570, 584-85 (2023).

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

Response: Laws that regulate speech are "content-based" where they "appl[y] to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015). Laws that are facially content-neutral will also be considered content-based where they "cannot be 'justified without reference to the content of the regulated speech'" or were "adopted by the government 'because of disagreement with the message the speech conveys.'" *Id*. (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)) (simplified). The Supreme Court has identified the key questions guiding this analysis in various cases, including *Reed* and *Ward*. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: "True threats," which are historically unprotected under the First Amendment, are "'serious expressions' conveying that a speaker means to 'commit an act of unlawful violence.'" *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (*quoting Virginia v. Black*, 538 U.S. 343, 359 (2003)) (simplified). The speaker must also possess a subjective mental state of at least recklessness, *i.e.*, that the speaker is aware that others could regard the statement as threatening violence but delivers it anyway. *Id.* at 75, 79.

21. **Under Supreme Court and Ninth 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: Questions of fact primarily address "who did what, when or where, how or why." *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Village at Lakeridge, LLC*, 583 U.S. 387, 394 (2018); *see also McKinney-Drobnis v. Oreshack*, 16 F.4th 594, 604 (9th Cir. 2021) (referring to factual issues as those that are "case-specific[,]" such as "weighing evidence and making credibility judgments"). The Supreme Court has described distinctions between questions of fact and law as "elusive" and has not yet arrived at "a rule or principle that will unerringly distinguish a factual finding from a legal conclusion." *Miller v. Fenton*, 474 U.S. 104, 113 (1985); *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982). Among the factors that courts consider in making the fact/law distinction include whether Congress has spoken on the issue and whether, "as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Miller*, 474 U.S. at 114. If confirmed, I will

faithfully apply all binding Supreme Court and Ninth Circuit precedent in distinguishing between questions of fact and questions of law.

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

Response: 18 U.S.C. § 3553(a)(2) requires that a sentencing judge make an individualized determination of the need for retribution, deterrence, incapacitation, and rehabilitation for each defendant. A district judge may not disregard any of the § 3553(a) factors based on her personal beliefs. If confirmed, I will apply the 18 U.S.C. § 3553(a) factors individually to each defendant before me in imposing a sentence that is "sufficient, but not greater than necessary" to comply with the purposes of sentencing.

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

Response: As a nominee for a lower federal court, it would generally be inappropriate for me to opine on the correctness of a Supreme Court opinion. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: As a nominee for a lower federal court, it would generally be inappropriate for me to opine on the correctness of a Ninth Circuit opinion. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: Section 1507 provides punishment for an individual who:

> [W]ith the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence[.]

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

Response: As a judicial nominee, I am guided by the Code of Conduct for United States Judges. Canon 3(A)(6) of that code precludes me from making public comment on the merits of a matter which may come before me. However, I note that the Supreme Court upheld a similar state-law provision in *Cox v. Louisiana*, 379 U.S. 559 (1965). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

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

    Response: As to all subparts of this question, as a judicial nominee, I am guided by the Code of Conduct for United States Judges.

    Regarding subparts (a) and (b), I believe I may answer consistently with the guidance in Canon 3(A)(6) because it is very unlikely that the issue of *de jure* racial segregation in public schools or government prohibitions on interracial marriage will come before me as a district court judge. My view is that the two cases listed in those subparts were correctly decided.

    As to subparts (c) through (m), Canon 3(A)(6) precludes me from making public comment on the merits of a matter which may come before me. However, I note as to subparts (d) and (e) that the Supreme Court overturned *Roe* and *Casey* in *Dobbs*. *See Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 268-290 (2022). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

    Response: In *District of Columbia v. Heller*, 554 U.S. 570, 595, 599 (2008), the Supreme Court held that the Second Amendment confers an individual right to keep

and bear arms that is unconnected to military service. *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010), held that the Second Amendment right applies against the states through the Fourteenth Amendment's Due Process Clause. To justify restrictions on the right of "law-abiding, responsible citizens" to carry firearms for self-defense, the government must demonstrate that the regulation is consistent with the Second Amendment's text and with "this Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17, 26 (2022). If confirmed, I will faithfully apply *Heller*, *McDonald*, and *Bruen*.

29. **Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."**
    a. **Has anyone associated with Demand Justice, including Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond, requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?**

       Response: No.

30. **The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."**
    a. **Has anyone associated with Alliance for Justice, including, but not limited to, Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris, requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

b. **Are you currently in contact with anyone associated with the Alliance for Justice including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with Alliance for Justice, including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

Response: No.

31. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**
    a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
        i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund.**

    Response: No.

    b. **Are you currently in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**
        i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**
        i. **Please include in this answer anyone associated with Arabella's subsidiaries, such as the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No.

32. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**
    a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Are you currently in contact with anyone associated with the Open Society Foundations, including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with the Open Society Foundations including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

       Response: No.

    d. **Have you ever received any funding, or participated in any fellowship or similar program affiliated with the Open Society network?**

       Response: No.

33. **Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."**
    a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Are you currently in contact with anyone associated with Fix the Court, including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with Fix the Court including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

Response: No.

34. **The Raben Group is a lobbying group that "champions diversity, equity, and justice as core values that ignite our mission for impactful change in corporate, nonprofit, government and foundation work." The group prioritizes judicial nominations and its list of clients have included the Open Society Foundations, the American Civil Liberties Union, the New Venture Fund, the Sixteen Thirty Fund, and the Hopewell Fund. It staffs the Committee for a Fair Judiciary.**
    a. **Has anyone associated with The Raben Group requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

    b. **Are you currently in contact with anyone associated with The Raben Group, including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff and/or Katherine Huffman? If so, who?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with The Raben Group including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff, and/or Katherine Huffman? If so, who?**

    Response: No.

    d. **Has anyone associated with the Raben Group offered to assist you with your nomination, including but not limited to organizing letters of support?**

    Response: No.

35. **The Committee for a Fair Judiciary "fights to confirm diverse and progressive federal judges to counter illegitimate right-wing dominated courts" and is staffed by founder Robert Raben.**
    a. **Has anyone associated with the Committee for a Fair Judiciary requested that you provide services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

b. **Are you currently in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**

Response: No.

Have you ever been in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?

Response: No.

36. **The American Constitution Society is "the nation's foremost progressive legal organization" that seeks to "support and advocate for laws and legal systems that redress the founding failures of our Constitution, strengthen our democratic legitimacy, uphold the role of law, and realize the promise of equality for all, including people of color, women, LGBTQ+ people, people with disabilities, and other historically excluded communities."**

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

Response: No.

b. **Are you currently in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

Response: I am in contact with a former colleague and several professional acquaintances who are board members of the Arizona Lawyer Chapter of the American Constitution Society. I am not personally a member of the American Constitution Society and have not discussed the society's advocacy with them.

c. **Have you ever been in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

Response: See my answer to subpart (b).

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

Response: On October 10, 2023, I sent letters of interest to the offices of Senators Mark Kelly and Kyrsten Sinema. On October 25, 2023, I formally applied through the

application portal the senators established. I interviewed with Senator Sinema's judicial selection committee on November 16, 2023, and with Senator Kelly's judicial selection committee on November 17, 2023. On January 12, 2024, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On February 21, 2024, the President announced his intent to nominate me.

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

    Response: No, not to my knowledge.

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

    Response: No, not to my knowledge.

40. **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, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No, not to my knowledge.

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

    Response: No, not to my knowledge.

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

    Response: No, not to my knowledge.

43. **During or leading up to your selection process, did you talk with any officials from or anyone directly associated with The Raben Group or the Committee for a Fair**

Judiciary, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No, not to my knowledge.

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

Response: No, not to my knowledge.

45. **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: Yes.

a. **If yes,**
   i. **Who?**
   ii. **What advice did they give?**
   iii. **Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

Response: In choosing which of the hundreds of cases I have handled were most responsive to the questions in the committee questionnaire and reflected the full breadth of my experience, I sought and received advice from individuals associated with the vetting process, including attorneys in the Office of Legal Policy at the Department of Justice. The decision of which cases to include, and descriptions of the cases, were entirely my own.

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

Response: On October 10, 2023, I sent letters of interest to the offices of Senators Mark Kelly and Kyrsten Sinema. On October 25, 2023, I formally applied through the application portal the senators established. I interviewed with Senator Sinema's judicial selection committee on November 16, 2023, and with Senator Kelly's judicial selection committee on November 17, 2023. On January 12, 2024, I interviewed with attorneys from the White House Counsel's Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office.

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

Response: The Office of Legal Policy sent me these questions on March 27, 2024. I drafted answers, received edits from the Office of Legal Policy, and made the edits that I believed were appropriate. I submitted my final draft to the Office of Legal Policy on April 5, 2024, so it could be transmitted to the committee on April 8, 2024.

Senator Mazie K. Hirono
Senate Judiciary Committee

Nominations Hearing | March 20, 2024
Questions for the Record for Krissa M. Lanham

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

QUESTIONS:

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

   Response: No.

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

   Response: No.

Senator Jon Ossoff
Questions for the Record for Krissa M. Lanham
March 20, 2024

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

   Response: Yes.

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

   Response: If confirmed, I will approach First Amendment cases as I will all other cases, by fairly and impartially applying Supreme Court and Ninth Circuit precedent to the facts of the cases 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: The Supreme Court has described the First Amendment as the "fixed star in our constitutional constellation," prohibiting any official from "prescrib[ing] 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. St. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). The United States was founded on these principles, and they have shaped the development of American society. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent interpreting the First Amendment.

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: The Supreme Court has stated that "[t]he assistance of counsel is often a requisite to the very existence of a fair trial." *Argersinger v. Hamlin*, 407 U.S. 25, 31 (1972). As an Assistant U.S. Attorney, I have prosecuted hundreds of cases in which indigent defendants have been represented by counsel, and a handful in which defendants have waived that right and proceeded pro se. Although I have striven to ensure a fair trial no matter who represents the defendant, my courtroom experience has tracked the Supreme Court's caution: "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel" because many pro se defendants are "unfamiliar with the rules of evidence" and "lack[ ] . . . the skill and knowledge adequately to prepare [a] defense." *Id*. (quoting *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)).

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: The Ninth Circuit has recognized that "[i]nterpreters play an important role in protecting the rights of non-English speaking persons[,]" which is "of particular importance in the courtroom where individuals must communicate in precise language under stressful conditions and key determinations affecting the individual's personal liberty or financial well-being are often made based on credibility." *United States v. Murguia-Rodriguez*, 815 F.3d 566, 568 (9th Cir. 2016). My courtroom experience as a federal prosecutor in Arizona, a district in which many indigent defendants do not speak English as a first language, confirms the vital role of interpreters in safeguarding a criminal defendant's constitutional rights.

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

Response: See my answer to Question 4 above. Access to competent translation is important to ensuring that a non-English speaking party understands the proceedings and presents their strongest case. It also enhances public confidence in the judiciary, protects criminal defendants' constitutional rights, and promotes access to equal justice under law.

Senator Mike Lee
Questions for the Record
Krissa Lanham, Nominee for District Court Judge for the District of Arizona

1. How would you describe your judicial philosophy?

Response: If I am confirmed, my judicial philosophy will be to approach every case with an open mind; to faithfully apply the binding precedent of the Ninth Circuit and Supreme Court; to work diligently to thoroughly understand the facts and law applicable to every decision so that the parties understand they have been heard and respected; to recognize the limited role of a federal district court judge within our Constitutional framework, acting with humility to decide only the cases and controversies presented by the parties before me; and to provide rulings that are clear to both the litigants and higher courts reviewing my decisions.

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

Response: When interpreting a federal statute, I will start with Supreme Court and Ninth Circuit precedent that has interpreted the text. In the absence of precedent, I will look to the text and the context, ending the analysis there if the meaning is clear. I would apply canons of construction where necessary to draw meaning from the structure, *see Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 457-59 (2022), and look to precedent in analogous contexts, faithfully applying the holdings and analytical methods of the Supreme Court and Ninth Circuit. Supreme Court precedent suggests that considering legislative history is inappropriate where the text's language and structure make the meaning clear. *See, e.g.*, *Milner v. Dep't of Navy*, 562 U.S. 562, 572 (2011).

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

Response: When interpreting a constitutional provision, I will start with Supreme Court and Ninth Circuit precedent interpreting the provision. In the absence of precedent, I will look to the text and context, ending the analysis there if the meaning is clear. If a case presents a constitutional issue of first impression, I will then apply canons of construction and consult the context, looking to the original public meaning in analogous circumstances where the Supreme Court or Ninth Circuit have done so. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 36-69 (2022).

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

Response: The text of the Constitution is the starting point for all constitutional analysis. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). The Supreme Court has interpreted the text of the Constitution according to its original public

meaning in some contexts, for example, in examining text and history to evaluate the constitutionality of firearms regulations under the Second Amendment. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 36-69 (2022). If confirmed, I will faithfully apply that interpretive method in all contexts where the Supreme Court or Ninth Circuit have done so.

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: See my answer to Question 2 above.

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: Federal courts usually interpret a statute "in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County*, 590 U.S. 644, 654 (2020). However, that meaning is broad enough to "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). If confirmed, I will faithfully apply the interpretive methods used by the Supreme Court and Ninth Circuit in analyzing constitutional and statutory provisions.

7. What are the constitutional requirements for standing?

Response: To establish standing under Article III's Cases and Controversies Clause, a plaintiff must show (1) a "concrete and particularized" injury in fact; (2) causation; and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

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

Response: Yes. The Supreme Court has held that Article I, § 8, gives Congress the implied powers that are "necessary and proper" to execute its enumerated powers. *M'Culloch v. Maryland*, 17 U.S. 316, 324 (1819). The Supreme Court has recognized implied powers including the power to incorporate a bank, *id*. at 325, and the power to enact federal criminal laws, *United States v. Fox*, 95 U.S. 670, 672 (1877).

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

Response: The Supreme Court has held that the constitutionality of a Congressional action "does not depend on recitals of the power which it undertakes to exercise." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: The Supreme Court has held that the Fourteenth Amendment's Due Process Clause protects certain substantive rights that are not enumerated in the Constitution. Identifying such a right requires an examination of whether it is "deeply rooted in this nation's history and tradition" and "implicit in the concept of ordered liberty." *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022) (quoting *Washington v. Glucksberg*, 521 U.S 702, 721 (1997)). The Supreme Court has recognized unenumerated rights that include the right to marry and the right to make decisions about the education of one's children. *See id.* at 256.

11. What rights are protected under substantive due process?

Response: See my answer to Question 10 above.

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

Response: In *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965), the Supreme Court recognized a right to contraceptives as part of an unenumerated right to marital privacy. The Court recently cited *Griswold* favorably in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 256 (2022). In contrast, the Supreme Court has recognized that *Lochner*'s reasoning has been abrogated. *See Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).

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

Response: The Supreme Court has held that Congress's power under the Commerce Clause is limited to regulating: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities that substantially affect interstate commerce. *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005).

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

Response: To determine whether a particular group qualifies as a "suspect class," the Supreme Court evaluates whether the group is a "discrete and insular minority" that has been "subjected to . . . a history of purposeful unequal treatment," with "obvious, immutable or distinguishing characteristics that define them as a discrete group." *Graham v. Richardson*, 403 U.S. 365, 372 (1971); *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976); *Bowen v. Gillard*, 483 U.S. 587, 602 (1987). Classifications based on alienage, nationality, and race are all suspect and subject to strict scrutiny. *Graham*, 403 U.S. at 371-72.

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 recognized that the Constitution's checks and balances and separation-of-powers principles "protect each branch of government from incursion by the others" and "protect the individual as well." *Bond v. United States*, 564 U.S. 211, 222 (2011).

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

Response: I would look to the binding precedent of the Ninth Circuit and Supreme Court. The judiciary's role in evaluating the constitutionality of its own actions and those of other branches is well-established in Supreme Court and Ninth Circuit case law. *See, e.g.*, *Marbury v. Madison*, 5 U.S. 137 (1803); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *United States v. Williams*, 68 F.4th 564 (9th Cir. 2023). If confirmed, I will faithfully apply these and all other binding Supreme Court and Ninth Circuit precedent in deciding such a case.

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

Response: A judge should treat all parties with respect and diligently work to understand their arguments. However, cases must be decided by evenhandedly applying the law to the facts, not based on empathy or the judge's personal preferences.

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

Response: Neither is acceptable and both are inconsistent with the role given to judges in Article III of the Constitution.

19. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not studied this trend to be able to opine on it. When faithfully applying the law to only the cases before them, judges act neither aggressively nor passively. If confirmed, I will strive to faithfully apply binding Supreme Court and Ninth Circuit precedent.

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

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

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: Article VI requires elected officials to swear an oath to support the Constitution. Article III of the Constitution establishes the role of judges in "say[ing] what the law is." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). Thus, "[n]o state legislator or executive or judicial officer can war against the Constitution," including the power granted to the judicial branch within it, "without violating his undertaking to support it." *Id*. at 18-19.

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: Hamilton's statement in Federalist No. 78 is a reminder of the limited role of a judge in our federal system. A judge's power is confined to giving effect to the law as passed by the legislature and enforced by the executive. If confirmed, I will strive to remain faithful to our Constitution's principles, acting with humility to decide only the cases and controversies presented by the parties before me.

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: Lower courts must follow Supreme Court precedent that directly applies to a case, "leaving to [the Supreme] Court the prerogative of overruling its own decisions." *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (quotation omitted). If confirmed as a federal district court judge, I would be bound to follow stare decisis regardless of whether the precedent is "questionable."

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

Response: None. A sentencing judge must consider the factors set forth in 18 U.S.C. § 3553. A defendant's "race, sex, national origin, creed, religion, and socio-economic status . . . are not relevant in the determination of a sentence." U.S.S.G. § 5H1.10.

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

Response: I am not familiar with the quoted statement or the context in which it was made. Black's Law Dictionary (11th ed. 2019) defines "equity" as "[f]airness; impartiality; evenhanded dealing" and "[t]he body of principles constituting what is fair and right." If confirmed, I will strive to be fair, impartial, and evenhanded in applying Supreme Court and Ninth Circuit precedent to the facts before me.

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

Response: See my answer to Question 25 for definitions of "equity." Merriam-Webster Dictionary 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: The Fourteenth Amendment's Equal Protection Clause guarantees "the equal protection of the laws" and does not use the term "equity." If confirmed and presented with this question, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent interpreting the Fourteenth Amendment.

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

Response: I have not personally defined the term "systemic racism." Merriam-Webster Dictionary defines it 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 have not personally defined the term "critical race theory." Merriam-Webster Dictionary defines it as "a group of concepts (such as the idea that race is a sociological rather than biological designation, and that racism pervades society and is fostered and perpetuated by the legal system) used for examining the relationship between race and the laws and legal institutions of a country and especially the United States."

30. Do you distinguish "Critical Race Theory" from "systemic racism," and if so, how?

Response: See my answers to Questions 28 and 29.

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

Questions for the Record for Krissa Lanham, nominated to be United States District Judge for the District of Arizona

I. Directions

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

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

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

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

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

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

II. Questions

1. **Is racial discrimination wrong?**

Response: Yes. Racial discrimination is unlawful and should be eliminated. *See Students for Fair Admissions, Inc. v. Pres. & Fellows of Harvard Coll.*, 600 U.S. 181, 201-08 (2023).

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

Response: As a judicial nominee, I am guided by the Code of Conduct for United States Judges. Canon 3(A)(6) of that code precludes me from making public comment on the merits of a matter which may come before me. If I am confirmed as a district judge, I will be bound to apply the test the Supreme Court has articulated for identifying rights not enumerated in the Constitution. That test requires an examination of whether the right asserted is "deeply rooted in this nation's history and tradition" and "implicit in the concept of ordered liberty." *See Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 231 (2022) (quoting *Washington v. Glucksberg*, 521 U.S 702, 721 (1997)).

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

Response: If I am confirmed, my judicial philosophy will be to approach every case with an open mind; to faithfully apply the binding precedent of the Ninth Circuit and Supreme Court; to work diligently to thoroughly understand the facts and law applicable to every decision so that the parties understand they have been heard and respected; to recognize the limited role of a federal district court judge within our Constitutional framework, acting with humility to decide only the cases and controversies presented by the parties before me; and to provide rulings that are clear to both the litigants and higher courts reviewing my decisions.

The role of a Supreme Court Justice is very different to that of a federal district court judge, and I have not studied the philosophies of the Warren, Burger, Rehnquist, or Roberts courts to determine which may be most analogous to mine.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "originalism" as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted[.]" The Supreme Court has applied an originalist interpretive method in some contexts, for example, in examining text and history to evaluate the constitutionality of firearms regulations under the Second Amendment. *See New York*

State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 36-69 (2022). If confirmed, I will apply the interpretive method directed by the Supreme Court and Ninth Circuit.

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

Response: Black's Law Dictionary (19th ed. 2019) defines "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." If confirmed, I will apply the interpretive method directed by the Supreme Court and Ninth Circuit.

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

Response: If I am confirmed as a lower federal court judge and presented with a constitutional issue of first impression, my analysis would primarily be controlled by the text and context of the provision, stopping there if the meaning is clear. I would also examine Supreme Court and Ninth Circuit case law analyzing analogous constitutional issues to ensure that I use an interpretive method that is faithful to binding precedent. In situations where the Supreme Court has analyzed the original public meaning of analogous provisions—for example, in the Second Amendment context, *see New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 36-69 (2022)—I would apply that methodology.

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

Response: Federal courts usually interpret a statute "in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County*, 590 U.S. 644, 654 (2020). The Supreme Court has evaluated the public's current understanding in certain contexts, for example, in examining "contemporary community standards" to determine whether speech is obscene under the First Amendment. *See Ashcroft v. Am. Civ. Liberties Union*, 535 U.S. 564, 574-75 (2002). If confirmed, I will faithfully apply the interpretive methods used by the Supreme Court and Ninth Circuit in analyzing constitutional and statutory provisions.

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

Response: No, the constitution has a fixed meaning "intended to endure for ages to come." *M'Culloch v. Maryland*, 17 U.S. 316, 415 (1819). However, that meaning is broad enough to "apply to circumstances beyond those the Founders specifically

anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022).

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

Response: Yes. The Supreme Court's ruling in *Dobbs* is binding precedent and if confirmed as a district court judge, I will faithfully apply it.

a. **Was it correctly decided?**

Response: As a nominee for a lower federal court, it is generally inappropriate for me to opine on the correctness of a Supreme Court opinion. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: Yes. The Supreme Court's ruling in *Bruen* is binding precedent and if confirmed as a district court judge, I will faithfully apply it.

a. **Was it correctly decided?**

Response: As a nominee for a lower federal court, it is generally inappropriate for me to opine on the correctness of a Supreme Court opinion. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: Yes. The Supreme Court's ruling in *Brown* is binding precedent and if confirmed as a district court judge, I will faithfully apply it.

a. **Was it correctly decided?**

Response: Yes, *Brown* was correctly decided. I believe I may answer this question consistently with the guidance in Canon 3(A)(6) because it is very unlikely that the issue of *de jure* racial segregation in public schools will come before me as a district court judge.

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

Response: Yes. The Supreme Court's ruling in *Students for Fair Admissions* is binding precedent and if confirmed as a district court judge, I will faithfully apply it.

a. **Was it correctly decided?**

Response: As a nominee for a lower federal court, it is generally inappropriate for me to opine on the correctness of a Supreme Court opinion. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: Yes. The Supreme Court's ruling in *Gibbons* is binding precedent and if confirmed as a district court judge, I will faithfully apply it.

a. **Was it correctly decided?**

Response: As a nominee for a lower federal court, it is generally inappropriate for me to opine on the correctness of a Supreme Court opinion. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: Under the Bail Reform Act, a presumption in favor of pretrial detention arises when a defendant is charged with: drug offenses punishable by a maximum term of imprisonment of ten years or more, *see* 18 U.S.C. § 3142(e)(3)(A); certain firearm or terrorism offenses, *see* 18 U.S.C. § 3142(e)(3)(B), (C); human trafficking offenses punishable by a maximum term of imprisonment of twenty years or more, *see* 18 U.S.C. § 3142(e)(3)(D); and certain offenses involving minor victims, *see* 18 U.S.C. § 3142(e)(3)(E).

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

Response: I am not aware of any Ninth Circuit or Supreme Court precedent describing the policy rationales underlying the presumptions in the Bail Reform Act, and did not locate any such cases when I performed a search.

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

Response: Yes. Various Supreme Court cases have identified statutory and constitutional limits to what government may impose or require of private institutions in the context of the exercise of religious freedoms. For example, in *Masterpiece Cakeshop, Ltd., v. Colorado Civ. Rts. Comm'n*, 584 U.S. 617, 630-40 (2018), the Supreme Court held that the Colorado Civil Rights Commission's order that a bakery must sell wedding cakes to same-sex couples, contrary to the baker's sincere religious

beliefs, violated the First Amendment. Similarly, in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720-36 (2014), the Supreme Court held that Department of Health and Human Services regulations requiring the group health plans of closely-held for-profit corporations to provide contraceptive coverage, in violation of the owners' sincerely-held religious beliefs, violated the Religious Freedom Restoration Act. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: Under the Free Exercise Clause of the First Amendment, "[t]he government . . . cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices." *Masterpiece Cakeshop, Ltd., v. Colorado Civ. Rts*. *Comm'n*, 584 U.S. 617, 618-19 (2018). Government regulations that treat any comparable secular activity more favorably than a religious exercise must satisfy strict scrutiny to be constitutional under the Free Exercise Clause. *Tandon v. Newsom*, 593 U.S. 61, 62-63 (2021).

17. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 15-21 (2020), the Supreme Court enjoined the Governor of New York from enforcing an executive order setting occupancy limits for religious services pending appeal. The Supreme Court held that the religious-entity plaintiffs were likely to succeed on the merits because New York's COVID restrictions did not survive strict scrutiny; the restrictions treated secular entities more favorably than religious ones, and imposed more severe limitations than necessary to prevent the spread of COVID.

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

Response: In *Tandon v. Newsom*, 593 U.S. 61, 62-65 (2021), the Supreme Court granted an injunction preventing California from enforcing certain COVID restrictions pending an appeal arguing that those restrictions unconstitutionally burdened the free exercise of religion. The Supreme Court held that the restrictions did not satisfy strict scrutiny because they treated some comparable secular activities more favorably than religious activities, and California failed to show that "public health would be

imperiled" by employing less restrictive measures.

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

Response: Yes. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022).

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

Response: In *Masterpiece Cakeshop, Ltd., v. Colorado Civ. Rts. Comm'n*, 584 U.S. 617, 630-40 (2018), the Supreme Court held that the Colorado Civil Rights Commission's order that a bakery must sell wedding cakes to same-sex couples, contrary to the baker's sincere religious beliefs, violated the First Amendment's Free Exercise Clause.

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

Response: Yes. The Free Exercise Clause of the First Amendment protects an individual's sincerely-held religious beliefs even when they do not specifically correspond to the tenets of a particular faith tradition. *See Frazee v. Illinois Dep't of Emp. Sec.*, 489 U.S. 829, 830-34 (1989).

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

Response: Yes, so long as the religious belief is sincerely held. *See Frazee v. Illinois Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989).

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

Response: See my answer to subpart (a).

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

Response: I am unaware of the official position of the Catholic Church.

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

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049,

2055 (2020), the Supreme Court applied the "ministerial exception" to bar a district court from entertaining the employment discrimination claims of two elementary school teachers at a Catholic School. The "ministerial exception" protects religious institutions' internal management decisions from state interference under the First Amendment's Free Exercise and Establishment Clauses. Because the teachers' role in educating students in the Catholic faith lay "at the very core of the mission of a private religious school[,]" the ministerial exception applied. *Id*. at 2066.

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

Response: In *Fulton v. City of Philadelphia*, 593 U.S. 522, 526 (2021), the Supreme Court held that Philadelphia's refusal to refer foster children to and renew its contract with Catholic Social Services (CSS) unless that organization agreed to certify same-sex foster parents violated the Free Exercise Clause of the First Amendment. Applying strict scrutiny, the Supreme Court held that Philadelphia's asserted interests in maximizing the number of available foster parents, avoiding liability, and ensuring equal treatment were insufficient to justify denying an accommodation that would allow CSS to continue serving foster children consistently with its religious beliefs.

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

Response: In *Carson v. Makin*, 596 U.S. 767 (2022), the Supreme Court held that a Maine tuition assistance program limiting state payments to only "nonsectarian" schools violated the First Amendment's Free Exercise Clause. Applying the holdings of *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246 (2020), and *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017), the Supreme Court held if a state chooses to subsidize private education, it cannot disqualify certain schools solely because they are religious. *Carson*, 596 U.S. at 779-80.

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

Response: In *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 542-44 (2022), the Supreme Court held that a school district's decision to issue disciplinary action against a football coach who silently prayed by himself on the field after games violated the Free Speech and Free Exercise Clauses of the First Amendment. The district permitted various other types of secular speech after games, and its professed interest in avoiding an Establishment Clause violation did not justify the infringements on Mr. Kennedy's rights so as to survive strict scrutiny.

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

Response: In his concurrence in *Mast v. Fillmore County*, 141 S. Ct. 2430 (2021), Justice Gorsuch explained his view that Fillmore County's refusal to grant an exception permitting the Swartzentruber Amish community to dispose of "gray" wastewater consistently with their religious beliefs by using a mulch basin system instead of a modern septic system failed strict scrutiny under the Religious Land Use and Institutionalized Persons Act.

27. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: Section 1507 prohibits picketing or parading near residences occupied by judges of the United States courts with the intent of influencing the judge in the discharge of his duty. As a judicial nominee, I am guided by the Code of Conduct for United States Judges. Canon 3(A)(6) of that code precludes me from making public comment on the merits of a matter which may come before me. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: The power to make a political appointment is vested in the person with appointment authority. *See, e.g.*, Art. II, § 2, cl. 2. As a judicial nominee, I am guided by the Code of Conduct for United States Judges. Canon 3(A)(6) and Canon 5 of that code preclude me from offering public commentary on the propriety or constitutionality of a political decision.

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

Response: The Supreme Court has held in certain contexts that a racially-disparate impact may violate anti-discrimination statutes. *See, e.g.*, *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009) (disproportionately adverse effect on minorities may violate Title VII of the Civil Rights Act); *Texas Dep't of Hous. & Cmty. Aff.*, 576 U.S. 519, 534 (2015) (holding that the Fair Housing Act "encompasses disparate-impact claims"). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: The number of justices on the U.S. Supreme Court is a question for policymakers. As a judicial nominee, I am guided by the Code of Conduct for United States Judges. Canon 3(A)(6) and Canon 5 of that code preclude me from offering public commentary on the propriety of such a decision. If confirmed, I will faithfully apply all Supreme Court precedent regardless of the number of justices on the Court.

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

Response: No.

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

Amendment?

Response: The Supreme Court has held that the Second Amendment protects "'the right of law-abiding, responsible citizens to use arms' for self-defense." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 26 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)).

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 595, 599 (2008), the Supreme Court held that the Second Amendment confers an individual right to keep and bear arms that is unconnected to military service. *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010), held that the Second Amendment right applies against the states through the Fourteenth Amendment's Due Process Clause. To justify restrictions on the right of "law-abiding, responsible citizens" to carry firearms for self-defense, the government must demonstrate that the regulation is consistent with the Second Amendment's text and with "this Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17, 26 (2022).

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

Response: Yes. *See District of Columbia v. Heller*, 554 U.S. 570, 595 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 750, 788 (2010).

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

Response: No. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022) ("The constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.") (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)).

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

Response: No. See my answer to Question 38.

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

Response: Article II, § 3 of the Constitution provides that the President "shall take Care that the Laws be faithfully executed." The Supreme Court has held that in discharging this duty, "the Executive Branch possesses authority to decide 'how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.'"

United States v. Texas, 599 U.S. 670, 678 (2023) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021)). As a judicial nominee, I am guided by the Code of Conduct for United States Judges. Canon 3(A)(6) and Canon 5 of that code preclude me from offering public commentary on the propriety or constitutionality of executive actions that may come before me if confirmed.

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

Response: Acts of 'prosecutorial discretion' are those in which a prosecutor chooses between the actions authorized by law in a criminal case. *See* Black's Law Dictionary (11th ed. 2019). Substantive administrative rules are those that have the "force and effect of law." *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979). To change such a rule, an agency must comply with the procedures in the Administrative Procedure Act. *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 96 (2015).

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

Response: No.

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

Response: In *Alabama Ass'n of Realtors v. Dep't of Health and Hum. Servs.*, 141 S. Ct. 2485 (2021), the Supreme Court vacated an order staying a judgment entered against the Centers for Disease Control and Prevention (CDC) because the agency exceeded its delegated authority in reimposing a nationwide eviction moratorium during the COVID pandemic under a statute that authorized the CDC only to require "inspection, fumigation," and like measures to prevent the interstate spread of communicable disease.

44. **Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?**

Response: No. In my career as a federal prosecutor, I have never done this and would not do this.

Senator Josh Hawley
Questions for the Record

Krissa Lanham
Nominee, U.S. District Judge for the District of Arizona

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

   Response: No.

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

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

   Response: The Supreme Court has interpreted the text of the Constitution according to its original public meaning in some contexts, for example, in examining text and history to evaluate the constitutionality of firearms regulations under the Second Amendment. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 36-69 (2022). If confirmed, I will faithfully apply that interpretive method in all contexts where the Supreme Court or Ninth Circuit have done so.

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

   Response: If confirmed, I would look to Ninth Circuit and Supreme Court precedent when interpreting legal texts. Then, I would look to the text and context of the provision, ending the analysis there if the meaning is clear. I would only consider legislative history in situations where Supreme Court or Ninth Circuit precedent has indicated that doing so is appropriate. Supreme Court precedent suggests that considering legislative history is inappropriate where the text's language and structure make the meaning clear. *See, e.g.*, *Milner v. Dep't of Navy*, 562 U.S. 562, 572 (2011).

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

      Response: Among the sources of legislative history, the Supreme Court has held that committee reports are more authoritative than "comments from the floor." *Garcia v. United States*, 469 U.S. 70, 76 (1984). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: It would only be appropriate for a district court judge to consider foreign law in constitutional interpretation when the Supreme Court or Ninth Circuit has so indicated. For example, the Supreme Court considered pre-founding English law in interpreting the Second Amendment in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 42-45 (2022).

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

Response: A prisoner challenging a particular execution protocol under the Eighth Amendment must (1) demonstrate "a substantial risk of serious harm" over and above death itself, which gives rise to "sufficiently imminent dangers"; and (2) identify a feasible and readily-available alternative method that would "significantly reduce a substantial risk of severe pain" from among the various methods authorized by his own state and others, that the government has refused to adopt without a legitimate penological reason. *Nance v. Ward*, 597 U.S. 159, 162-64 (2022); *Glossip v. Gross*, 576 U.S. 863, 877 (2015); *Bucklew v. Precythe*, 587 U.S. 119 (2019). The Ninth Circuit applies this standard. *Creech v. Tewalt*, 94 F.4th 859, 863 (9th Cir. 2024).

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

Response: Yes.

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

Response: In *Dist. Att'y's Off. For Third Jud. Dist. v. Osborne*, 557 U.S. 52, 72-75 (2009), the Supreme Court reversed a Ninth Circuit decision holding that a habeas petitioner had a constitutional right of access to evidence to conduct DNA analysis. The Supreme Court's holding in *Osborne* that no such federal constitutional right exists remains good law and has been cited recently. *See Reed v. Goertz*, 598 U.S. 230, 235 (2023).

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

Response: No.

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

Response: The Supreme Court uses strict scrutiny to evaluate free exercise claims challenging facially-neutral state government action where the government has treated "*any* comparable secular activity more favorably than religious exercise," provided "a mechanism for individualized exemptions," or where the government's actions or statements evidence hostility towards religion. *See Tandon v. Newsom*, 593 U.S. 61, 62 (2021); *Kennedy v. Bremerton Sch. Dist*., 597 U.S. 507, 526 (2022); *Masterpiece Cakeshop, Ltd. v. Colorado Civ. Rts*. *Comm'n*, 584 U.S. 617, 634-35 (2018); *Church of Lukumi Bablu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534-35 (1993).

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

Response: See my answer to Question 8.

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

Response: The Ninth Circuit recognizes that its "'narrow function'" in determining whether an individual's religious belief is sincerely held in the free exercise context "is to determine' whether the line drawn reflects 'an honest conviction.'" *Bolden-Hardge v. Off. of California State Controller*, 63 F.4th 1215, 1223 (9th Cir. 2023) (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014)). It does not "second-guess[ ] the reasonableness of an individual's assertion that a requirement burdens her religious beliefs," "question the centrality of particular beliefs or practices to a faith," or evaluate whether the individual has validly interpreted a particular creed. *Id*.; *Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008) (quoting *Hernandez v. C.I.R.*, 490 U.S. 680, 699 (1989)).

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

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 595, 599 (2008), the Supreme Court held that the Second Amendment confers an individual right to keep and bear arms that is unconnected to military service.

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

Response: No.

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

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

Response: Justice Holmes elaborated on the meaning of his statement later in the same paragraph: "[A] Constitution is not intended to embody a particular economic theory . . . . It is made for people of fundamentally different views, and the accident of our finding certain opinions natural and familiar, or novel, . . . ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States." *Lochner v. New York*, 198 U.S. 45, 75-76 (1095) (Holmes, J., dissenting). I agree that judges should apply the law faithfully and impartially, setting aside their personal views and without regard to the popularity of a particular outcome.

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

Response: As a nominee for a lower federal court, it would generally be inappropriate for me to opine on the correctness of a Supreme Court opinion. See Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent. However, I note that the Supreme Court has recognized that *Lochner*'s reasoning has been abrogated. *See Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).

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

Response: The Supreme Court elaborated on the meaning of that phrase elsewhere in the same sentence, stating that "*Korematsu* was gravely wrong the day it was decided" and "has no place in law under the Constitution." *Trump v. Hawaii*, 585 U.S. 667, 710 (2018).

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

Response: Lower courts must follow Supreme Court precedent that directly applies to a case, "leaving to [the Supreme] Court the prerogative of overruling its own decisions." *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (quotation omitted). However, certain Supreme Court opinions have been abrogated or superseded by constitutional amendments or statutory enactments and are therefore no longer good law, despite not having been formally overruled by the Supreme Court itself. *See, e.g.*, *Dred Scott v. Sandford*, 60 U.S. 393 (1857); *United States v. Santos*, 553 U.S. 507 (2008). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

a. If so, what are they?

Response: See my answer to Question 14.

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

Response: Yes.

15. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?
b. If not, please explain why you disagree with Judge Learned Hand.
c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: Subsequent to Judge Learned Hand's opinion, the Supreme Court explained that antitrust claims should be resolved "on a case-by-case basis," focusing on the record facts, rather than by looking to "formalistic distinctions." *Eastman Kodak Co. v. Image Tech. Servs., Inc*., 504 U.S. 451, 466-67 (1992). The Supreme Court has noted that controlling more than two-thirds of the market may constitute a monopoly, *id.* at 481, and the Ninth Circuit generally holds 65% of market share to be sufficient to establish monopoly power. *See Dreamstime.com, LLC v. Google LLC*, 54 F.4th 1130, 1137 n. 5 (9th Cir. 2022). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent in determining whether a percentage of market share constitutes a monopoly based on the record facts.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "federal common law" as "[t]he body of decisional law derived from federal courts when adjudicating federal questions and other matters of federal concern, such as disputes between the states and foreign relations, but excluding all cases governed by state law."

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

Response: The Supreme Court has long held that "the views of the state's highest court with respect to state law are binding on the federal courts." *Wainwright v. Goode*, 464 U.S. 78, 84 (1983); *Post v. Kendall Cty. Sup'rs*, 105 U.S. 667, 679 (1881) ("The construction uniformly given to the Constitution of a State by its highest court is binding on the courts of the United States as a rule of decision."). If confirmed, I will faithfully follow these precedents.

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

Response: See my answer to Question 17 above.

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

Response: The Supreme Court has held that "[w]ithin our federal system the substantive rights provided by the Federal Constitution define only a minimum. State law may recognize liberty interests more extensive than those independently protected by the Federal Constitution." *Mills v. Rogers*, 457 U.S. 291, 300 (1982).

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

Response: Yes, I believe that *Brown* was correctly decided. I believe I may answer this question consistently with the guidance in Canon 3(A)(6) because it is very unlikely that the issue of *de jure* racial segregation in public schools will come before me as a district court judge.

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

Response: Article III, § 2, cl. 1 of the Constitution limits the federal judicial role to resolving cases and controversies. Nationwide injunctions "raise serious questions about the scope of courts' equitable powers under Article III" and whether federal courts have the authority to issue them is unsettled. *See Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in the grant of a stay). As a judicial nominee, I am guided by the Code of Conduct for United States Judges. Canon 3(A)(6) of that code precludes me from making public comment on the merits of a matter which may come before me. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: See my answer to Question 19 above.

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

Response: See my answer to Question 19 above.

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

Response: See my answer to Question 19 above.

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

Response: The federalist structure that is "central to the constitutional design . . . adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect." *Arizona v. United States*, 567 U.S. 387, 398 (2012). Federalism "assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society[,]" "increases opportunity for citizen involvement in democratic processes[,]" "allows for more innovation and experimentation in government[,]" and "makes government more responsive by putting the States in competition for a mobile citizenry." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991).

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

Response: Federal courts generally have an "unflagging obligation" to exercise the jurisdiction given to them. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Abstention doctrines are the exception to this general rule, and provide that federal courts should abstain from resolving pending legal questions in deference to adjudications by a state court when, for example:

(1) The federal proceedings overlap with concurrent, pending state court proceedings, and the state court may be a more appropriate forum based on considerations such as the assumption of jurisdiction over property, geographical inconvenience of the forum, avoiding piecemeal litigation, and the adequacy of the state-court forum to protect the parties' interests, *see id*. at 818-19;

(2) There is a parallel, pending state criminal proceeding (or a state civil proceeding akin to a prosecution), with which a federal court's exercise of jurisdiction could interfere, *see Younger v. Harris*, 401 U.S. 37, 44 (1971);

(3) Substantial uncertainty exists over the state-law question at issue, the resolution of which in state court may allow the federal court to avoid adjudicating a

constitutional question, *see Railroad Comm'n of Tex. v. Pullman Co*., 312 U.S. 496, 500-01 (1941); or

(4) The question is one involving a state law or policy that is committed in the first instance to an expert administrative scheme, *see Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

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

Response: Damages generally provide redress for past injury, while injunctive relief prevents or stops present or future harm. *See Mayfield v. United States*, 599 F.3d 964, 969 (9th Cir. 2010). Fact-finders must resolve whether a claimant has established an entitlement to damages or injunctive relief based on the individual circumstances of the case. As a judicial nominee, I am guided by the Code of Conduct for United States Judges. Canon 3(A)(6) of that code precludes me from making public comment on the merits of a matter which may come before me. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: The Supreme Court has held that the Fourteenth Amendment's Due Process Clause protects certain substantive rights that are not enumerated in the Constitution. Identifying such an unenumerated right requires an examination of whether the right asserted is "deeply rooted in this nation's history and tradition" and "implicit in the concept of ordered liberty." *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022) (quoting *Washington v. Glucksberg*, 521 U.S 702, 721 (1997)).

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

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

Response: The Free Exercise Clause "'protects religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.'" *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017) (quoting *Church of Lukumi Bablu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533, 542 (1993)) (alterations omitted).

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

Response: No. The right to free exercise of religion also protects "freedom of conscience in religious matters," "religious exercises, whether communicative or not," and "the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Lee v. Weisman*, 505 U.S. 577, 591 (1992); *Kennedy v. Bremerton Sch. Dist*., 597 U.S. 507, 523, 525 (2022).

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

Response: See my answer to Question 8 above.

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

Response: See my answer to Question 10 above.

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

Response: The Religious Freedom Restoration Act (RFRA) "applies to all Federal law, and the implementation of that law, whether statutory or otherwise." *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) (quoting 42 U.S.C. §§ 2000bb-3(a)). However, RFRA also permits Congress to exclude statutes from its protections. *Id*. (quoting 42 U.S.C. §§ 2000bb-3(b)).

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

Response: No.

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

Response: The Ninth Circuit recently reaffirmed that the "beyond a reasonable doubt" standard requires "a subjective state of *near certitude* of the guilt of the accused." *United States v. Velazquez*, 1 F.4th 1132, 1137 (quoting *Jackson v. Virginia*, 443 U.S. 307, 315 (1979)). I am not aware of any Supreme Court or Ninth Circuit precedent

quantifying that standard. As a judicial nominee, I am guided by the Code of Conduct for United States Judges. Canon 3(A)(6) of that code precludes me from making public comment on the merits of a matter which may come before me. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

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

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

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

Response: *Harrington v. Richter*, 562 U.S. 86, 102 (2011), did not specify the circumstances in which a federal court could hold that "fairminded jurists could disagree that the state court's decision conflicts with [the Supreme] Court's precedents." As a judicial nominee, I am guided by the Code of Conduct for United States Judges. Canon 3(A)(6) of that code precludes me from making public comment on the merits of a matter which may come before me. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

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

Response: Fed. R. App. P. 32.1(a)(1) provides that courts "may not prohibit or restrict the citation of federal judicial [decisions]" issued on or after January 1, 2007, "that have been . . . designated as 'unpublished."

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

Response: See my answer to subpart (a) above.

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

Response: Ninth Circuit R. 36-3(a) provides that "[u]npublished dispositions and orders of this Court are not precedent, except when relevant under the doctrine of

law of the case or rules of claim preclusion or issue preclusion." If confirmed, I would not treat unpublished decisions as precedential except in the circumstances where the Ninth Circuit local rule so permits.

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

Response: See my answer to subparts (a) and (c) above.

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

Response: See my answer to subparts (a) and (c) above.

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

Response: See my answer to subpart (a) above.

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

Response: See my answer to subpart (a) above.

29. In your legal career:

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

Response: I have tried six cases as lead, co-lead, or sole counsel.

b. How many have you tried as second chair?

Response: I have tried three cases as second chair.

c. How many depositions have you taken?

Response: To the best of my recollection, I have not taken any depositions.

d. How many depositions have you defended?

Response: To the best of my recollection, I have not defended any depositions.

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

Response: I have argued 15 cases before a federal appellate court, including two en banc.

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

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

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

Response: I have not appeared before a federal agency.

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

Response: I estimate approximately 10.

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

Response: I estimate approximately 40.

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

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

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

Response: None of my previous jobs required me to track billable hours.

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

a. What do you understand this statement to mean?

Response: I understand this statement to mean that judges should put aside their personal preferences and faithfully, impartially, and objectively apply the law to decide only the issues before them. If confirmed, I am committed to doing so and will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

a. What do you understand this statement to mean?

b. Do you agree or disagree with this statement?

Response: See my answer to Question 31 above.

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

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

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

Response: See my answer to Question 31 above.

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

a. If yes, please provide appropriate citations.

Response: No.

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

Response: No.

36. What were the last three books you read?

Response: *Demon Copperhead*, by Barbara Kingsolver; *The Rachel Incident*, by Caroline O'Donoghue; *Mexican Gothic*, by Silvia Moreno-Garcia.

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

Response: Whether America is a systemically racist country is a subject of political debate that could arise in litigation. As a judicial nominee, I am guided by the Code of Conduct for United States Judges. Canon 3(A)(6) and Canon 5 of that code preclude me from offering public commentary on matters of political debate the merits of which may come before me if I am confirmed.

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

Response: I have represented the United States in hundreds of cases, and there is no one matter of which I am most proud. Having worked for the entirety of my career in public service, I am most proud of having dedicated my legal skills to making my community a better place in every role I held.

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

Response: Yes.

a. How did you handle the situation?

Response: I set aside my personal views, followed the policies and guidance of the Department of Justice, and enforced the laws as written.

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

Response: Yes.

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

Response: The law professor's work that I consult most often is *Reading Law: The Interpretation of Legal Texts*, by Justice Antonin Scalia and Professor Bryan A. Garner. I do not regularly read work by other law professors.

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

Response: No Federalist Paper has shaped my views of the law more than any other.

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

Response: I try to approach reading all judicial opinions without preconceptions, aware that reasonable jurists may differ on important questions, and am unable to pinpoint a specific opinion or law review article that made me change my mind.

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

Response: In *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 223 (2022), the Supreme Court suggested that whether "a human person comes into being at conception" implicates "a profound moral issue on which Americans hold sharply conflicting views." Moreover, the Court declined to answer that question. As a judicial nominee, Canon 3(A)(6) of Code of Conduct for United States Judges precludes me from making public comment on the merits of a matter which may come before me. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: No.

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

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

Response: No.

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

- **a. Apple?**
- **b. Amazon?**

c. Google?
d. Facebook?
e. Twitter?

Response: No.

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

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

Response: I have edited hundreds of briefs as the Appellate Chief and Deputy Appellate Chief. My name is usually included on every Ninth Circuit brief arising from Phoenix, Flagstaff, and Yuma, but I am aware of instances on some appellate pleadings—not briefs—where support staff inadvertently removed my name. It is possible the same may have happened with briefs. In addition, I edited Supreme Court filings that do not bear my name in two cases:

Brief of the United States in opposition, *Mitchell v. United States*, 141 S. Ct. 216 (U.S. Aug. 20, 2020) (No. 20-5398).

Petition for a Writ of Certiorari, *United States v. Briones*, 141 S. Ct. 2589 (U.S. Dec. 6, 2019) (No. 19-720), 2019 WL 6716014.

48. Have you ever confessed error to a court?

Response: Yes.

a. If so, please describe the circumstances.

Response: I have confessed error in every case where the law or record demanded it. For example, the Ninth Circuit recently held en banc that a district court must orally pronounce all discretionary conditions of supervised release at sentencing even without objection, overruling prior precedent holding otherwise. *United States v. Montoya*, 82 F.4th 640, 644-45 (9th Cir. 2023) (en banc). I conceded error in a case where the district court had not orally pronounced the discretionary conditions at a sentencing that occurred years before *Montoya*. *See* Supplemental Brief of Appellee Regarding *United States v. Montoya*, ECF No. 94, Ninth Cir. No. 18-10083 (filed Oct. 17, 2023).

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

Response: I took an oath to testify truthfully at my nomination hearing, and have tried to answer all questions honestly to the best of my ability. In doing so, I have also abided by

the Code of Conduct for United States Judges, including by refraining from making any statements "on the merits of a matter pending or impending in any court."

Senator John Kennedy
Questions for the Record

Krissa Lanham

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

   Response: Yes. In federal criminal law, those circumstances arise when the crime of conviction is death-eligible as provided in 18 U.S.C. § 3591, the government has given notice of and the jury has found aggravating factors as described in 18 U.S.C. § 3592, and the procedures in 18 U.S.C. § 3593 have been followed.

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, including your approach to constitutional and statutory interpretation. Be as specific as possible.**

   Response: If confirmed, my judicial philosophy will be to approach every case with an open mind; to faithfully apply the binding precedent of the Ninth Circuit and Supreme Court; to work diligently to thoroughly understand the facts and law applicable to every decision so that the parties understand they have been heard and respected; to recognize the limited role of a federal district court judge within our Constitutional framework, acting with humility to decide only the cases and controversies presented by the parties before me; and to provide rulings that are clear to both the litigants and higher courts reviewing my decisions. I will look to binding Ninth Circuit and Supreme Court precedent, text and context, and the applicable canons of construction to interpret constitutional and statutory provisions.

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

   Response: Yes. The Supreme Court has applied an originalist interpretive method in some contexts, for example, in examining text and history to evaluate the

constitutionality of firearms regulations under the Second Amendment. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 36-69 (2022). If confirmed, I will faithfully apply the interpretive methods used by the Supreme Court and Ninth Circuit in analyzing 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: If I am confirmed as a lower federal court judge and presented with a constitutional question of first impression, my analysis would primarily be controlled by the text and context of the provision. My analysis would end there if the meaning is clear. I would also examine Supreme Court and Ninth Circuit case law analyzing analogous constitutional issues to ensure that I use an interpretive method that is faithful to binding precedent. In situations where the Supreme Court has analyzed the original public meaning of analogous provisions—for example, in the Second Amendment context, *see New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 36-69 (2022)—I would apply that methodology.

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

   Response: Yes. *See Van Buren v. United States*, 593 U.S. 374, 381 (2021) ("[W]e start where we always do: with the text of the statute.").

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

   Response: When interpreting the meaning of a statute or provision, judges start with the text and the context, ending the analysis there if the meaning is clear. They apply canons of construction where necessary to draw meaning from the structure, *see Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 457-59 (2022), and look to precedent in the same or analogous contexts. Supreme Court precedent suggests that considering legislative history is inappropriate where the text's language and structure make the meaning clear. *See, e.g.*, *Milner v. Dep't of Navy*, 562 U.S. 562, 572 (2011).

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 Constitution has a fixed meaning "intended to endure for ages to come." *M'Culloch v. Maryland*, 17 U.S. 316, 415 (1819). However, that meaning is broad enough to "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).

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: In *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), the Supreme Court reversed the Ninth Circuit's denial of qualified immunity to a police officer who briefly placed his knee on a person's back while restraining that person in a volatile domestic violence incident. The Supreme Court held that the officer was entitled to qualified immunity because his actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known"; prior circuit precedent was factually distinguishable so it did not provide the officer notice that using force in this context was unlawful. *Id*. at 6-7.

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: Article III, § 2, cl. 1 of the Constitution limits the federal judicial role to resolving cases and controversies. Nationwide injunctions "raise serious questions about the scope of courts' equitable powers under Article III" and whether federal courts have the authority to issue them is unsettled. *See Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in the grant of a stay). As a judicial nominee, I am guided by the Code of Conduct for United States Judges. Canon 3(A)(6) of that code precludes me from making public comment on the merits of a matter which may come before me. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

13. Is there ever a circumstance in which a district judge may seek to circumvent, evade, or undermine a published precedent of the U.S. Court of Appeals under which the judge sits or the U.S. Supreme Court?

Response: No.

14. Will you fully and faithfully apply all precedents of the U.S. Supreme Court and the U.S. Court of Appeals under which you would sit?

Response: Yes.

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

Response: The Ninth Circuit has instructed that the Supreme Court's considered dicta should be "afford[ed] . . . a weight that is greater than ordinary judicial dicta as prophecy of what the [C]ourt might hold." *Nettles v. Grounds*, 830 F.3d 922, 930-31 (9th Cir. 2016) (en banc). If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

16. Have you ever considered an applicant's race, sex, or religion when making a hiring decision? If so, please provide full details.

Response: No.

17. When reviewing applications from persons seeking to serve as an intern, extern, or law clerk in your chambers, what role would the race, sex, or religion of the applicants play in your consideration?

Response: If confirmed, I will strongly encourage qualified applicants from a wide range of backgrounds to apply for positions in my chambers and will not engage in racial, gender-based, or religious discrimination when selecting from among those applicants.