Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Angela Martinez
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?**
   a. **If yes, state all countries of citizenship and dates of citizenship.**
   b. **If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**
      i. **If not, please explain why.**

   Response: No.

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

   Response: No, it is never appropriate for a judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument.

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, it is never appropriate for a judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time.

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 is appropriate to consider foreign law when interpreting the United States Constitution only in limited circumstances as authorized by the Supreme Court. For example, in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, the Court considered English history and law in interpreting the Second Amendment. 597 U.S. 1, 39–44 (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 disagree with this statement. Value judgments are not relevant to determining Constitutional or other legal issues that come before the court. When making legal

decisions judges are duty bound to apply the law, including binding precedent and relevant statutes, to the facts of each case.

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 apply binding precedent established by the Ninth Circuit and the United States Supreme Court.

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

   Response: Yes.

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

   Response: Yes.

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

    Response: A prisoner in custody under sentence of a federal court may seek relief from the sentence in several ways. The prisoner may appeal his sentence, either to the district court if the sentence was imposed by a magistrate judge for a misdemeanor, or to the Ninth Circuit if the sentence was imposed by a district court. A prisoner may also file a motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255, or pursuant to 28 U.S.C. § 2241 if the remedy available by a § 2255 motion is "inadequate or ineffective to test the legality of his detention." *See Harrison v. Ollison*, 519 F.3d 952, 956 (9th Cir. 2008). A prisoner can also seek compassionate release pursuant to 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, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, the plaintiff non-profit organization filed lawsuits against Harvard and the University of North Carolina alleging that the schools' race-based admissions programs violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act. The Supreme Court held that the race-based admissions programs of both schools violated the Equal Protection Clause. In finding the admissions programs unconstitutional, the Court stated that "both programs lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful endpoints." *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 230 (2023).

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

    Response: Yes.

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

    Response: I was a member of the hiring panel as Senior Litigation Counsel at the United States Attorney's Office in the District of Arizona. As a federal magistrate judge, I hired my chambers staff.

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. However, as part of my job responsibility at the United States Attorney's Office, I assisted the United States Attorney for the District of Arizona with efforts to reach diverse legal community groups to ensure members were notified of the office's job openings and informed about the important work done by a United States Attorney's office.

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

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

Response: No, not to my knowledge.

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

    Response: Yes, government classifications based on race are subject to strict scrutiny.

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 (2023), the Supreme Court held that the First Amendment right to free speech protected a website designer's right to refuse to create wedding websites that were inconsistent with the designer's religious belief that marriage is reserved for unions between a man and a woman. In this case, the plaintiff brought an action against the Colorado Civil Rights Commission and the Colorado Attorney General to enjoin them from compelling her to create wedding websites that violated her religious beliefs. *Id*. The Supreme Court ruled that Colorado law violated the plaintiff's free speech rights under the First Amendment because it compelled speech the owner did not believe in. *Id*. at 603.

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: It is a correct statement of the law under *West Virginia State Board of Education v. Barnette*, which has not been overruled, and which the Supreme Court in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) recently reaffirmed.

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: In determining whether a law that regulates speech is "content-based" or "content-neutral," I would rely on binding and relevant Supreme Court and Ninth Circuit precedent on this issue. In determining whether a law regulating speech is content-based or content neutral, a court considers: (1) "whether the law is content neutral on its face" and (2) "whether the purpose and justification for the law are content based." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 165–66 (2015). If the law is content based, its restrictions on speech must survive strict scrutiny to be constitutional. *Reed*, 576 U.S. at 171.

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

Response: In *Counterman v. Colorado*, 600 U.S. 66 (2023), the Supreme Court set forth the standard for determining whether a statement does not qualify as protected speech under the true threats doctrine. The Court held that for speech to be considered a true threat and thus not protected by the First Amendment, the speaker must have "consciously disregarded a substantial risk that his communications would be viewed as threatening violence." *Counterman*, 600 U.S. at 69. The Court applied a "recklessness standard" to the *mens rea* of the speaker, reasoning that the standard offered "enough breathing space for protected speech without sacrificing too many of the benefits of enforcing laws against true threats." *Counterman*, 600 U.S. at 82 (citing *Elonis v. United States*, 575 U.S. 723, 748 (2015)).

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 "basic" or "historical" fact address "who did what, when or where, how or why." *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 394 (2018) (citation omitted). In *Guerrero-Lasprilla v. Barr*, 589 U.S. 221 (2020), the Supreme Court held that "questions of law" include "the application of a legal standard to undisputed or established facts" in addition to "pure" questions of law. *Guerrero-Lasprilla*, 589 U.S. at 227. The Supreme Court has described the "nature of the distinction between questions of fact and questions of law" as "vexing," *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982), and as "sometimes slippery." *Thompson v. Keohane*, 516 U.S. 99, 111 (1995). Additionally, the Court has stated that "the fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better than another to decide the issue in question." *Merck Sharp & Dohne Corp. v. Albrecht*, 139 S. Ct. 1668, 1680 (2019) (citation omitted).

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) sets forth the factors that a district judge considers when sentencing a defendant. A district court should "consider all of the § 3553(a) factors to determine whether they support the sentence requested by the party." *Gall v. United States*, 552 U.S. 38, 49–50 (2007). The statute does not direct the court to give more weight to one factor over another. *See, e.g., Gall v. United States*, 552 U.S. 38, 49–50 (2007) (court should consider all sentencing factors.) If confirmed, I will consider all § 3553(a) factors, as well as the United States Sentencing Guidelines and any United States Supreme Court and Ninth Circuit precedent, when sentencing a defendant.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded from commenting on the quality of Supreme Court decisions. *See* Code of Conduct for United States Judges, Canon 3A(6). If confirmed, I will faithfully apply binding United States 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 sitting United States Magistrate Judge and judicial nominee, I am precluded from commenting on the quality of Ninth Circuit decisions. *See* Code of Conduct for United States Judges, Canon 3A(6). If confirmed, I will faithfully apply binding United States Supreme Court and Ninth Circuit precedent.

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

Response: 18 U.S.C. § 1507 provides:

"Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both.

Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded from commenting on issues that may come before me to avoid creating the impression that I have prejudged the issue. *See* Code of Conduct for United States Judges, Canon 3A(6). I am unaware of any United States Supreme Court or Ninth Circuit decision finding 18 U.S.C. § 1507 unconstitutional. The Supreme Court in *Cox v. Louisiana*, 379 U.S. 559, 563 (1965) held that a similar Louisiana statute did not "infringe upon the constitutionally protected rights of free speech and free assembly."

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

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

    Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided.

See Code of Conduct for United States Judges, Canon 3(A)(6). However, because the constitutionality of *de jure* racial segregation is unlikely to come before me should I be confirmed, and consistent with the responses of other judicial nominees, I can state that *Brown v. Board of Education* was correctly decided.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, because the constitutionality of a prohibition on interracial marriage is unlikely to come before me should I be confirmed, and consistent with the responses of other judicial nominees, I can state that *Loving v. Virginia* was correctly decided.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The decision of *Griswold v. Connecticut* is binding precedent and if confirmed I would apply this precedent fully and faithfully.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The Supreme Court overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). Therefore, *Roe v. Wade* is no longer binding precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). The Supreme Court overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). Therefore, *Planned Parenthood v. Casey* is no longer binding precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). *Gonzalez v. Carhart* is binding Supreme Court precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *Gonzalez v. Carhart*.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). *District of Columbia v. Heller* is binding Supreme Court precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *District of Columbia v. Heller*.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. See Code of Conduct for United States Judges, Canon 3(A)(6). *McDonald v. City of Chicago* is binding Supreme Court precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *McDonald v. City of Chicago*.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. See Code of Conduct for United States Judges, Canon 3(A)(6). *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding Supreme Court precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from

giving an opinion on whether a Supreme Court decision was correctly decided. See Code of Conduct for United States Judges, Canon 3(A)(6). *New York State Rifle & Pistol Association v. Bruen* is binding Supreme Court precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *New York State Rifle & Pistol Association v. Bruen*.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). *Dobbs v. Jackson Women's Health* is binding Supreme Court precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *Dobbs v. Jackson Women's Health*.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* are binding Supreme Court precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). *303 Creative LLC v. Elenis* is binding Supreme Court precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *303 Creative LLC v. Elenis*.

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

Response: I would apply the legal standard set forth by the Supreme Court in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022), in which the Court held that

"when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct . . . [and] the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation."

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?**
    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?**
    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 to all subparts: 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?**
    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?**
    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 to all subparts: 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.

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

Response to all subparts: 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?**
    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?**
    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 to all subparts: 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?**
    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?**
    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?**
    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 to all subparts: 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?**
    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?**
    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 to all subparts: 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?**
b. **Are you currently in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**
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 to all subparts: No.

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: In response to Senators Kyrsten Sinema and Mark Kelly's website announcement, I submitted my application for consideration to serve as a District Judge for the District of Arizona on October 25, 2023. On November 16, 2023, I interviewed with both Senator Sinema's and Senator Kelly's judicial advisory committees. On January 16, 2024, an official from the White House Counsel's Office contacted me to determine whether I was interested in speaking further about potential nomination to the United States District Court for the District of Arizona. I interviewed with attorneys from that office the next day. On January 23, 2024, an attorney for the White House Counsel's Office informed me that I was under further consideration for possible nomination. Since January 23, 2024, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On February 21, 2024, the President announced his intent to nominate me to serve as a District Judge for the District of Arizona.

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.

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.

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.

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.

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.

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.

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.

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

Response: No.

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 January 16, 2024, an official from the White House Counsel's Office contacted me to determine whether I was interested in speaking further about potential nomination to the United States District Court for the District of Arizona. I interviewed with attorneys from that office the next day. On January 23, 2024, an attorney for the White House Counsel's Office informed me that I was under further consideration for possible nomination. Since January 23, 2024, I have been in contact with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of

Justice. On February 21, 2024, the President announced his intent to nominate me to serve as a District Judge for the District of Arizona.

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

Response: On March 27, 2024, I received questions from the Committee through the Department of Justice Office of Legal Policy (OLP). Once I completed my draft responses, I forwarded them to OLP. I then made limited edits, finalized my responses, and forwarded them to OLP for submission to the Committee.

Senator Mazie K. Hirono
Senate Judiciary Committee

Nominations Hearing | March 20, 2024
Questions for the Record for Angela M. Martinez

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

QUESTIONS:

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

   Response: No.

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

   Response: No.

Senator Jon Ossoff
Questions for the Record for Judge Angela Martinez
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 the same way I will approach all cases that come before me: by researching and applying Supreme Court and Ninth Circuit precedent that is relevant and binding as to the precise issues raised.

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

      Response: As a sitting United States Magistrate Judge and a judicial nominee, I am prohibited from expressing any personal views I might hold. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, it is generally understood that the rights of freedom of speech, publication, assembly, and exercise of religion are enshrined in the First Amendment because they are essential components of individual liberty and a democratic system of government. First Amendment rights enable the exercise of other rights that are fundamental in our constitutional system. The ability of the people to petition and influence their governments without fear of retribution is fundamental to a functioning democracy. If confirmed, I would faithfully apply all applicable Supreme Court and Ninth Circuit precedent to First Amendment cases.

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 in *Gideon v. Wainwright* held that the Due Process Clause of the Fourteenth Amendment guarantees the right to legal representation in federal criminal prosecutions of indigent defendants. 372 U.S. 335 (1963). In my experience as a former federal prosecutor and current United States Magistrate Judge, I have observed firsthand how essential the effective representation of indigent defendants is in ensuring that the rights of criminal defendants are protected. Competent defense counsel is critical at all stages of federal criminal prosecutions, from initial appearance to trial and sentencing. The right to counsel also supports public trust in the criminal justice system.

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

Response: As a sitting United States Magistrate Judge, I regularly preside over cases in which English is not a party's first language, particularly in our criminal immigration cases. In many instances, our court encounters defendants who speak Spanish or native indigenous languages such as Náhuatl or Mixteco. In criminal matters, the defendant receives an interpreter in his or her native language at no cost. The primary challenge that non-native English speakers face in court proceedings is that they may not understand the proceedings or their rights. These challenges stem not only from the language barrier but also from legal concepts that may not readily translate to other languages, such as the concepts of a jury trial or the presumption of innocence. It is imperative that interpreters not only speak a defendant's native language but also understand and communicate the cultural and/or legal concepts that may not readily translate.

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

   Response: As a sitting United States Magistrate Judge, I am committed to ensuring that a non-native English speaker's due process rights are upheld just as rigorously as those of a native English speaker. When presiding over court proceedings, I take care to ensure that litigants for whom English is not their first language fully comprehend the proceedings every step of the way and that they are treated with respect and dignity. Without hesitation, I believe language access is essential to protecting due process rights and ensuring access to justice.

Senator Mike Lee
Questions for the Record
Angela Marie Martinez, Nominee for District Court Judge for the District of Arizona

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

Response: As a sitting United States Magistrate Judge, my judicial philosophy is that I am first and foremost a public servant who holds sacred my solemn oath to administer justice fairly and impartially and to faithfully uphold the Constitution and the laws of the United States. I hold sacred the importance of an independent judiciary that diligently ensures equal and timely access to justice under law. If confirmed, I will adhere to my solemn oath as a judicial officer to uphold the Constitution and the laws of the United States without bias or prejudice. I will ensure that all cases are handled in a fair and impartial manner and that all who come before the court are treated with dignity and respect.

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

Response: If confirmed, I would look first to any prior interpretations of the federal statute by the Supreme Court or the Ninth Circuit. If such precedent exists, I will faithfully apply it. In the absence of binding precedent, I would look to the text of the statute. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). "If the statutory language is unambiguous and the statutory scheme is coherent and consistent . . . the inquiry ceases." *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). If the text of the statute is ambiguous or vague, I would then consult Supreme Court and Ninth Circuit precedent for applicable canons of statutory construction and methods of interpretation. I would also consider persuasive authority from other Circuits.

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

Response: If confirmed, I would look first to any prior interpretations of the constitutional provision by the Supreme Court or the Ninth Circuit. If such precedent exists, I will faithfully apply it. In the unlikely event that a constitutional provision has not previously been interpreted by the Supreme Court or the Ninth Circuit, I would then consider the text of the provision, as well as any instructive, even if not binding, Supreme Court or Ninth Circuit precedent. I would also consider persuasive authority from other Circuits.

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

Response: "[T]he public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." *District of*

*Columbia v. Helle*r, 554 U.S. 570, 605 (2008). The meaning of a constitutional provision is interpreted as "understood by the voters . . . in their normal and ordinary as distinguished from technical meaning" at the time of ratification. *Id*. at 576. If confirmed, I would faithfully follow binding precedent of the Supreme Court and Ninth Circuit when interpreting the Constitution.

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 response to Question 2.

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

Response: See response to Question 4. *See also New Prime, Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) ("[W]ords generally should be interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute.").

7. What are the constitutional requirements for standing?

Response: To satisfy the constitutional requirements for standing, a "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo v. Robins*, 136 S. Ct. 1540, 1547 (2016).

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 in *McCulloch v. Maryland* stated that Congress has implied legislative powers derived from the Necessary and Proper Clause where the end is "legitimate . . . within the scope of the constitution, [by] all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution[.]" 17 U.S. 316, 436–37 (1819). The Necessary and Proper Clause gives Congress the power to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, sec. 8, cl. 18. In *Nat'l Fed'n of Indep. Bus. v. Sebelius*, the Supreme Court further explained that the Commerce Clause gives Congress power to "legislate on [the] vast mass of incidental powers which must be involved in the constitution" but does not license any "great substantive and independent powers" beyond those enumerated. 567 U.S. 519, 559 (2012).

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

Response: The Supreme Court in *Nat'l Fed'n of Indep. Bus. v. Sebelius* stated that "the question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." 567 U.S. 519, 570 (2012) (citation omitted). However, in enacting laws, Congress must comply with the Constitution. *Id*.; *see also Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) (portions of Congressional statute violated First Amendment). If confirmed and presented with a question of the constitutionality of a Congressional statute, I would faithfully apply Supreme Court and Ninth Circuit precedent on the matter.

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

Response: Yes. The Supreme Court in *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) held that the Fifth and Fourteenth Amendments protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and which are "implicit in the concept of ordered liberty." Such substantive rights include, but are not limited to, the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), the right to direct the education and upbringing of one's children, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the right to engage in private, consensual sexual acts, *Lawrence v. Texas*, 539 U.S. 558 (2003), the right to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965), the right to same-sex marriage, *Obergefell v. Hodges*, 576 U.S. 644 (2015), the right to travel freely between the states, *Sáenz v. Roe*, 526 U.S. 489 (1999), and the right not to be forcibly administered drugs, *Rochin v. California*, 342 U.S. 165 (1952).

11. What rights are protected under substantive due process?

Response: See response to Question 10.

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

Response: In *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), the Supreme Court overruled *Lochner v. New York*, 198 U.S. 45 (1905), concluding that the Constitution did not protect the economic rights at issue in that case. The Supreme Court in *Griswold v. Connecticut* held that the use of contraceptives is a substantive due process right. 381 U.S. 479 (1965). If confirmed, I will faithfully apply Supreme Court and Ninth Circuit precedent, including *Washington v. Glucksberg*, 521 U.S. 702 (1997), relating to substantive due process rights, regardless of any personal beliefs I may have about its merits.

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

Response: Article I grants Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, sec. 8, cl. 3. Congress may regulate "three broad categories of activity" under its commerce power: "the use of the channels of interstate commerce," "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and "activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558–59 (1995); *see also Nat'l. Fed'n. of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536–37 (2012). Congress may not "compel[] individuals to become active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce." *Sebelius*, 567 U.S. at 552.

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

Response: The Supreme Court in *Johnson v. Robison* defined a "suspect class" as one that has "an immutable characteristic determined solely by accident of birth" or that is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." 415 U.S. 361, 375 n. 14 (1974) (citations omitted); *see also Lyng v. Castillo*, 477 U.S. 635, 638 (1986) (describing a suspect class as one that exhibits "obvious, immutable, or distinguishing characteristics" or that is "a minority or politically powerless"). The Supreme Court has identified race, religion, national origin, and alienage as suspect classes requiring strict scrutiny. *See City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

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

Response: "[T]he system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (citation omitted); s*ee also Seila Law v. CFPB*, 140 S. Ct. 2183, 2202 (2020) ("The Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty. Their solution to governmental power and its perils were simple: divide it.") (citation omitted).

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

Response: If confirmed and presented with a case involving the separation of powers, I would apply Supreme Court and Ninth Circuit precedent regarding the specific question as well as the Constitutional text at issue. *See Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015). For example, for "claims of Presidential power," I

would apply the "familiar tripartite framework" set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring).

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

Response: When deciding a case, empathy should play no role in the findings of fact, admission of evidence, or application of the law. However, empathy may play a role in the manner in which the judge conducts the proceedings and manages the courtroom, such as when the court is addressing the parties, staff, vulnerable victims, or even jurors called upon to serve in cases presenting difficult or traumatic evidence. It is imperative that the parties and the public are treated with respect and sensitivity during the judicial process.

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

Response: Both outcomes are undesirable and should be avoided.

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 had occasion to carefully consider the Supreme Court's historical pattern of upholding or invalidating federal statutes or the reasons for those decisions. As a Magistrate Judge I have faithfully applied United States Supreme Court and Ninth Circuit precedent and would continue to do so if I am fortunate enough to be confirmed as a District Judge

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." *See also Marbury v. Madison*, 5 U.S. 137, 177 (1803) (stating that it is "the province and duty of the judicial department to say what the law is"). Regarding "judicial supremacy," the Supreme Court has stated that "the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court

. . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Elected officials take an oath to uphold the Constitution. U.S. Const. art. VI, cl. 3. The Supreme Court has stated that no "state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). However, Congress has used the Article V amendment process to overturn Supreme Court precedent. *See, e.g.*, *Dred Scott v. Sandford*, 60 U.S. 393 (1857), *superseded* (1868). As a sitting United States Magistrate Judge and a judicial nominee, I cannot comment on how elected officials execute or discharge their duties. If confirmed, I will faithfully apply Supreme Court and Ninth Circuit precedent in any case involving a claim that an elected official failed to follow the Constitution or a judicial decision.

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

Response: The power of the judiciary is limited to impartially interpreting and applying the law in actual cases and controversies that come before the court. As a sitting United States Magistrate Judge and judicial nominee, I am bound by, and will continue to abide by, the powers given to federal courts in Article III of the Constitution.

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 should follow controlling law and leave to the Supreme Court "the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). If confirmed, I will faithfully apply all United States Supreme Court precedent and Ninth Circuit precedent without regard to any opinion I may have about its correctness or constitutionality. I have adhered to this practice as a sitting United States Magistrate and will continue to do so if I am so fortunate as to be confirmed as a District Judge.

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: A defendant's identity characteristics such as race, gender, nationality, sexual orientation, or gender identity, should play no role in a judge's sentencing analysis. 18 U.S.C. § 3553(a) sets forth the factors that a district judge considers when sentencing a defendant. A district court should "consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party." *Gall v. United States*, 552 U.S. 38, 49–50 (2007). The Sentencing Guidelines provide that 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 (Policy Statement). If confirmed, I will consider all § 3553(a) factors, as well as the Sentencing Guidelines and applicable Supreme Court and Ninth Circuit precedent, when sentencing a defendant.

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

Response: I am not familiar with the Biden Administration's definition of equity as set forth in Question 25. Black's Law Dictionary (11th ed. 2019) defines equity as "fairness, impartiality, and evenhanded dealing" and "the body of principles constituting what is fair and right; natural law."

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

Response: I do not have my own definition for these terms. Merriam-Webster Dictionary defines "equity" as "justice according to natural law or right" and "freedom from bias or favoritism." 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 Equal Protection Clause of the Fourteenth Amendment guarantees "the equal protection of the laws." U.S. Const. amend. XIV. I am not aware of any Supreme Court or Ninth Circuit precedent holding that the Fourteenth Amendment guarantees "equity" as defined in Question 25. If confirmed and presented with a case

involving interpretation of the word "equity," I would apply Supreme Court and Ninth Circuit precedent to decide the issue.

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

Response: I have not had the opportunity to study the term "systemic racism," and I believe the term may have different meanings to different people. I do not have my own definition. In my personal experience, I have had the honor of becoming a United States Magistrate Judge, and I ensure that every matter that comes before me is handled fairly and impartially without regard to race. To the extent that a claim raising the issue of "systemic racism" comes before me, I will make factual and legal determinations based on the evidence presented as well as the law as instructed by the Supreme Court and the Ninth Circuit.

29. Without citing Black's Law Dictionary, how do you define "Critical Race Theory?"

Response: I have not had the opportunity to study the term "Critical Race Theory," and I believe the term may have different meanings to different people. I do not have my own definition. Merriam-Webster Dictionary defines "critical race theory" as "a group of concepts (such as the idea that race is a sociological rather than biological designation, and that racism pervades society and is fostered and perpetuated by the legal system) used for examining the relationship between race and the laws and legal 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 responses to Questions 28 and 29.

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

Questions for the Record for Angela Marie Martinez, 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 prohibited by federal law. *See, e.g.,* U.S. Const. amend. XIV; U.S. Const. amend. XV; 42 U.S.C. § 1981; 1964 Civil Rights Act, Title VI; 1964 Civil Rights Act, Title VII; 42 U.S.C. § 2000e *et seq*.

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

Response: The Due Process Clause of the Fifth and Fourteenth Amendments protects unenumerated rights that are "deeply rooted in this Nation's history and tradition" and that are "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). As a sitting United States Magistrate Judge and a judicial nominee, I am prohibited from expressing an opinion as to whether there are any unenumerated rights in the Constitution as yet unarticulated by the Supreme Court. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, if confirmed, I would faithfully apply the *Glucksberg* test and all applicable Ninth Circuit and Supreme Court precedent.

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

Response: As a sitting United States Magistrate Judge, my judicial philosophy is that I am first and foremost a public servant who holds sacred my solemn oath to administer justice fairly and impartially and to faithfully uphold the Constitution and the laws of the United States. I hold sacred the importance of an independent judiciary that diligently ensures equal and timely access to justice under law. I have not studied the judicial philosophies of the Warren, Burger, Rehnquist, or Roberts Courts and have not determined which philosophy is most like mine. If confirmed, I will adhere to my solemn oath as a judicial officer to uphold the Constitution and the laws of the United States without bias or prejudice. I will ensure that all cases are handled in a fair and impartial manner and that all who come before the court are treated with dignity and respect.

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

Response: Black's Law Dictionary defines originalism as the "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." I do not subscribe to a particular interpretative theory. If confirmed, I will faithfully apply Supreme Court and Ninth Circuit precedent to all issues of constitutional and statutory interpretation, including any interpretative theory applied by the Supreme Court or

Ninth Circuit in any relevant precedent.

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 defines living constitutionalism as the "doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I do not subscribe to a particular interpretative theory. If confirmed, I will faithfully apply Supreme Court and Ninth Circuit precedent to all issues of constitutional and statutory interpretation, including any interpretative theory applied by the Supreme Court or Ninth Circuit in any relevant precedent.

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: In a rare issue of first impression, my analysis would begin with the text of the Constitution, which I would faithfully apply as written to include any Supreme Court and Ninth Circuit precedent as to how to interpret the meaning of that text. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). I would faithfully apply the analytical framework set forth by the Supreme Court and Ninth Circuit pertaining to the constitutional question presented.

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: The Supreme Court has instructed that when interpreting the Constitution, the courts are to use the "normal meaning" of the text known and understood by the public at the time of ratification and to apply the ordinary usage of those words. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 576–77 (2008). However, in limited circumstances, the Supreme Court also has looked to contemporary standards when determining the meaning of the Constitution. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 560–61 (2005) (noting that Eighth Amendment excessive punishment claims are determined by the evolving standards of decency). Similarly, the Supreme Court has said that it "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of enactment." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). *See also New Prime, Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) ("[W]ords generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute.").

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

Response: No. The Constitution does not change except through the amendment process set forth in Article V of the Constitution. Nevertheless, the Supreme Court has explained that "[a]lthough [the Constitution's] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *See, e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022) (citing *United States v. Jones*, 565 U.S. 400, 404–5 (2012) (holding that installation of a tracking device was "a physical intrusion [that] would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted")).

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

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health* is binding precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *Dobbs v. Jackson Women's Health*.

a. **Was it correctly decided?**

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

Response: The Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen* is binding precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *New York State Rifle & Pistol Association v. Bruen*.

a. **Was it correctly decided?**

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

Response: The Supreme Court's decision in *Brown v. Board of Education* is binding precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *Brown v. Board of Education*.

a. **Was it correctly decided?**

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6). However, because the constitutionality of *de jure* racial segregation is unlikely to come before me should I be confirmed, and consistent with the responses of other judicial nominees, I can state that *Brown v. Board of Education* was correctly decided.

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

Response: The Supreme Court's decision in *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* is binding Supreme Court precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.

a. **Was it correctly decided?**

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

Response: The Supreme Court's decision in *Gibbons v. Ogden* is binding precedent. If confirmed, I will faithfully and impartially apply binding Supreme Court and Ninth Circuit precedent, including *Gibbons v. Ogden.*

a. **Was it correctly decided?**

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

Response: The Bail Reform Act of 1984 provides that a rebuttable presumption in favor of pretrial detention arises when there is probable cause to believe that a defendant has committed: (a) certain drug offenses for which the maximum term of imprisonment is ten years or more; (b) certain offenses involving firearms, conspiracy, or international

terrorism; (c) certain other terrorism offenses for which the maximum term of imprisonment is ten years or more; (d) certain human trafficking offenses; and (e) certain offenses involving minors. *See* 18 U.S.C. § 3142(e)(3). Under § 3142(e)(2), a rebuttable presumption in favor of pretrial detention also arises when a defendant committed certain offenses while on pretrial release.

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

Response: Generally, pretrial detention is appropriate when "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(e)(2). The presumption of pretrial detention in certain cases ensures the safety of the community and the appearance of the defendant at court proceedings. *See, e.g., United States v. Salerno*, 481 U.S. 739, 747–51 (1987) (discussing the policy interests at issue in pretrial detention matters).

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. The Religious Freedom Restoration Act (RFRA) proscribes the government from "substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the government "demonstrates that application of the burden to the person: (1) is in furtherance of a compelling government interest and (2) is the least restrictive means of furthering that compelling government interest." 42 U.S.C. §§ 2000bb–1(a), (b). RFRA applies to religious organizations, *see Little Sisters of the Poor Sants Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) as well as to businesses operated by observant owners, *see Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 719 (2014).

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

Response: Government regulations that discriminate on the basis of religion must satisfy strict scrutiny. *See Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993). A law that restricts religious practice must "advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Id*. (citation omitted).

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*, the Supreme Court granted the religious entity-applicants injunctive relief against the executive order, finding that it likely violated their First Amendment right to free exercise. The executive order's regulations were subject to strict scrutiny because they "single[d] out houses of worship for especially harsh treatment." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17 (2020). The Court found that the applicants established a likelihood of success on the merits of their claim, irreparable harm from the violation of their First Amendment right to free exercise, and that injunctive relief was in the public interest. *Id*. at 19–20.

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

Response: In *Tandon v. Newsom*, the Supreme Court granted plaintiffs injunctive relief on their claim that a California regulation restricting private religious gatherings during the COVID-19 pandemic but not restricting similar business-related gatherings violated their First and Fourteenth Amendment rights. The Court held that government regulations "trigger strict scrutiny under the Free Exercise Clause whenever they treat any comparable secular activity more favorably than religious exercise" and found that the California regulation "treats some comparable secular activities more favorably than at-home religious exercise[.]" *Tandon v. Newsom*, 593 U.S. 61, 63 (2021). Therefore, the Court held that plaintiffs were likely to succeed on the merits and had met the other requirements for injunctive relief.

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

Response: Yes. In *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), the Supreme Court held that the Free Exercise Clause of the Constitution protects religious exercise activities outside the walls of houses of worship.

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Supreme Court held that the Colorado Civil Rights Commission did not comply with the First Amendment free exercise clause in its handling of a proceeding involving a baker's refusal to sell a wedding cake to a same-sex couple because the Commission demonstrated hostility to a religion or religious viewpoint.

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. "[I]t is not within the judicial function and judicial competence to inquire whether the petitioner . . . correctly perceived the commands of his faith. Courts

are not arbiters of scriptural interpretation." *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 716 (1981); *see also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) ("[I]t is not for [the Court] to say that their religious beliefs are mistaken or insubstantial.")

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

Response: As articulated by the Supreme Court in *Burwell v. Hobby Lobby Stores, Inc.*, the federal courts' "narrow function" is to "determine whether the [plaintiffs' asserted religious belief] reflects an honest conviction." 573 U.S. 682, 725 (2014) (citation omitted).

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

Response: As articulated by the Supreme Court in *Burwell v. Hobby Lobby Stores, Inc*., the federal courts' "narrow function" is to "determine whether the [plaintiffs' asserted religious belief] reflects an honest conviction." 573 U.S. 682, 725 (2014) (citation omitted).

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

Response. I am not familiar with the position of the Catholic Church on abortion.

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*, the Supreme Court held that the ministerial exception, which is grounded in the First Amendment free exercise cause, barred the employment discrimination claims of two teachers at Catholic schools. The Court reasoned that the ministerial exception applied to the teachers' claims because they were responsible for "educating and forming students in the Catholic faith[.]" *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2066 (2020).

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*, the Supreme Court held that Philadelphia's policy of refusing to contract with Catholic Social Services to provide foster care unless it agreed to allow same-sex couples to foster parent failed strict scrutiny and violated the First Amendment free exercise clause. 593 U.S. 522, 542 (2021). The Court reasoned that because the City's policy denied Catholic Social Services' request for an exception that would allow it to provide foster parent services without certifying same-sex couples, while allowing other entities to obtain exceptions, the policy violated the First Amendment free exercise clause because it unduly burdened the organization's religious beliefs and was not generally applicable. *Id*.

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*, the Supreme Court held that the "nonsectarian" requirement of Maine's tuition assistance program for private secondary schools violated the First Amendment free exercise and establishment clauses. The Court applied strict scrutiny to the program and held that Maine's "antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise." 596 U.S. 767, 781 (2022).

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 School District*, the Supreme Court held that the school district burdened its football coach's rights under the First Amendment free exercise clause by terminating him for his decision to pray quietly and to himself at midfield after games. The Court held that the coach had engaged in private speech, not government speech that was attributable to the school district, and that he had not impermissibly coerced his players to pray. The school district's treatment of the coach's religious exercise and speech failed under strict scrutiny because "the only meaningful justification the government offered for its reprisal rested on a mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech." 597 U.S. 507, 543 (2022).

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 *Mast v. Fillmore County, Minnesota*, Justice Gorsuch concurred in the decision to vacate the decision of the lower court and applied *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021) to find that the lower court and the County "misapprehended" the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). 141 S. Ct. 2430, 2432. RLUIPA requires that the government's

imposition of a land use regulation that places a "substantial burden on the religious exercise of a person" must further a compelling government interest and be the least restrictive means of furthering that interest. *See* 42 U.S.C. § 2000cc(a)(1). Justice Gorsuch found that the County had failed to "offer a compelling explanation why the same flexibility extended to [other groups was not] extended to the Amish." *Id*. at 2432.

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I cannot comment on an issue that may come before me to avoid creating the impression that I have prejudged the issue. *See* Code of Conduct for United States Judges, Canon 3A(6). If I am confirmed and presented with a case involving 18 U.S.C. § 1507, I will faithfully apply Supreme Court and Ninth Circuit precedent on the issue.

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;**

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

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

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

Response. No to all.

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: Under the Constitution, the President has the authority to make political appointments with the advice and consent of the Senate. U.S. Const. art. II, § 2. As a sitting United States Magistrate Judge and a judicial nominee, I am prohibited from expressing an opinion on what the President and Senate should consider in exercising their constitutional duties.

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

Response: A racially disparate impact of an employment policy or practice can be evidence of racial discrimination. "[S]ome facially neutral employment practices may violate Title VII even in the absence of a demonstrated discriminatory intent." *Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 988 (1988). Under a disparate impact theory of discrimination, proof of intent to discriminate is not required. *Id*. at 988. The Supreme Court has found that where an employer uses "standardized employment tests or criteria" that are "not demonstrably related to the jobs for which they were used" but that have a "markedly disproportionate adverse effect" on a racial minority, racial discrimination has occurred. *Id*. at 987–88; *see also Griggs v. Duke Power Co.*, 401 U.S. 424, 429 (1971). If confronted with a legal claim under Title VII or the Equal Protection Clause involving allegations of racial disparity, I would faithfully examine the factual record and apply binding precedent from the Supreme Court and Ninth Circuit.

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

Response: I do not have an opinion on whether Congress should increase or decrease the number of justices on the United States Supreme Court. Congress alone has the power to change the size of the Supreme Court. U.S. Const. art. III, § 1.

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: In *New York State Rifle & Pistol Ass'n v. Bruen*, the Supreme Court reaffirmed that the Second Amendment "protect[s] an individual right to armed self-defense" subject to "the historical understanding of the Amendment." 142 S. Ct. 2111, 2128 (2022).

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 *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022), the Supreme Court held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct . . . the government must demonstrate that [a firearm] regulation is consistent with this Nation's historical tradition of firearm regulation." If confirmed, I will faithfully apply all Supreme Court and Ninth Circuit precedent relating to the Second Amendment.

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

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

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

Response. No. In *New York Rifle & Pistol Ass'n v. Bruen*, the Supreme Court held that the right to own firearms is protected under "a test rooted in the Second Amendment's text, as informed by history." 142 S. Ct. 2111, 2127. The Supreme Court explained that the constitutional right to bear arms "in public for self-defense is not a 'second-class right.'" *Id.* at 2156 (quoting *McDonald v. Chicago*, 561 U.S. 742, 780 (2010)). If confirmed, I will faithfully apply Supreme Court and Ninth Circuit precedent relating to the Second Amendment.

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

Response: No. In *New York Rifle & Pistol Ass'n v. Bruen*, the Supreme Court held that the right to own firearms is protected under "a test rooted in the Second Amendment's text, as informed by history." 142 S. Ct. 2111, 2127 (2022). The Court did not suggest that the right to own firearms is less protected than the right to vote. If confirmed, I will faithfully apply Supreme Court and Ninth Circuit precedent relating to the Second Amendment.

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

Response: Article II, Section 3 of the Constitution states that the President "shall take Care that the Laws be faithfully executed." As a sitting United States Magistrate Judge and a judicial nominee, I am prohibited from expressing an opinion regarding the appropriate exercise of this power.

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

Response: Prosecutorial discretion involves an executive official's decision whether to initiate a criminal prosecution. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). A substantive administrative rule change occurs via a rulemaking process undertaken by an administrative agency pursuant to the Administrative Procedure Act or other applicable law. *See* 5 U.S.C. § 553.

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

Response: No. Congress enacted 18 U.S.C. § 3591, which states that a defendant who has been found guilty of certain federal offenses "shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years at the time of the offense." The death penalty for state offenses is enacted by the states. *See* U.S. Const. amend. X.

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 Association of Realtors v. HHS*, the Supreme Court vacated the stay of the judgment of the U.S. District Court for the District of Columbia that the nationwide moratorium on evictions of tenants living in counties with substantial or high levels of COVID-19 transmission, imposed by the Centers for Disease Control and Prevention (CDC), was unlawful. 141 S. Ct. 2485, 2486 (2021). The Supreme Court found that the applicants were "virtually certain to succeed on the merits of their argument that the CDC exceeded its authority" under the Public Health Services Act, on which it relied to enact the moratorium. *Id*.

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.

Senator Josh Hawley
Questions for the Record

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

      Response: No.

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 explained that "the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 650 (2008). The Supreme Court has applied original public meaning in various contexts including with respect to the Second Amendment and the Confrontation Clause. *See, e.g., New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004). If confirmed, I would faithfully follow binding Supreme Court and Ninth Circuit precedent that require a court to consider original public meaning when interpreting constitutional provisions.

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

   Response: When interpreting legal text, I look first to the text itself and to any Supreme Court or Ninth Circuit precedent interpreting that text; if binding precedent exists, I faithfully apply and follow it. If the statutory language is unambiguous and the statutory scheme is coherent and consistent . . . the inquiry ceases." *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). If, after considering precedent, the statutory scheme, and the canons of statutory interpretation, the text remains ambiguous, I would consult legislative history to the extent permissible under Supreme Court and Ninth Circuit precedent. In all instances, I would consult legislative history warily because the Supreme Court has cautioned that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

   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: In considering legislative history when interpreting a statute, I would apply relevant Supreme Court and Ninth Circuit precedent relating to the

persuasiveness of certain forms of legislative history. For example, the Supreme Court in *Russello v. United States*, held that "[w]here Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended." 464 U.S. 16, 23–24 (1983). The Supreme Court also has distinguished between pre-enactment and post-enactment legislative history. *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 (2011) ("Post-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation.") The Supreme Court has "eschewed reliance on the passing comments of one Member and casual statements from floor debates." *Garcia v. United States*, 469 U.S. 70, 76 (1984) (citations omitted); *see also NLRB v. SW Gen., Inc.*, 580 U.S. 288, 307 (2017) ("[F]loor statements by individual legislators rank among the least illuminating forms of legislative history."). The history of amendments, revisions, and repeals of a statute are considered probative of legislative intent. *See, e.g., Pierce County v. Guillen*, 537 U.S. 129, 145 (2003).

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 is appropriate to consider foreign law when interpreting the United States Constitution only in limited circumstances as authorized by the Supreme Court. For example, in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, the Court considered English history and law in interpreting the Second Amendment. 597 U.S. 1, 39–44 (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: To prevail on a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment, a claimant must show that the protocol "creates a demonstrated risk of severe pain" and that the risk "is substantial when compared to the known and available alternatives." *Glossip v. Gross*, 576 U.S. 863, 877–78 (2015) (noting that "prisoners cannot successfully challenge a method of execution unless they establish that the method presents a risk that is *sure or very likely* to cause serious illness and needless suffering, and give rise to sufficiently *imminent* dangers") (emphasis in original) (citation omitted)); *see also Atwood v. Shinn*, 36 F.4th 901, 904 (9th Cir.), *cert. denied*, 142 S. Ct. 2809 (2022) (same).

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. "[T]he Eighth Amendment requires a prisoner to plead and prove a known and available alternative." *Glossip v. Gross*, 576 U.S. 863, 880 (2015).

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 *District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52 (2009), the Supreme Court held that a habeas corpus petitioner had no due process right to access DNA evidence, reversing the Ninth Circuit's decision to the contrary.

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

Response: No.

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

Response: A neutral and generally applicable law that incidentally burdens religious exercise is not subject to strict scrutiny under the First Amendment free exercise clause. *See Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878–82 (1990); *see also Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531 (1993); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021). However, government action that is not generally applicable, such as where a law invites "the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions," *Fulton*, 141 S. Ct. at 1877, or where a law treats "any comparable secular activity more favorably than religious exercise," *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), is subject to strict scrutiny.

The Religious Land Use and Institutionalized Persons Act ("RLUIPA") requires that any government action "that imposes a substantial burden on the religious exercise of a person," regardless of its facial neutrality, must further a compelling government interest and be the least restrictive means of furthering that interest. *See* 42 U.S.C. § 2000cc(a)(1). Similarly, the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb *et seq.,* proscribes federal governmental action that substantially burdens the exercise of religion even if the burden stems from a generally applicable law. In such circumstances, the government must demonstrate that the burden on the person, for-profit corporation, or religious organization furthers a compelling governmental interest by the least restrictive means. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705 (2014). Under Ninth Circuit precedent, a "substantial burden" is a "significantly great restriction or onus upon [religious] exercise" that includes "outright bans" on such

exercise as well as "lesser restrictions" that threaten punishment or cause "substantial delay, uncertainty, and expense." *Johnson v. Baker*, 23 F.4th 1209, 1215–16 (9th Cir. 2022).

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: The legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief is strict scrutiny. *See, e.g., Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021); *Carson v. Makin*, 142 S. Ct. 1987 (2022); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).

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 Supreme Court has held that "it is not within the judicial function and judicial competence to inquire whether the petitioner . . . correctly perceived the commands of [his] faith. Courts are not arbiters of scriptural interpretation." *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 716 (1981); *see also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) ("[I]t is not for [the Court] to say that their religious beliefs are mistaken or insubstantial.") Instead, the Supreme Court instructs that the court's "narrow function" in this context is to determine whether the asserted religious belief "reflects an honest conviction." *Id*. at 686.

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: The Supreme Court in *District of Columbia v. Heller* held that the Second Amendment guarantees "the individual right to possess and carry weapons in case of confrontation" and to maintain and use a firearm for traditionally lawful purposes such as self-defense in one's home. 554 U.S. 570 (2008).

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 explained in the same opinion that he meant that "a constitution is not intended to embody a particular economic theory." *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting). As a sitting United States Magistrate Judge and a judicial nominee, I am generally precluded from commenting on the correctness of Supreme Court precedent because it is possible that related issues could come before the courts. However, to the extent that Justice Holmes was stating that a judge should not determine cases based upon his or her personal views, I agree.

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

Response: *Lochner* was abrogated in large part by *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). If confirmed, I will faithfully follow and apply all governing Supreme Court and Ninth Circuit precedent without regard to any beliefs I may have about its correctness.

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

Response: The Supreme Court in *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018) stated that "*Korematsu* was gravely wrong the day it was decided" and "has no place in law under the Constitution." It appears that the Court may have used the phrase had "been overruled in the court of history" to reflect that although *Korematsu* had not been officially overturned by the Supreme Court, it was widely discredited and viewed with substantial disfavor in the years following its issuance.

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 should follow controlling law and leave to the Supreme Court "the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). If confirmed, I will faithfully apply all United States Supreme Court precedent without regard to any beliefs I may have about its correctness.

a. If so, what are they?

Response: Please see answer to Question 14.

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

Response: Yes. I commit to faithfully applying all Supreme Court precedents.

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

a. Do you agree with Judge Learned Hand?

Response: I understand Judge Learned Hand's statement to be part of an explanation of the fact-intensive inquiry underlying a determination of market share within the relevant market. *See United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945). The Supreme Court in *Eastman Kodak v. Image Tech. Servs., Inc.*, 504 U.S. 451, 481 (1992) stated that a defendant holding more than 80 percent of the market "with no readily available substitutes" could support a finding of monopoly power. However, "a market share of less than 50 percent is presumptively insufficient to establish market power." *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1438 (9th Cir. 1995).

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

Response: If confirmed, I will faithfully apply precedent regarding what constitutes a monopoly regardless of any beliefs I may have about its correctness or its consistency with Judge Learned Hand's statement.

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: Please see answer to Question 15.

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

Response: The Supreme Court in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938) stated that "[t]here is no federal general common law." "[O]nly limited areas exist in which federal judges may appropriately craft the rule of decision," such as "admiralty disputes" and "certain controversies between States." *Rodriguez v. Fed. Deposit Ins. Corp.*, 589 U.S. 132, 136 (2020).

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 interpretation of the meaning of a state constitutional provision is a matter of state law on which federal courts defer to the decisions of the highest court in the state whose constitution the federal court is interpreting. *See Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) ("Except in matters governed by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern."); *see also Bute v. People of State of Ill.*, 333 U.S. 640, 649 (1948) (federal courts must accept state court interpretations of state constitutional provisions unless they are inconsistent with "fundamental principles of liberty and justice"); *Wainwright v. Goode*, 464 U.S. 78, 84 (1983).

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

Response: Please see answer to Question 17. Generally, the interpretation of state constitutions and state laws is a matter to be left to the state courts. *See, e.g., Hebert v. State of La.,* 272 U.S. 312, 316–17 (1926). I am not aware of any Supreme Court or Ninth Circuit cases holding that a federal court must identically interpret identical text from state and federal constitutional provisions.

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

Response: The Supreme Court has explained that state constitutional provisions can provide greater protections than the Federal Constitution. For example, the Supreme Court has stated that, "[i]t is elementary that States are free to provide greater protections in their criminal justice system than the Federal Constitution requires." *See California v. Ramos*, 463 U.S. 992, 1013–14 (1983); *see also Cooper v. State of California*, 386 U.S. 58, 62 (1967) (recognizing "the State's power to impose higher standards on searches and seizures than required by the Federal Constitution if it chooses to do so").

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

Response: As a sitting United States Magistrate Judge and judicial nominee, I am precluded by the Canons of the Code of Conduct for United States Judges from giving an opinion on whether a Supreme Court decision was correctly decided. However, because the constitutionality of *de jure* racial segregation is unlikely to come before me should I be confirmed, and consistent with the responses of other judicial nominees, I can state that *Brown v. Board of Education* was correctly decided.

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

a. **If so, what is the source of that authority?**
b. **In what circumstances, if any, is it appropriate for courts to exercise this authority?**

Response to all subparts: Federal Rule of Civil Procedure 65 authorizes federal courts to issue injunctions. Federal courts should grant injunctive relief only when a plaintiff establishes: (1) a likelihood of success on the merits of his claim; (2) a likelihood of irreparable harm in the absence of relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Supreme Court has upheld nationwide injunctions in certain circumstances when necessary to grant relief. *See Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2088–89 (2017); *but see Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (reversing grant of nationwide injunction based on plaintiffs' failure to show a likelihood of success on the merits). Injunctive relief "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Injunctions are "a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). If confirmed, I would apply this precedent faithfully and impartially to requests for injunctive relief that come before me.

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

Response: See response to Question 19.

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

Response: The Constitution establishes a system of dual sovereignty between the States and the Federal Government. The Supreme Court has explained that "[. . .] under our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause." *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991) (citation omitted). The Supreme Court also has explained that "[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress." *New York v. United States*, 505 U.S. 144, 156 (1992). Federalism serves as a check on abuses of government power, balances power between the federal government and state governments, and ensures the protection of fundamental liberties. *Gregory*, 501 U.S. at 458 (reasoning that "[the] federalist structure of joint sovereigns preserves to the people numerous advantages. It assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile

citizenry.").

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

Response: "Abstention doctrines do not create a condition precedent to litigation; rather, they serve federalism by allowing a state court to decide state-law issues in the first instance." *See Harman v. Forssenius*, 380 U.S. 528, 534 (1965) ("[A]bstention may be proper in order to avoid unnecessary friction in federal[-]state relations [and] interference with important state functions."). Abstention is "the exception, not the rule." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 82 (2013)). Several abstention doctrines may apply when a case brought in federal court is connected to state court proceedings. For example, the *Younger* abstention doctrine requires federal courts to abstain from interfering with ongoing state criminal proceedings, certain state civil enforcement proceedings, or state civil proceedings that uniquely further the state courts' ability to perform their judicial functions. *See Younger v. Harris*, 401 U.S. 37 (1971) (federal courts should consider if the ongoing state proceeding implicates important state interests and provides an adequate opportunity to raise federal challenges); *see also Sprint Commc'ns, Inc.*, 571 U.S. at 73. *Pullman* abstention is "an equitable doctrine that allows federal courts to refrain from deciding sensitive federal constitutional questions when state law issues may moot or narrow the constitutional questions." *See Gearing v. City of Half Moon Ba*y, 54 F.4th 1144, 1147 (9th Cir. 2022), *cert. denied,* 144 S. Ct. 95 (2023); *see also Railroad Commission of Texas v. Pullman Co.,* 312 U.S. 496 (1941). Finally, *Burford* abstention is designed to "protect[ ] complex state administrative processes from undue federal interference." *Blumenkron v. Multnomah Cnty.,* 91 F.4th 1303, 1312 (9th Cir. 2024) (citations omitted); *see also New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 361 (1989).

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

Response: Whether damages and/or injunctive relief is a proper remedy depends on the factual circumstances and the claims at issue in the case before the court. Generally, the equitable remedy of injunctive relief is appropriate only if legal remedies such as monetary damages do not adequately compensate the injury. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). As a sitting United States Magistrate Judge and judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting on a matter that may come before me such as requests for damages and/or injunctive relief. Should I be confirmed as a district judge, I will faithfully apply Supreme Court and Ninth Circuit precedent to all determinations regarding an award of damages and/or injunctive relief.

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

Response: The Supreme Court in *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) held that the Fifth and Fourteenth Amendments protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and which are "implicit in the concept of ordered liberty." Such substantive rights include, but are not limited to, the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), the right to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), the right to direct the education and upbringing of one's children, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the right to engage in private, consensual sexual acts, *Lawrence v. Texas*, 539 U.S. 558 (2003), the right to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965), the right to same-sex marriage, *Obergefell v. Hodges*, 576 U.S. 644 (2015), the right to travel freely between the states, *Sáenz v. Roe*, 526 U.S. 489 (1999), and the right not to be forcibly administered drugs, *Rochin v. California*, 342 U.S. 165 (1952).

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: Please see responses to Questions 8 and 9. In *Kennedy v. Bremerton Sch. Dist.*, the Supreme Court stated that "[r]espect for religious expressions is indispensable to life in a free and diverse Republic." 597 U.S. 507, 543 (2022).

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

Response: The Supreme Court in *Lee v. Weisman*, 505 U.S. 577, 591 (1992) referred to the First Amendment as protecting the "freedom of worship." *See also West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943) (listing "freedom of worship" among the rights protected by the Bill of Rights). The Free Exercise Clause protects the free exercise of religion and freedom of worship. *Kennedy v. Bremerton Sch. Dist*., 597 U.S. 507, 543 (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 responses to Question 8 and 9.

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

Response: See response to Question 10.

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

Response: The Religious Freedom Restoration Act (RFRA) "applies to all Federal law, and the implementation of that law, whether statutory or otherwise." 42 U.S.C. §§ 2000bb(a)(1). The Supreme Court in *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) stated that RFRA "applies to all Federal law, and the implementation of that law, whether statutory or otherwise. RFRA also permits Congress to exclude statutes from RFRA's protections." The Supreme Court has determined that RFRA provides "very broad protection for religious liberty." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693, 706 (2014) (holding that the owner of a closely held corporation with religious objections to contraceptives could not be required to provide insurance coverage for them to employees under the Affordable Care Act).

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 Supreme Court in *Illinois v. Gates* stated that "an effort to fix some general, numerically precise degree of certainty corresponding to 'probable cause' may not be helpful[.]" 462 U.S. 213, 235 (1983). According to the Model Criminal Jury Instructions for the Ninth Circuit, "proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty." *See also United States v. Velasquez*, 980 F.2d 1275, 1278 (9th Cir. 1992) (affirming use of the "firmly convinced" language in jury instruction on reasonable doubt).

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

a. **Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?**
b. **In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?**
c. **If you disagree with either of these statements, please explain why and provide examples.**

Response to all subparts: A "federal court may grant habeas relief only if a state court violated *clearly established* Federal law, as determined by *the Supreme Court* of the United States." *Dunn v. Reeves*, 594 U.S. 731, 739 (2021) (emphasis in original). "This wide latitude means that federal courts can correct only extreme malfunctions in the state criminal justice system." *Id*. (citation omitted). In other words, "a federal court may grant [habeas] relief only if every fairminded jurist would agree that every reasonable lawyer would have made a different decision." *Id*. at 740 (emphasis in original) (citation omitted). As a sitting United States Magistrate Judge and judicial nominee, I am precluded by Canon 3(A)(6) of the Code of Conduct for United States Judges from commenting further on a matter that may come before me such as petitions for habeas corpus relief. Should I be confirmed as a district judge, I will faithfully apply Supreme Court and Ninth Circuit precedent to all determinations regarding habeas petitions.

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?**
b. **If yes, please explain if and how you believe this practice is consistent with the rule of law.**
c. **If confirmed, would you treat unpublished decisions as precedential?**
d. **If not, how is this consistent with the rule of law?**
e. **If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?**
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.**
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 to all subparts: The Ninth Circuit Rules and the Federal Rules of Appellate Procedure set forth the legal framework for federal courts' application of published opinions versus unpublished dispositions. Ninth Circuit Rule 36-2 sets forth the criteria for publication of a court's disposition. Ninth Circuit Rule 36-3(a) states that unpublished dispositions "are not precedent, except when

relevant under the doctrine of law of the case or rules of claim preclusion or issue preclusion." However, unpublished dispositions issued on or after January 1, 2007 may be cited. *See* Ninth Circuit Rule 36-3(b); *see also* Federal Rule of Appellate Procedure 32.1(a)(ii). Federal Rule of Appellate Procedure 32.1(a) further provides that a court "may not prohibit or restrict the citation of" unpublished or non-precedential dispositions. If confirmed, I will apply the Federal Rules of Appellate Procedure and Ninth Circuit Rules regarding the citation and application of unpublished dispositions without regard to any personal views I may hold about such rules.

29. In your legal career:

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

Response: In my many years as a civil litigator and an Assistant United States Attorney in the criminal division, I tried approximately seven felony trials as either first or only chair.

b. How many have you tried as second chair?

Response: In my many years as a civil litigator and an Assistant United States Attorney in the criminal division, I tried approximately one felony trial as second chair and one civil trial as second chair.

c. How many depositions have you taken?

Response: In my many years as a civil litigator and an Assistant United States Attorney in the criminal division, I have taken an estimated 25-50 depositions.

d. How many depositions have you defended?

Response: In my many years as a civil litigator and an Assistant United States Attorney in the criminal division, I have defended an estimated 25-50 depositions.

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

Response: While I have filed multiple appellate briefs with the Ninth Circuit, my appellate cases were all successfully resolved on the briefing without need for oral argument.

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

Response: None.

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

Response: None.

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

Response: In my many years as a civil litigator and an Assistant United States Attorney in the criminal division, I have argued multiple dispositive motions in trial court, but I have not tracked the number.

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

Response: In my many years as a civil litigator and an Assistant United States Attorney, I have filed and responded to many evidentiary motions, and I have argued some of the motions in trial courts; however, I have not tracked the number.

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

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

Response: From 2000-2002, I worked for the law firm of Lewis and Roca. To the best of my memory, I billed approximately 1,800 hours per year.

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

Response: Because I was a new associate at Lewis and Roca, I was not taking on nor assigned pro bono projects during my first two years; however, as my experience grew, I began to use my legal training to advance and develop high school and law students in both trial and appellate moot courts.

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 a judge must decide cases based on applicable law and relevant facts, not based on his or her personal preferences or values. If confirmed, I will continue to faithfully apply Supreme Court and Ninth Circuit precedent regardless of any personal feelings I may have about the outcome of a case.

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: I understand this statement to mean that judges must faithfully and impartially apply the law, regardless of personal opinions or preferences. I agree with this statement as I have described it. If confirmed, I will continue to faithfully apply Supreme Court and Ninth Circuit precedent without regard to any personal views I may hold about the correctness of that precedent.

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: I understand this statement to mean that judges must faithfully and impartially apply the law, regardless of personal opinions or preferences. I agree with this statement as I have described it. If confirmed, I will continue to faithfully apply Supreme Court and Ninth Circuit precedent regardless of any personal views I may hold about that precedent.

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: A to Z Mysteries (children's book series); The Light We Carry by Michelle Obama; and Untamed by Glennon Doyle.

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

Response: I have not had the opportunity to study whether America is "systemically racist," and I believe the term "systemically racist" may have different meanings to different people. I do not have my own definition. In my personal experience, I have had the honor of becoming a United States Magistrate Judge, and I ensure that every matter that comes before me is handled fairly and impartially without regard to race. To the extent that a claim raising the issue as to whether America is "systemically racist" comes before me, I will make factual and legal determinations based on the evidence presented in the case and the law as instructed by the Supreme Court and the Ninth Circuit.

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

Response: I do not have one case or legal representation of which I am most proud. Instead, I am most proud of my daily and enduring commitment to justice and fairness in the nearly 1,500 criminal cases I prosecuted on behalf of the United States spanning two decades.

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

a. How did you handle the situation?

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

Response: My ethical obligations preclude me from identifying any specific matters in which I took a position in litigation on behalf of a client that conflicted with my personal views. If such a scenario arose, I fulfilled my ethical obligation to advocate and make legally supported arguments on my client's behalf. If confirmed, I commit to applying the law as written, without regard to any personal beliefs I may hold regarding the policies embodied in the law.

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

Response: In my work as a sitting United States Magistrate Judge, I rely primarily on federal and state constitutions, federal statute and regulations, and federal case law. I rarely rely on law review articles or other publications by law professors. Because I do not regularly read law review articles or other academic publications, I cannot identify any law professors whose work I read often.

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

Response: No specific Federalist Paper has shaped my views of the law. However, Alexander Hamilton's Federalist 78 is informative about the role of the federal judiciary.

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

Response: I do not recall a specific judicial opinion or law review article that caused me to change my mind. I have read many persuasive judicial opinions. If confirmed, I would faithfully apply all binding precedent regardless of how persuasive I consider it to be.

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

Response: The Supreme Court stated in *Dobbs v. Jackson Women's Health Organization* that the question of when human life begins is a "profound moral issue" on which it does not express "any view." 597 U.S. 215, 223–225, 254, 263 (2022). As a sitting United

States Magistrate Judge and judicial nominee, I cannot comment on the merits of any issue that may come before me. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If confirmed, I will faithfully apply Supreme Court precedent on this matter.

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: In either late 2006 or early 2007, I testified under oath in a state child custody proceeding to determine whether my nephew and niece could travel abroad for my wedding. I do not have the court records and do not believe they are available online. The court granted permission for my nephew and niece to travel abroad for my wedding, which they did without incident.

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 to all the above.

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

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

Response: I hold shares in Apple, Amazon, and Google.

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: To the best of my recollection, no.

48. Have you ever confessed error to a court?

- **a. If so, please describe the circumstances.**

Response: To the best of my recollection, no.

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: My understanding is that judicial nominees have a duty to provide truthful answers to the questions of the Committee so that the Senate can provide advice and consent on judicial appointments as set forth in Article II, Section 2 of the Constitution.

Senator John Kennedy
Questions for the Record

Angela Martinez

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

   Response: Yes. The Supreme Court in *Gregg v. Georgia* held that the death penalty is constitutional. 428 U.S. 153 (1976). The offenses that are punishable by death and the procedural requirements for such cases are set forth in 18 U.S.C. §§ 3591-3593. If confirmed, I will faithfully apply and follow relevant Supreme Court and Ninth Circuit precedent, as well as statutory procedure, in any matter involving a death sentence.

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: As a sitting United States Magistrate Judge, my judicial philosophy is that I am first and foremost a public servant who holds sacred my solemn oath to administer justice fairly and impartially and to faithfully uphold the Constitution and the laws of the United States. I hold sacred the importance of an independent judiciary that diligently ensures equal and timely access to justice under law. If confirmed, I will adhere to my solemn oath as a judicial officer to uphold the Constitution and the laws of the United States without bias or prejudice. I will ensure that all cases are handled in a fair and impartial manner and that all who come before the court are treated with dignity and respect.

   When interpreting the Federal Constitution or a statute, I look first to the text itself and to any Supreme Court or Ninth Circuit precedent interpreting that text; if binding precedent exists, I faithfully apply and follow it. If no binding precedent resolves the matter and if the text is ambiguous, I consider additional Supreme Court and Ninth Circuit precedent

interpreting similar constitutional or statutory provisions as well as decisions from other federal circuit courts that may have interpreted the legal text at issue in the case. I may also consider judicial canons of construction.

6. Is originalism a legitimate method of constitutional interpretation?

Response: Yes. "[T]he public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008). If confirmed, I would faithfully follow the binding precedent of the Supreme Court and Ninth Circuit when interpreting the Constitution.

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 presented with a constitutional issue of first impression, I would faithfully apply the constitutional text as written, as well as Supreme Court precedent on how to interpret the meaning of that text. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

8. Is textualism a legitimate method of statutory interpretation?

Response: Yes. If confirmed, when called upon to interpret a statute, I would look first to any prior interpretations by the Supreme Court or the Ninth Circuit. If such precedent exists, I will faithfully apply it. In the absence of binding precedent, I would look to the text of the statute. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). "If the statutory language is unambiguous and the statutory scheme is coherent and consistent . . . the inquiry ceases." *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016); *see also Bostock v. Clayton Cty.*, 590 U.S. 644, 674 (2020) (stating that "when the meaning of the statute's term is plain, our job is at an end").

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

Response: See responses to Questions 7 and 8.

When interpreting the meaning of a statute or provision, after considering any binding precedent, courts look to the plain language of the statute. "If the statutory language is unambiguous and the statutory scheme is coherent and consistent . . . the inquiry ceases." *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016); *see also Bostock v. Clayton Cty.*, 590 U.S. 644, 674 (2020) (stating that "when the meaning of the statute's term is plain, our job is at an end").

If, after considering precedent, the statutory scheme, and the canons of statutory interpretation, the statute remains ambiguous, I would then consult legislative history as authorized by the Supreme Court and the Ninth Circuit. However, "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp.*, 545 U.S. at 568. In considering legislative history when interpreting a statute, I would apply relevant Supreme Court and Ninth Circuit precedent relating to the persuasiveness of certain forms of legislative history. *See, e.g., Pierce County v. Guillen*, 537 U.S. 129, 145–46 (2003) (considering the history of amendments to legislation).

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 does not change except through the amendment process set forth in Article V of the Constitution. Nevertheless, the Supreme Court has explained that "[a]lthough [the Constitution's] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022) (citing *United States v. Jones*, 565 U.S. 400, 404–5 (2012) (holding that installation of a tracking device was "a physical intrusion [that] would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted")).

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

Response: The Supreme Court in *Rivas-Villegas v. Cortesluna* reversed the conclusion of the Ninth Circuit that a police officer was not entitled to qualified immunity. 595 U.S. 1 (2021). Qualified immunity applies "when an officer's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Rivas-Villegas*, 595 U.S. at 5. The Supreme Court held that the officer's conduct in placing his knee on the suspect's back for no more than eight seconds, and only on the side of his back near the knife that officers were in the process of retrieving, did not violate a clearly established right against excessive force. *Id*. at 4–5.

In finding officer Rivas-Villegas not entitled to qualified immunity, the Ninth Circuit analogized to the scenario in *LaLonde v. Cnty. of Riverside*, 204 F.3d 947 (9th Cir. 2000), stating that both suspects were lying face-down on the ground and "were not resisting either physically or verbally." *Cortesluna v. Leon*, 979 F.3d 645, 654 (9th Cir. 2020). However, the Supreme Court found the facts of *LaLonde* "materially distinguishable." *Rivas-Villegas*, 595 U.S. at 5. In *LaLonde*, the suspect was unarmed and testified that the officer deliberately dug his knee into the suspect's back when he had no weapon and had made no threat. In contrast, the suspect in *Rivas-Villegas* was armed with a knife. Further, video evidence showed that the officer had his knee on the suspect's back for no more than eight seconds and only on the side of the back near the knife. *Id*. at 8–9. The Supreme Court relied on these factual differences in concluding that officer Rivas-

Villegas was entitled to qualified immunity.

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: Federal Rule of Civil Procedure 65 authorizes federal courts to issue injunctions. Federal courts should grant injunctive relief only when a plaintiff establishes: (1) a likelihood of success on the merits of his claim; (2) a likelihood of irreparable harm in the absence of relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Supreme Court has upheld nationwide injunctions in certain circumstances when necessary to grant relief. *See Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2088-89 (2017); *but see Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (reversing grant of nationwide injunction based on plaintiffs' failure to show a likelihood of success on the merits). Injunctive relief "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Injunctions are "a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). If confirmed, I would apply this precedent faithfully and impartially to requests for injunctive relief that come before me.

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. Lower courts should follow controlling law and leave to the Supreme Court "the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). If confirmed, I will faithfully apply all United States Supreme Court precedent without regard to any opinion I may have about its correctness or constitutionality.

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 treats "the considered dicta of the Supreme Court with greater weight and deference as prophecy of what that Court might hold." *Valladolid v. Pac. Operations Offshore, LLP*, 604 F.3d 1126, 1131 (9th Cir. 2010), *aff'd and remanded sub nom. Pac. Operators Offshore, LLP v. Valladolid*, 565 U.S. 207 (2012) (citation omitted). However, the Ninth Circuit also provides that "[w]e do not blindly [. . .] follow

an unconsidered statement simply because it was uttered by the Supreme Court." *Id*. If confirmed, I would faithfully apply legally 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. None.