

Senator Lindsey Graham, Ranking Member
Questions for the Record
Michelle Williams Court
Nominee to be United States District Judge for the Central District of California

1. **You are an active member of the Women Lawyers Association of Los Angeles (“WLALA”). WLALA highlights its strong condemnation of *Dobbs*, accusing the decision of “severely curtail[ing] or eliminate[ing] . . . a person’s freedom to make informed medical decisions about their pregnancy.” Do you agree with WLALA’s characterization of *Dobbs*?**

Response: As a sitting California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on whether a particular case was correctly decided. If confirmed, I will fairly and impartially apply all binding precedents of the Supreme Court and Ninth Circuit, including *Dobbs*.

- a. **WLALA states that “[w]e do not accept this result for our society.” Is it appropriate for a judge to be a member of an organization that refuses to accept binding precedent?**

Response: The appropriateness of a judge’s membership in a given organization depends on many factors, including the nature of the organization, the judge’s role within the organization, and how it might impact the judge’s ability to carry out her duties fairly and impartially. In my current role as a California state court judge, and not withstanding membership in any organization, I have fairly and impartially applied all binding precedents of the United States and California Supreme Courts. If confirmed, I will fairly and impartially apply all binding precedents of the Supreme Court and Ninth Circuit, including *Dobbs*.

2. **You were Vice President and General Counsel at Bet Tzedek Legal Services. According to their website, Bet Tzedek “support[s] children . . . who identify as transgender and gender non-conforming.” How does Bet Tzedek “support” transgender children?**

Response: I do not know how Bet Tzedek supports transgender children. I left my employment at Bet Tzedek Legal Services shortly after I was appointed to the state court bench in 2011. I have not worked there for more than twelve years. During the time I did work there, Bet Tzedek’s practice did not include services for transgender or gender non-conforming children.

- a. **Do you support “gender affirming care” for minors?**

Response: As a sitting California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on matters of policy that are reserved for the legislative and executive branches and from commenting on the merits of any matter pending or impending in any court. If confirmed, I will fairly and impartially apply all binding precedent.

3. **In 2021 on *The Portia Project*, you said that you are one of two judges tasked with reviewing name-change petitions. You’ve publicly discussed your role in changing “gender identity markers” and said that you “try very hard to ensure that transgender litigants feel seen, are heard for who they are and who they present themselves to be.”**

- a. **How were you assigned to this role? Did you apply, request, or volunteer?**

Response: Pursuant to Los Angeles Superior Court Local Rule 2.8(e), name change petitions filed in the Central District of the court are assigned to the Assistant Supervising Judges of the Civil Division. I served as an Assistant Supervising Judge of the Civil Division from January 2021 through December 2022.

- i. **If you applied, requested, or volunteered, why did you do so?**

Response: Not applicable.

- b. **How long have you held this role?**

Response: I held that role from January 2021 through December 2022.

- c. **What factors do you consider when determining whether to grant a name-change petition?**

Response: “Code of Civil Procedure sections 1275 *et seq.* govern the process by which an individual can obtain a formal legal name change in California. Section 1277 provides that once a petition seeking a name change is filed, the superior court shall make an order setting forth the details of the petition and direct all persons interested in the matter “to appear before the court at a time and place specified” (Code Civ. Proc., § 1277, subd. (a)(1).) That section also directs that notice of the hearing and pending petition be published in a newspaper of general circulation. (*Id.*, subd. (a)(2)(A).) Section 1278, subdivision (a)(1) provides that if an objection is filed by any person, the court may examine “on oath” any persons touching the petition or application and may order the name change or dismiss the petition as to the court may seem right and proper. And section 1278, subdivision

(a)(2) goes on to provide that “If no objection is filed ... the court may, without hearing, enter the order that the change of name is granted.” *Wood v. San Francisco County Superior Court*, 100 Cal.App.5th 717, 722–723 (2024).

During the time I handled name change petitions, each petition was supported by a nationwide criminal history check which listed probation/parole status and a check of the sex offender database. A petition for name change may only be denied if there are “substantial and principled reasons” for denying a name change. (See *In re Arnett*, 148 Cal.App.4th 654, 661 (2007)). California state courts have held, a person should be able to “adopt any name he or she chooses [citation] so long as the name is not adopted to defraud or intentionally confuse.” (*Weathers v. Superior Court*, 54 Cal.App.3d 286, 288–289 (1976)). In handling name change petitions, I applied those precedents binding on me as a California state court judge, including *Arnett* and *Weathers*.

d. What factors do you consider when determining whether to change someone’s “gender identity marker”?

Response: The factors considered when determining whether to grant a gender change petition are governed by statutory and case law procedures similar to those used for name change petitions. Primarily, the courts must determine whether there are any substantial and principled reasons for denying the petition (*In re Arnett*, 148 Cal.App.4th 654 (2007)). If no such reasons exist, the petition should be granted. In cases involving gender change, medical and psychological evidence supporting the necessity of gender change may also be taken into consideration.

e. Is it possible to objectively determine a person’s gender?

Response: I am not an expert in this area. More importantly, in determining whether to grant a gender change petition, it is my role as a California state court judge to follow statutory and case law precedents set out by the legislature and California appellate courts.

f. Have you ever ordered the change of a “gender identity marker” for a child (under the age of 18)?

Response: Every petition for change of a gender identity marker has come before me as a petition for change of name to conform with gender identity. California law requires all petitions for name change concerning a minor to be submitted by a parent and to be accompanied by a copy of the minor’s birth certificate. I have never granted petition for a change of gender identity marker for a minor in a case

where a parent objected.

i. **If yes, approximately how many? Please provide citations to the relevant cases.**

According to my review of the Los Angeles Superior Court case management system, I have granted twenty-six petitions for change of name of a minor to conform with gender identity. The citations to these cases are:

In The Matter Of: Kaia Ruth Ballard, No. 20STCP04128 (L.A. Cnty. Super. Ct. Feb. 9, 2021)

In The Matter Of: Ema Luz Julian-Lorenz, No. 20STCP04267 (L.A. Cnty. Super. Ct. Mar. 1, 2021)

In The Matter Of: Miranda Ryana Gomez, No. 21STCP00596 (L.A. Cnty. Super. Ct. Apr. 26, 2021)

In The Matter Of: Hal Ru Stevens, No. 21STCP00977 (L.A. Cnty. Super. Ct. May 24, 2021)

In The Matter Of: Cynthia Paola Velasquez, No. 21STCP01356 (L.A. Cnty. Super. Ct. June 28, 2021)

In The Matter Of: Mason Reign-Keishan Moseley, No. 21STCP01504 (L.A. Cnty. Super. Ct. July 12, 2021)

In The Matter Of: Emmanuel Santamaria, No. 21STCP01518 (L.A. Cnty. Super. Ct. July 12, 2021)

In The Matter Of: Stepanie Anne Zuckerman, No. 21STCP02434 (L.A. Cnty. Super. Ct. Sept. 27, 2021)

In The Matter Of: Arlene Alpuerto, No. 21STCP02445 (L.A. Cnty. Super. Ct. Sept. 27, 2021)

In The Matter Of: Eric Wang, No. 21STCP02772 (L.A. Cnty. Super. Ct. Nov. 1, 2021)

In The Matter Of: James Stephen Davis, No. 21STCP02799 (L.A. Cnty. Super. Ct. Nov. 1, 2021)

In The Matter Of: Vivian Elizabeth Ruelas, No. 21STCP03330 (L.A. Cnty. Super. Ct. Nov. 29, 2021)

In The Matter Of: Eric Edward Menoyo, No. 21STCP03380 (L.A. Cnty. Super. Ct. Dec. 6, 2021)

In The Matter Of: Colette Audrey Valerio, No. 21STCP04219 (L.A. Cnty. Super. Ct. Feb. 28, 2022)

In The Matter Of: Ruby Esmeralda Estrada Rodriguez, No. 22STCP00121 (L.A. Cnty. Super. Ct. Mar. 7, 2022)

In The Matter Of: Emma Rose Snell, No. 22STCP00166 (L.A. Cnty. Super. Ct. Mar. 7, 2022)

In The Matter Of: Alessandro Judd Kahn, No. 22STCP00330 (L.A. Cnty. Super. Ct. Mar. 28, 2022)

In The Matter Of: Rory Naomi Leyva, No. 22STCP00882 (L.A. Cnty. Super. Ct. May 2, 2022)

In The Matter Of: Anna Aarons, No. 22STCP00900 (L.A. Cnty. Super. Ct. May 9, 2022)

In The Matter Of: Israel Blugrind, No. 22STCP01248 (L.A. Cnty. Super. Ct. June 13, 2022)

In The Matter Of: Robert William Rasmussen, III, No. 22STCP01562 (L.A. Cnty. Super. Ct. June 27, 2022)

In The Matter Of: Seth Williams, No. 22STCP02343 (L.A. Cnty. Super. Ct. Aug. 8, 2022)

In The Matter Of: Lloyd Charles Bronstein, No. 22STCP02468 (L.A. Cnty. Super. Ct. Aug. 15, 2022)

In The Matter Of: Beatrice Blanchard Panofsky, No. 22STCP03420 (L.A. Cnty. Super. Ct. Nov. 7, 2022)

In The Matter Of: Saair Tavaréz-Ruiz, No. 22STCP03738 (L.A. Cnty. Super. Ct. Nov. 14, 2022)

In The Matter Of: Brett Briskin, No. 22STCP03756 (L.A. Cnty. Super. Ct.

Nov. 28, 2022)

- g. **Under California law, what is the legal importance of a “gender identity marker”?**

Response: To my knowledge, the term “gender identity marker” does not appear in California law.

- h. **How many “gender identity marker” petitions have you granted?**

Response: Every petition for a change of a gender identity marker has come before me as a petition for change of name to conform with gender identity. I estimate that I have granted approximately 350 such petitions.

- i. **How frequently do you hear name change or “gender identity markers” petitions for transgender litigants as opposed to requests for other reasons?**

Response: I have not heard name change petitions since December 2022. During the two years in which I did hear them, petitions for transgender litigants comprised about twenty percent of the total number of name change petitions I adjudicated.

- j. **How many “gender identity markers” are there?**

Response: California law recognizes three gender and sex identifiers: female, male, and nonbinary. This is not a matter of my personal opinion, rather it reflects California law which binds me as a California state court judge.

- k. **Have you ever granted the change of a “gender identity marker” to something other than M (Male) or F (Female)? If so, what are they?**

Response: Yes. When requested and pursuant to California law, I have granted petitions for a change to nonbinary.

- l. **How many genders are there?**

Response: I am not an expert in this area. It is my obligation as a California state court judge to apply California law.

4. **In a 2020 panel called “Behind from the Start: Sex, Gender, and Race Bias in the Courtroom and Across the Table,” you relied on a definition of implicit bias that states that “[a]ll of us have implicit bias to some degree.” Do you agree with that statement?**

Response: That statement reflects California law. The Judicial Council of California Civil Jury Instructions state: “Our brains help us navigate and respond quickly to events by grouping and categorizing people, places, and things. We all do this . . . Although we are aware of some of our biases, we may not be aware of all of them. We refer to biases that we are not aware of as ‘implicit’ or ‘unconscious.’ They may be based on stereotypes we would reject if they were brought to our attention. Implicit or unconscious biases can affect how we perceive others and how we make decisions, without our being aware of the effect of these biases on those decisions.” Judicial Council of California Civil Jury Instruction 5030; *see* CA Code of Jud. Ethics, Canon 3, Cal. R. Ct. Standard of Judicial Administration 10.20(d), and *Weathers v. Kaiser Foundation Hospitals*, 5 Cal.3d 98, 110 (1971).

- a. **Do you have implicit bias? How will it impact your ability to rule impartially?**

Response: Please see my response to Question 4.

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

Response: Yes.

6. **Are you currently, or have you ever been, a citizen of another country?**

Response: No.

- a. **If yes, list 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.**

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

Response: No.

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

Response: No.

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

Response: The Supreme Court has occasionally considered English common law. *See District of Columbia v. Heller*, 554 U.S. 570, 598-600 (2008) and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 39–44 (2022). If confirmed, I would look to the text, structure, and background of the Constitution itself in carrying out the task of constitutional interpretation unless the Supreme Court or Ninth Circuit has instructed courts to consider foreign law.

10. **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. Judgments about the Constitution must be made by applying settled law to the facts before the court. Independent value judgments play no role in the analysis.

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

Response: The Constitution and statutes of the United States are domestic laws, and if confirmed, I would examine the text, structure, and background of the Constitution and statutes when interpreting these sources of law. *See Medellin v. Texas*, 552 U.S. 491, 504-505 (2008). As a sitting California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on whether a particular statement by another judge or a justice of the Supreme Court is correct. If confirmed, I will fairly and impartially apply all binding precedent.

12. **Please define the term “prosecutorial discretion.”**

Response: “[T]he Government retains ‘broad discretion’ as to whom to prosecute.” *Wayte v. United States*, 470 U.S. 598, 607–608 (1985), *citing United States v. Goodwin*, 457 U.S. 368, 380, n. 11. “[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in

his discretion.” *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).

- 13. 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. The appropriate approach is to impartially apply the law to the facts presented to the court.

- 14. 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.

- 15. 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.

- 16. 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 may directly appeal the sentence to the higher court, either to a district court judge from a sentence imposed by a magistrate judge or the Ninth Circuit Court of Appeals if sentenced by a district court judge. The prisoner may also seek modification of a sentence pursuant to Rule 35(a) of the Federal Rules of Criminal Procedure and may also file a motion under 28 U.S.C. § 2255 to vacate, set aside, or modify the sentence upon the ground that the “sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” A prisoner may also file a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Finally, a prisoner may also file a motion for compassionate release, or seek a modification of a sentence where a

“sentencing range . . . has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o).” 28 U.S.C. § 3582(c).

- 17. 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 Supreme Court held that the use of race in admission policies violated Title VI of the 1964 Civil Rights Act and the Equal Protection Clause of the Fourteenth Amendment. Applying a strict scrutiny analysis, the Court held that the race-conscious admissions programs at issue were unconstitutional because they lacked sufficiently focused and measurable objectives warranting use of race, unavoidably employed race in a negative manner, involved racial stereotyping, and lacked meaningful endpoints.

- 18. 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 participated in hiring decisions in my positions at Litt & Márquez, Bet Tzedek Legal Services, and the Los Angeles Superior Court.

- 19. 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.

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

Response: No.

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

Response: No.

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.

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

Response: Yes.

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

Response: In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held that a website designer could not be compelled to prepare a website that promoted ideas that were contrary to her sincerely held religious beliefs. The Court found that the wedding websites qualified as plaintiff's pure speech and compelling plaintiff to create speech in which she did not believe violated First Amendment.

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

Is this a correct statement of the law?

Response: Yes. *Barnette* is binding Supreme Court precedent and is therefore a correct statement of the law.

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

Response: In determining whether a law that regulates speech is "content-based" or "content-neutral," I would follow all Supreme Court and Ninth Circuit precedent. "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). A facially neutral government regulation can nevertheless target speech if "the purpose and justification for the law are content based." *Id.* at 166. Key questions that would inform my analysis are whether the law at issue explicitly regulates particular subject matter, whether the law regulates speech by its

function or purpose, or whether, although facially neutral, the law “cannot be ‘justified without reference to the content of the regulated speech,’ or that were adopted by the government ‘because of disagreement with the message [the speech] conveys.’” *Id.* at 163-64 (citations omitted).

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

Response: The standard for determining whether a statement is not protected speech under the true threats doctrine was articulated by the Supreme Court in *Counterman v. Colorado*, 600 U.S. 66 (2023). “True threats of violence are outside the bounds of First Amendment protection and punishable as crimes.” *Id.* at 69. “True threats are ‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’” *Id.* at 74.

27. 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: The Supreme Court has stated “the proper characterization of a question as one of fact or law is sometimes slippery.” *Thompson v. Keohane*, 516 U.S. 99, 110–111 (1995). There are three generally recognized categories of fact vs. law: purely factual questions, purely legal questions, and questions of mixed fact and law. *Guerrero-Lasprilla v. Barr*, 589 U.S. 221 (2020). Questions of fact are “basic, primary, or historical facts: facts ‘in the sense of a recital of external events and the credibility of their narrators....’” *Thompson* at 110 (internal citations omitted). “[I]n those instances in which Congress has not spoken and in which the issue falls somewhere between a pristine legal standard and a simple historical fact, the fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question.” *Miller v. Fenton*, 474 U.S. 104, 113-114 (1985).

28. 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) requires consideration of seven factors in imposing a sentence, including retribution, deterrence, incapacitation, and rehabilitation. Congress did not expressly prioritize any single factor over any other. If confirmed, I will weigh all of these factors to determine just and fair sentences in the cases that come before me.

29. 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 California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on whether a specific case was particularly well-reasoned. If confirmed, I will fairly and impartially apply all binding precedent.

30. 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 California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on whether a specific case was particularly well-reasoned. If confirmed, I will fairly and impartially apply all binding precedent.

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

Response: 18 U.S.C. § 1507 prohibits any person picketing, parading, or using a sound-truck or similar device in or near a courthouse or building housing a federal court or residence occupied or used by a judge, juror, witness, or court officer “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.”

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

Response: I am not aware of any precedent in either the Supreme Court or the Ninth Circuit addressing the constitutionality of this statute. The Supreme Court in *Cox v. Louisiana*, 379 U.S. 559, 563 (1965) upheld a similar Louisiana statute as not violative of the constitutionally protected rights of free speech and free assembly. As a sitting California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on whether this statute is constitutional. If confirmed, I will fairly and impartially apply all binding law and precedent.

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

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

Response: Yes. As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. Consistent with the practice of prior judicial nominees, however, *Brown v. Board of Education* falls within a small class of cases that is so unlikely to ever come before me and I can therefore state that *Brown v. Board*

of Education was correctly decided.

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

Response: Yes. As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. If I am fortunate to be confirmed, I will faithfully apply all binding precedent. Consistent with the practice of prior judicial nominees, however, *Loving v. Virginia* falls within a small class of cases that is so unlikely to ever come before me and I can therefore state that *Loving v. Virginia* was correctly decided.

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. If confirmed, I will fairly and impartially apply all binding law and precedent, including *Griswold v. Connecticut*.

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

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

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

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

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. If confirmed, I will fairly and impartially apply all binding law and precedent, including *Gonzales v. Carhart*.

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. If confirmed, I will fairly and impartially apply all binding law and

precedent, including *District of Columbia v. Heller*.

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. If confirmed, I will fairly and impartially apply all binding law and precedent, including *McDonald v. City of Chicago*.

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. If confirmed, I will fairly and impartially apply all binding law and 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 California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. If confirmed, I will fairly and impartially apply all binding law and precedent, including *New York State Rifle & Pistol Association v. Bruen*.

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. If confirmed, I will fairly and impartially apply all binding law and 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 California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. If confirmed, I will fairly and impartially apply all binding law and 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 California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. If confirmed, I will fairly and impartially apply all binding law and precedent, including *303 Creative LLC v. Elenis*.

34. **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 standard articulated by the Supreme Court in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022) (“[T]he government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command.”) (quotations omitted).

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

- a. **Has anyone associated with Demand Justice, including Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond, requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: Not to my knowledge.

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

Response: Not to my knowledge.

- 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: Not to my knowledge.

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

- a. Has anyone associated with Alliance for Justice, including, but not limited to, Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris, requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: Not to my knowledge.

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

Response: Not to my knowledge.

- 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: Not to my knowledge.

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

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

Response: Not to my knowledge.

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

Response: To my knowledge, no one associated with Arabella’s subsidiaries has ever contacted me.

- 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?**

Response: Not to my knowledge.

- i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: To my knowledge, no one associated with Arabella's subsidiaries has ever contacted me.

- 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?**

Response: Not to my knowledge.

- 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 my knowledge, no one associated with Arabella's subsidiaries has ever contacted me.

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

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

Response: Not to my knowledge.

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

Response: Not to my knowledge.

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

Response: Not to my knowledge.

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

Response: Not to my knowledge.

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

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

Response: Not to my knowledge.

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

Response: Not to my knowledge.

- 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: Not to my knowledge.

40. The Raben Group is a lobbying group that “champions diversity, equity, and justice as core values that ignite our mission for impactful change in corporate, nonprofit, government and foundation work.” The group prioritizes judicial nominations and its list of clients have included the Open Society Foundations, the American Civil Liberties Union, the New Venture Fund, the Sixteen Thirty Fund, and the Hopewell Fund. It staffs the Committee for a Fair Judiciary.

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

Response: Not to my knowledge.

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

Response: Not to my knowledge.

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

Response: Not to my knowledge.

- 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: Not to my knowledge.

41. The Committee for a Fair Judiciary “fights to confirm diverse and progressive federal judges to counter illegitimate right-wing dominated courts” and is staffed by founder Robert Raben.

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

Response: Not to my knowledge.

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

Response: Not to my knowledge.

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: Not to my knowledge.

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

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

Response: Not to my knowledge.

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

Response: Not to my knowledge.

- 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: Not to my knowledge.

43. 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 November 2020, I was contacted by a member of then-Senator Kamala Harris’s Judicial Selection Commission and was asked about my interest in applying for nomination to the district court. On December 7, 2020, I submitted my application to Senator Harris and to Senator Dianne Feinstein. On March 26, 2021, I was interviewed by Senator Alex Padilla’s Judicial Commission for the Central District of California. On April 26, 2021, I was interviewed by Senator Dianne Feinstein’s Judicial Commission for the Central District of California. I interviewed with attorneys from the White House Counsel’s office on August 25, 2021. On January 19, 2024, I was contacted by Senator Laphonza Butler’s office and was asked if I was interested in pursuing nomination to the district court. On January 25, 2024, I was interviewed by Senator Butler’s Chief Counsel. On January 31, 2024, I was interviewed by Senator Butler. On February 9, 2024, an attorney from the White House Counsel’s Office advised me that I was being considered for a vacancy in the Central District of California. On February 11, 2024, I interviewed with attorneys from the White House Counsel’s Office. Since February 11, 2024, I have been in contact with officials from the Office of Legal Policy at the

Department of Justice. On April 24, 2024, the President announced his intent to nominate me.

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

Response: Not to my knowledge.

- 45. 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: Not to my knowledge.

- 46. 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: Not to my knowledge.

- 47. 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: Not to my knowledge.

- 48. 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: Not to my knowledge.

- 49. 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: Not to my knowledge.

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

Response: Not to my knowledge.

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

Response: I chose all of the cases listed on my Senate Judiciary Committee questionnaire. My decision reflected broad guidance provided by the Office of Legal Policy to include cases that best represented the breadth of my experience.

- 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?

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

Response: On February 9, 2024, an attorney from the White House Counsel's Office advised me that I was being considered for a vacancy in the Central District of California. On February 11, 2024, I interviewed with attorneys from the White House Counsel's Office. Since February 11, 2024, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 24, 2024, the President announced his intent to nominate me.

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

Response: I received these questions from the Office of Legal Policy on May 29, 2024. I reviewed the questions and prepared a draft of my responses. I sent the draft to the Office of Legal Policy and had one conversation in which I was given feedback on the draft. I then finalized the draft and sent it to the Office of Legal Policy for submission to the Senate Judiciary Committee.

**Senate Judiciary Committee
Nominations Hearing
May 22, 2024
Questions for the Record
Senator Amy Klobuchar**

For Michelle Williams Court, to be U.S. District Judge for the Central District of California

Prior to your judicial appointment in 2012, you served as the Vice President, General Counsel, and Director of Litigation at Bet Tzedek Legal Services, a nonprofit law firm that provides pro bono legal services to low-income clients. You also worked as an attorney for the ACLU of Southern California.

- **Can you say more about how you view the role of a judge and how it differs from that of an advocate?**

Response: Unlike advocates, who owe their clients a duty to argue for a particular outcome, judges are duty bound to “be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.” Code of Conduct for United States Judges, Canon 3; *see also* California Code of Judicial Ethics, Canon 3.

In my twelve years as a state court trial judge, I have developed an approach to adjudicating cases which evidences a combination of integrity and impartiality. My goal is to inspire public confidence and to contribute to the effective functioning of the legal system. In every case, I carefully review the record, diligently research the law, and faithfully apply that law in a way that is consistent with binding precedents. I do not decide cases based on my personal views and do not reach issues that are not properly presented to me. I adhere to high standards of ethics, impartially, and evenhandedness, and strive to exhibit patience and composure while maintaining control over proceedings. I also recognize the need for prompt resolution to legal disputes.

- **Do you have any reservations about setting your personal views to the side when evaluating the facts or the law as a judge?**

Response: No. I have been a sitting judge for over twelve years and have no reservations about setting my personal views to the side when evaluating the facts or the law as a judge. I do not decide cases based on my personal views and am mindful of not reaching issues that are not properly presented to me.

Senator Mike Lee
Questions for the Record
Michelle Williams Court, Nominee for District Court Judge for the Central District of
California

1. How would you describe your judicial philosophy?

Response: Judges should fairly, diligently, and impartially apply the law to the facts of the cases before them. In my twelve years as a state court trial judge, I have developed an approach to adjudicating cases which evidences a combination of integrity and impartiality. My goal is to inspire public confidence and to contribute to the effective functioning of the legal system. In every case, I carefully review the record, diligently research the law, and faithfully apply that law in a way that is consistent with binding precedents. I do not decide cases based on my personal views and do not reach issues that are not properly presented to me. I adhere to high standards of ethics, impartially, and evenhandedness, and strive to exhibit patience and composure while maintaining control over proceedings. I also recognize the need for prompt resolution to legal disputes.

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

Response: If confirmed, I would first determine whether the Supreme Court or Ninth Circuit had previously interpreted the specific statutory provision at issue. If there is no such precedent, I would review the text of the statute. If the text is unambiguous then the inquiry ends. If the text is ambiguous, I would then consider any applicable canons of construction or other interpretive principles. In appropriate cases, I would also consider persuasive authority from other courts, as well as legislative history consistent with the Supreme Court guidance on its limited utility.

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

Response: I would start with applicable Supreme Court and Ninth Circuit precedent interpreting the particular provision at issue. If there is no such precedent, I would look at the text of the constitutional provision. I would interpret the text in a manner consistent with the methods of interpretation that the Supreme Court has used in other similar cases.

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

Response: The Supreme Court has looked to the original meaning to interpret the Constitution in some cases. *See, e.g., N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); *United States v. Jones*, 565 U.S. 400 (2012); *Crawford v. Washington*, 541 U.S. 36 (2004). If I am confirmed as a district court judge I would be bound by and would apply Supreme Court and Ninth Circuit precedent,

including whether the precedent relied on the original meaning of any constitutional provision.

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: The Supreme Court has clearly stated that “a statute [should be read] in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). I would refer to any binding precedent in the Ninth Circuit and the Supreme Court and apply it. In cases involving text that remains ambiguous after analysis of the plain meaning and binding precedent, I rely on the canons of interpretation recognized by the Ninth Circuit and the Supreme Court and, if necessary, consider persuasive authority from other courts.

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

Response: The Supreme Court has clearly stated that “a statute [should be read] in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). As a district court judge I would apply this precedent.

7. **What are the constitutional requirements for standing?**

Response: Federal courts hear only actual cases or controversies. The party invoking federal jurisdiction must show (1) an injury in fact, which must be concrete, particularized, and actual or imminent, (2) a causal connection between the injury and the conduct complained of, meaning the injury was likely caused by the defendant, and (3) that a favorable court decision will likely redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

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

Response: The Congress has the power to enact all laws that are necessary and proper to legislate within its enumerated powers. *McCulloch v. Maryland*, 17 U.S. 316 (1819).

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 ‘question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.’” *National Federation of Independent Business v. Sebelius* (2012) 567 U.S. 519, 570 (2012), citing *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948). If a case were to

come before me challenging the scope of legislative power to pass a statute, I would evaluate that challenge by applying all binding Supreme Court and Ninth Circuit precedent.

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

Response: Yes. “Our established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition,’ and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed.’ Second, we have required in substantive-due-process cases a ‘careful description’ of the asserted fundamental liberty interest. Our Nation’s history, legal traditions, and practices thus provide the crucial ‘guideposts for responsible decisionmaking,’ that direct and restrain our exposition of the Due Process Clause. . . the Fourteenth Amendment ‘forbids the government to infringe ... ‘fundamental’ liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.’” *Washington v. Glucksberg*, 521 U.S. 702, 720–721 (1997) (internal citations omitted).

The Supreme Court has recognized certain rights that are protected by the Constitution’s due process clauses to include “the rights to marry, to have children, to direct the education and upbringing of one’s children, to marital privacy, to use contraception, [and] to bodily integrity.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (internal citations omitted). The Supreme Court has also recognized the right to marry a person of the same gender. *Obergefell v. Hodges*, 576 U.S. 644, 675 (2015).

11. **What rights are protected under substantive due process?**

Response: Please see my response to Question 10.

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

Response: The Supreme Court has determined that the Due Process Clause protects certain fundamental yet unenumerated rights that are “‘deeply rooted in this Nation’s history and tradition’ . . . and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed’” *Washington v.*

Glucksberg, 521 U.S. 702, 720–21 (1997) (internal quotations omitted). The Supreme Court has also recognized as fundamental the right of married couples to use contraceptives, *Griswold v. Connecticut*, 381 U.S. 479 (1965), the right to marry someone of a different race, *Loving v. Virginia*, 388 U.S. 1 (1967), and the right to marry someone of the same sex, *Obergefell v. Hodges*, 576 U.S. 644 (2015). *Lochner v. New York* was overturned by *Ferguson v. Skrupa*, 372 U.S. 726 (1963).

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

Response: “[T]here are three categories of activity that Congress may regulate under its commerce power: (1) ‘the use of the channels of interstate commerce’; (2) ‘the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities’; and (3) ‘those activities having a substantial relation to interstate commerce, . . . i.e., those activities that substantially affect interstate commerce.’” *Taylor v. United States*, 579 U.S. 301, 306 (2016).

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

Response: A group is considered a “suspect class” for the purpose of strict scrutiny under the Equal Protection Clause if it meets certain criteria, including a history of purposeful unequal treatment, a characteristic that frequently bears no relation to ability to perform or contribute to society, obvious, immutable, or distinguishing characteristics that define them as a discrete group, and being in a minority or politically powerless position. The Supreme Court has recognized that statutes targeting “suspect distinctions such as race, religion, or alienage” are subject to strict scrutiny. *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Lyng v. Castillo*, 477 U.S. 635, 638 (1986).

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

Response: “The Framers regarded the checks and balances that they had built into the tripartite Federal Government as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.” *Buckley v. Valeo*, 424 U.S. 1, 122 (1976).

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: Article I of the Constitution establishes Congress as the law-making body of the federal government, consisting of the Senate and the House of Representatives. The powers and responsibilities of Congress are outlined here. Congress has the power to “make all [l]aws which shall be necessary and proper for carrying into [e]xecution the . . . [p]owers vested by [the] [c]onstitution in the

[g]overnment of the United States, or in any Department or Officer thereof.” *United States v. Kebodeaux*, 570 U.S. 387, 394 (2013); see also *McCulloch v. Maryland*, 4 Wheat. 316, 421 (1819). If a case were to come before me challenging the scope of legislative power to pass a statute, I would evaluate that challenge by applying all Ninth Circuit and Supreme Court precedent. *E.g.* *National Federation of Independent Businesses v. Sebelius*, 567 U.S. 519 (2012), *United States v. Kebodeaux*, 570 U.S. 387, 394 (2013).

Article II of the Constitution establishes the president as the head of the executive branch of the federal government, with the power to enforce laws passed by Congress. The powers and responsibilities of the president are outlined here. The scope of presidential power varies depending on the context in which it is exercised. The Supreme Court in *Youngstown Sheet & Tube Co. v. Sawyer* articulated a tripartite framework to evaluate presidential powers. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–638 (1952) (Jackson J., concurring). The framework divides exercises of Presidential power into three categories: First, “When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.” *Id.* at 635. Second, “in absence of either a congressional grant or denial of authority,” there is a “zone of twilight in which he and Congress may have concurrent authority,” and where “congressional inertia, indifference or quiescence may” invite the exercise of executive power. *Id.* at 637. Finally, when “the President takes measures incompatible with the expressed or implied will of Congress ... he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.” *Id.* To succeed in this third category, the President’s asserted power must be both “exclusive” and “conclusive” on the issue. *Id.* at 637–638. *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015).

If a case were to come before me challenging the scope of presidential power, I would evaluate that challenge by applying all binding Supreme Court and Ninth Circuit precedent. *E.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634-638 (1952) (Jackson J., concurring).

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

Response: A judge must decide cases based on impartial application of the law equally to all parties.

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

Response: Both 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 am not familiar with these statistics and have not studied trends concerning the Supreme Court's decisions concerning invalidation of federal statutes. If I am fortunate to be confirmed, I will impartially apply all federal laws and binding United States Supreme Court and Ninth Circuit precedent in matters concerning the constitutionality of federal statutes.

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

Response: Judicial review is the authority of the judiciary to determine whether a congressional statute is unconstitutional. *Marbury v. Madison*, 5 U.S. 137 (1803). Judicial supremacy refers to the principle that the judiciary holds the authority in interpreting the Constitution and that its decisions are binding on the other branches of government and the states. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958) ("Article VI of the Constitution makes the Constitution the 'supreme Law of the Land.' In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as 'the fundamental and paramount law of the nation,' declared in the notable case of *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60, that 'It is emphatically the province and duty of the judicial department to say what the law is.' This decision declared the basic principle 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.")

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: I am not aware of any precedent in either the Supreme Court or the Ninth Circuit addressing how elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions. If I confirmed and am asked to resolve a conflict involving the actions of an elected official, I will follow all Supreme Court and Ninth Circuit precedent. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) ("no state legislature or executive or judicial officer can war against the Constitution without violating his undertaking to support it").

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 Constitution makes clear that the role of the judiciary is to interpret and apply the Constitution and federal law. It is the role of Congress to make the law and the role of the executive branch to enforce it. Separation of these roles is central to the structure of American law and crucial to the efficient and effective functioning of the government. If confirmed, I will apply the law as articulated by the Constitution, in statutes, and all binding Supreme Court and Ninth Circuit precedent.

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: Under the doctrine of stare decisis, courts are bound to follow the legal principles established in previous decisions. The doctrine exists in both vertical and horizontal forms. Vertical stare decisis obliges courts to follow the decisions of higher courts in the same jurisdiction regardless of whether the judge agrees with them. If confirmed, I will apply binding Supreme Court and Ninth Circuit precedent without regard to any personal opinions about its constitutional underpinnings. *Mallory v. Norfolk S. Ry Co.*, 600 U.S. 122, 136 (2023).

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 judge's sentencing analysis?**

Response: None.

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

Response: I am not familiar with this statement. Black's Law Dictionary (11th ed.

2019), defines equity as “fairness; impartiality; evenhanded dealing.” If the definition of equity were to arise in a case that appeared before me, I would apply all binding Supreme Court and Ninth Circuit precedent to resolve the question.

26. **Without citing a dictionary definition, do you believe there is a difference between “equity” and “equality?” If so, what is it?**

Response: To my understanding, equality refers to being equal; equity refers to being fair.

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

Response: I am not aware of any Supreme Court or Ninth Circuit precedent that guarantees equity as defined by this question. The Fourteenth Amendment’s Equal Protection Clause guarantees “the equal protection of the laws” and does not refer to equity.

28. **According to your current understanding, and without citing a dictionary definition, how do you define “systemic racism?”**

Response: I do not have a personal definition of this term. As a judge, I do not look at systemic effects. I consider each individual case that comes before me on the individual facts presented. If fortunate to be confirmed, I will adjudicate the claims and defenses before me on the facts presented and binding Supreme Court and Ninth Circuit precedent.

29. **According to your current understanding, and without citing a dictionary definition, how do you define “Critical Race Theory?”**

Response: I do not have a personal definition of this term. However, it is my understanding that Critical Race Theory is an academic framework.

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

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

31. **You are an active member of the Women Lawyers Association of Los Angeles (“WLALA”) for nearly 25 years, including having served in leadership on the Board of Governors and several subcommittees. WLALA released a statement condemning *Dobbs v. Jackson Women’s Health Organization*, stating that the Supreme Court’s decision will “severely curtail or eliminate in many parts of the United States a person’s freedom to make informed medical decisions about their pregnancy,” and “[w]e do not accept this result for our society.” As a federal judge, would you accept the result of *Dobbs* and faithfully apply this Supreme Court precedent?**

Response: Yes.

32. **The WLALA statement referenced in question 31 commits WLALA and similar organizations to a “heightened commitment to work together to protect the reproductive rights of all.” Do you intend to honor the Supreme Court’s holding in *Dobbs* despite your organization’s commitment to do precisely the opposite?**

Response: If confirmed, I will fairly and impartially apply all binding precedent, including *Dobbs*.

33. **You have been a member of the National Association of Women Judges (“NAWJ”) since 2012. Since then, NAWJ has hosted a series of politically progressive webinars. These webinars include “Why We Need a Diversity and Inclusion Plan,” “Pride & Pronouns: Understanding & Addressing Gender Identity in the Courtroom and Beyond,” and “Microaggressions 2: When the Judge Commits the Microaggression.” Did you participate in any way, or consult with NAWJ on any of those webinars, including any that are not listed in this question?**

Response: No.

34. **Last year, you accepted an Alumni Award from Pomona College. In your acceptance speech, you stated, “I am honored by the recognition of my efforts to further equity, inclusion and access to justice.” How specifically would you implement DEI initiatives in your courtroom as a federal district court judge?**

Response: I do not and will not implement initiatives of any kind in my courtroom. In my twelve years on the bench, my focus in managing the courtrooms over which I have presided has been to require order and decorum in the proceedings before me, to be patient and courteous and to require similar conduct of lawyers and court staff, to perform my duties without bias or prejudice, and to dispose of all matters before me fairly, promptly, and efficiently.

35. **In 2021, you published an article in *Advocate Magazine*. In your article, you wrote the following: “Questions commonly asked in jury selection such as, ‘where do you work,’ can now easily lead to a line of inquiry leading to the improper exclusion of a prospective juror based, at least in part, on her residence or employment in a community of color.” You continue, “[q]uestions commonly asked in jury selection such as, ‘where do you live,’ are at the top of a slippery slope of questions delving into national origin and cultural identity. Improper because they could lead to the exclusion of a potential juror based on race, but also insidious and dangerous in light of the expression of explicit bias experienced by our API neighbors.” When an attorney asks a prospective juror “where do you work” or “where are you from,” how do you decide if that attorney is motivated by racism? How do you propose that an attorney assess important information about prospective jurors like where they live or where**

they work, without asking those questions?

Response: It is appropriate to ask prospective jurors where they live or where they work. It is important, however, for judges and attorneys to be mindful as they navigate voir dire to guard against making assumptions about prospective jurors that could lead to the improper use of peremptory challenges.

36. **You celebrated the “Land Acknowledgment Movement” as evidence of the “ripple effect advocacy has on society.” Would you give a land acknowledgement as part of your daily judicial duties if confirmed? How would you determine which native community to acknowledge if the land occupied by the courthouse changed hands several times?**

Response: I do not and will not give a land acknowledgement as part of my daily judicial duties.

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

Questions for the Record for Michelle Williams Court, nominated to be United States District Judge for the Central District of California

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.

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

Response: As a sitting California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on matters of policy that are reserved for the legislative branch, the merits of any matter pending or impending in any court, or commenting on whether a particular case was correctly decided. If confirmed, I will fairly and impartially apply all binding precedent, including the test for identifying rights not enumerated in the Constitution described by the Supreme Court in *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (finding such rights must be “deeply rooted in this nation’s history and tradition” and “implicit in the concept of ordered liberty”).

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: Judges should fairly, diligently, and impartially apply the law to the facts of the cases before them. In my twelve years as a state court trial judge, I have developed an approach to adjudicating cases which evidences a combination of integrity and impartiality. My goal is to inspire public confidence and to contribute to the effective functioning of the legal system. In every case, I carefully review the record, diligently research the law, and faithfully apply that law in a way that is consistent with binding precedents. I do not decide cases based on my personal views and do not reach issues that are not properly presented to me. I adhere to high standards of ethics, impartially, and evenhandedness, and strive to exhibit patience and composure while maintaining control over proceedings. I also recognize the need for prompt resolution to legal disputes.

My role as a trial court judge is different from that of a Supreme Court Justice and I am not sufficiently familiar with the philosophies of the Warren, Burger, Rehnquist, and Roberts courts to identify which philosophy is most analogous to mine.

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

Response: Black’s Law Dictionary (11th ed. 2019) defines “Originalism” as “[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect.” The Supreme Court has looked to the original meaning to interpret the Constitution in some cases. *See, e.g., N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022); *United States v. Jones*, 565 U.S. 400 (2012); *Crawford v. Washington*, 541 U.S. 36 (2004). If confirmed, I will fairly and impartially apply all binding precedent, including whether the precedent relied on the original meaning of any constitutional provision.

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 (11th ed. 2019) defines “living constitutionalism” as “[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values.” I am not aware of any precedent applying “living constitutionalism” as an interpretive method. If confirmed, I will fairly and impartially apply all binding 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: Yes.

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 stated that in the normal course, “a statute [should be read] in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). In certain other limited instances in construing other amendments of the constitution, the Supreme Court has considered the public’s then-current understanding. See, e.g., *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004) (First Amendment challenges to obscenity regulations evaluated in accordance with “contemporary community standards”); see also *District of Columbia v. Heller*, 554 U.S. 570, 576–577 (2008) (The normal reading of the constitution may “include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.”); *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 235 (2022) (“Constitutional analysis must begin with ‘the language of the instrument,’ which offers a ‘fixed standard’ for ascertaining what our founding document means.”). If confirmed, I will fairly and impartially apply all binding precedent.

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

Response: No. The Constitution can be modified by amendment, as stated in Article V of the Constitution. However, while the meaning of the Constitution “is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). See, e.g., *United States v. Jones*, 565 U.S. 400, 404-405 (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: Yes. The ruling in *Dobbs v. Jackson Women’s Health*

Organization is binding precedent.

a. **Was it correctly decided?**

Response: As a sitting California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on whether a particular case was correctly decided. If confirmed, I will fairly and impartially apply all binding precedent, including *Dobbs v. Jackson Women's Health Organization*.

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

Response: Yes. The ruling in *New York Rifle & Pistol Association v. Bruen* is binding precedent.

a. **Was it correctly decided?**

Response: As a sitting California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on whether a particular case was correctly decided. If confirmed, I will fairly and impartially apply all binding precedent, including *New York Rifle & Pistol Association v. Bruen*.

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

Response: Yes. The ruling in *Brown v. Board of Education* is binding precedent.

a. **Was it correctly decided?**

Response: Yes. As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. Consistent with the

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

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

Response: Yes. The ruling in *Students for Fair Admissions v. Harvard* is binding precedent.

a. **Was it correctly decided?**

Response: As a sitting California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on whether a particular case was correctly decided. If confirmed, I will fairly and impartially apply all binding precedent, including *Students for Fair Admissions v. Harvard*.

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

Response: Yes. The ruling in *Gibbons v. Ogden* is binding precedent.

a. **Was it correctly decided?**

Response: As a sitting California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on whether a particular case was correctly decided. If confirmed, I will fairly and impartially apply all binding precedent, including *Gibbons v. Ogden*.

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

Response: Certain drug offenses, enumerated firearm, terrorism, and human trafficking offenses, and certain crimes against minors carry a

rebuttable presumption that pretrial detention should be imposed. *See* 18 U.S.C. § 3142(e)(3).

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

Response: The Supreme Court has stated pretrial detention is appropriate when “no condition or combination of conditions will reasonable assure the appearance of the person as required and the safety of any other person and the community.” *See* 18 U.S.C. § 3142(e)(2); *United States v. Salerno*, 481 U.S. 739, 747-751 (1987). If confirmed, I will fairly and impartially apply all binding precedent.

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 Supreme Court has identified limits on governmental impositions or requirements of private institutions and actors. *See* 303 *Creative LLC v. Elenis*, 600 U.S. 570 (2023); *Tandon v. Newsom*, 593 U.S. 61, 62-63 (2021); *Masterpiece Cakeshop, Ltd., v. Colorado Civ. Rts. Comm’n*, 584 U.S. 617, 618-19 (2018); and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

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

Response: The Free Exercise Clause subjects any law that is not neutral towards religion to strict scrutiny, and the law must be narrowly tailored to satisfy a compelling government interest to survive. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17-18 (2020).

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: The Supreme Court found the religious entity-applicants were likely to prevail on the merits of their claims that religious institutions were being treated in a manner inferior to that of non-religious institutions and any such discrepancy was unlikely to survive strict scrutiny analysis because the regulations at issue singled out houses of worship for especially harsh treatment. Therefore, the Court held that a preliminary injunction should be issued. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 15-21 (2020).

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

Response: The Supreme Court held that California’s COVID restrictions on in-home religious activities violated the Free Exercise Clause of the First Amendment because they were more stringent than those on comparable secular activities, such as hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants. *Tandon v. Newsom*, 593 U.S. 61, 63 (2021).

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

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

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

Response: Where a government behaves with hostility to religion during the process of adjudicating whether a person is entitled to an accommodation to a law on religious grounds, the government violates the Free Exercise Clause and the law is unconstitutional. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com’n*, 584 U.S. 617, 638 (2018).

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. An individual's religious beliefs are protected as long as they are rooted in religion and are sincerely held. See *Thomas v. Review Board of Indiana Employment Security Div.*, 450 U.S. 707, 713 (1981) and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 717 (2014).

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

Response: Yes. See *Frazee v. Illinois Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989).

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

Response: Yes. See *Frazee v. Illinois Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989).

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

Response: I am unaware of any law or precedent that sets forth the official position of any religion on any matter.

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: Governmental action must not give rise to "excessive entanglement" on the part of government in the affairs of religion, or vice versa. Religious groups are entitled to a "ministerial exception" under which the group's actions concerning any employee whom the institution regards as educating students in the institution's faith is essentially immune from regulation. *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 756-757 (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: The requirement that a religious provider of foster care services allow same sex couples to be foster parents unduly burdened the free exercise of religion triggering strict scrutiny review. The Court found this requirement was not narrowly tailored to accomplish the governmental interest of ensuring a sufficient number of foster parents and therefore unconstitutional. *Fulton v. City of Philadelphia*, 593 U.S. 522, 540-542 (2021).

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: Where a state offered free public education to every school aged child in the state and allowed the parents in districts with no secondary school to choose any approved secular school, the practice of not offering free tuition to families opting for religious schools violated the Free Exercise clause. *Carson v. Makin*, 596 U.S. 767, 780-81 (2022).

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

Response: A school district's termination of a football coach because he knelt at midfield after games to offer a quiet personal prayer violated the Free Exercise and Free Speech Clauses because the prayers were "private speech" and students were not required or expected to participate. *Kennedy v. Bremerton School District*, 597 U.S. 507, 531-542 (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: Justice Gorsuch wrote separately to emphasize that the Religious Land Use and Institutionalized Person Act required a strict scrutiny analysis. The lower courts allowed Fillmore County to assert a generalized compelling interest in the installation of septic systems. *Mast*

v. Fillmore County, 141 S. Ct. 2430, 2432 (2021). Justice Gorsuch opined that the proper analysis should have focused on whether Fillmore County had a compelling interest in refusing to grant the Amish plaintiffs an exception to this requirement. *Id.* This was particularly true where other secular groups had been granted such exceptions. *Id.*

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 California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of any matter pending or impending in any court. The Supreme Court has clearly stated that “a statute [should be read] in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). I would refer to any binding precedent in the Supreme Court and Ninth Circuit and, if appropriate under the circumstances of the case presented, I would also look to the canons of interpretation recognized by the Supreme Court and Ninth Circuit and persuasive authority from other courts.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: As a sitting California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on matters of policy that are reserved for the legislative and executive branches or commenting on the merits of any matter pending or impending in any court. If confirmed, I will fairly and impartially apply all binding precedent.

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

Response: Disparate impact can be considered when analyzing whether discriminatory intent exists but does not, on its own, establish discriminatory intent. *See Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266 (1977); *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 521 (2015).

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

Response: The appropriate size of the Supreme Court is a question for Congress and policymakers.

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

Response: No.

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

Response: The Second Amendment protects an individual's right to bear arms at home and in public. *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S. Ct. 2111, 2117 (2022); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: The Second Amendment confers on private individuals the right to keep basic firearms, including handguns, both at home and in public for self-defense. *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Second Amendment applies the same way to state and local government as it does to the federal government. *McDonald v. City of Chicago*, 561 U.S. 742 (2010). The plain text of the Second Amendment gives private citizens the right to carry a concealed gun outside of the home; local officials may not retain "substantial discretion" about whether a gun license shall be issued to a particular recipient. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022).

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

Response: Yes. *See District of Columbia v. Heller*, 554 U.S. 570, 602

(2008); *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010); *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2156 (2022).

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

Response: No.

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

Response: No.

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

Response: The Constitution vests the president with the power “to take Care that Laws be faithfully executed.” U.S. Const. art. II, § 3. “[T]he Government retains ‘broad discretion’ as to whom to prosecute.” *Wayte v. United States*, 470 U.S. 598, 607–608 (1985), citing *United States v. Goodwin*, 457 U.S. 368, 380 n. 11. While “prosecutorial discretion is broad, it is not unfettered. Selectivity in the enforcement of criminal laws is ... subject to constitutional constraints.” *Wayte v. United States*, 470 U.S. 598, 608 (1985).

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

Prosecutorial discretion is “[a] prosecutor’s power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court.” Black’s Law Dictionary (11th ed. 2019). A substantive rule change is a change to an administrative regulation that has the force of law. A substantive administrative rule change must be made in pursuant to the procedures in the Administrative Procedure Act. *See* 5 U.S.C. §§ 551-559.

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

Response: No.

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

Response: The Supreme Court vacated a nationwide eviction moratorium on the grounds that the Center for Disease Control would be unlikely to prevail on its assertion that the Public Health Service Act authorized it to impose such a moratorium. *Alabama Association of Realtors v. Department of Health and Human Services*, 594 U.S. 758, 764-765 (2021).

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: As a sitting California state court judge and nominee to the United States District Court for the Central District of California, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on matters of policy that are reserved for the legislative and executive branches. If confirmed, I will fairly and impartially apply all binding precedent.

**Senator John Kennedy
Questions for the Record**

Michelle Court

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

Response: Yes. The Supreme Court has held that the death penalty is not per se unconstitutional under the Eighth Amendment. *Jurek v. Texas*, 428 U.S. 262, 268 (1976). Congress has stated which offenses could result in the imposition of the death penalty. See 18 U.S.C. §§ 794, 2381 and 3591.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: Judges should fairly, diligently, and impartially apply the law to the facts of the cases before them. In my twelve years as a state court trial judge, I have developed an approach to adjudicating cases which evidences a combination of integrity and impartiality. My goal is to inspire public confidence and to contribute to the effective functioning of the legal system. In every case, I carefully review the record, diligently research the law, and faithfully apply that law in a way that is consistent with binding precedents. I do not decide cases based on my personal views and do not reach issues that are not properly presented to me. I adhere to high standards of ethics, impartially, and evenhandedness, and strive to exhibit patience and composure while maintaining control over proceedings. I also recognize the need for prompt resolution to legal disputes.

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

Response: Yes. See, e.g., *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1

(2022).

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: I would first look at the text of the constitutional provision. I would interpret the text in a manner consistent with the methods of interpretation that the Supreme Court has used. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court looked to the original public meaning of the Second Amendment. If confirmed, I will fairly and impartially apply all binding precedent.

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

Response: Yes. *See, e.g., Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644 (2020).

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

Response: If the text of the statute or provision is ambiguous and there is no binding Supreme Court or Circuit Court precedent on point then judges may, consistent with Supreme Court Circuit Court precedent, look to cases interpreting similar laws, accepted canons of statutory construction and, when appropriate, cases from other jurisdictions. If these additional resources do not provide sufficient guidance, judges can look to legislative history if permitted to do so under Supreme Court and binding Circuit Court precedent. *See, e.g., Bostock*, 590 U.S. at 674-75 (“To ferret out . . . shifts in linguistic usage or subtle distinctions between literal and ordinary meaning, this Court has sometimes consulted the understandings of the law’s drafters as some (not always conclusive) evidence.”).

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: The Constitution can be modified by amendment, as stated in Article V of the Constitution. While the meaning of the Constitution “is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). *See, e.g., United States v. Jones*, 565 U.S. 400, 404–405 (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: A law enforcement officer is entitled to qualified immunity where the officer's conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." (quoting *White v. Pauly*, 137 S. Ct. 548, 551 (2017)). *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021). The Supreme Court held that the officer was entitled to qualified immunity because the respondent had not "identified any Supreme Court case that addresses facts like the ones at issue here" and therefore the officer did not have notice that the specific conduct was unlawful. *Id.* at 6. In accord with qualified immunity jurisprudence, the Court explained that "[a] right is clearly established when it is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right' and that the inquiry must consider the specific context of the case, as opposed to a broad general proposition." *Id.* at 5-6 (internal quotations and citations omitted).

- 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: Injunctions are governed by Rule 65 of the Federal Rules of Civil Procedure. Meant to preserve the status quo, an injunction is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). Neither the Supreme Court nor the Ninth Circuit have issued guidance on when, specifically, a nationwide injunction should be issued. If confirmed and presented with a request for a nationwide injunction, I will fairly and impartially apply all binding precedent.

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

Response: No.

- 14. Will you faithfully apply all precedents of the U.S. Supreme Court and the U.S. Court of Appeals for the Ninth Circuit?**

Response: Yes.

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

Response: Dicta is not binding precedent, however, "we afford 'considered dicta from the Supreme Court ... a weight that is greater than ordinary judicial dicta as prophecy of what the court might hold.'" *Nettles v. Grounds*, 830 F.3d 922, 930–931 (9th Cir. 2016). If confirmed, I will fairly and impartially apply all binding precedent.

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

Response: None.

17. **What legal standard is used to determine whether an unenumerated right is fundamental?**

Response: The Supreme Court has determined that the Due Process Clause protects certain fundamental yet unenumerated rights that are “‘deeply rooted in this Nation’s history and tradition’ . . . and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed’” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (internal quotations omitted). The Supreme Court has recognized as fundamental, among other rights, the right of married couples to use contraceptives, *Griswold v. Connecticut*, 381 U.S. 479 (1965), the right to marry someone of a different race, *Loving v. Virginia*, 388 U.S. 1 (1967), and the right to marry someone of the same sex, *Obergefell v. Hodges*, 576 U.S. 644 (2015).