

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

1. **You joined the “National Asian Pacific American Judicial Council” in 2023. Why did you join this organization?**

Response: I was invited to join the organization by a colleague in the Los Angeles Superior Court, and I joined in October 2023 in order to meet and socialize with other judges.

2. **When did you become aware the “National Asian Pacific American Judicial Council” is affiliated with the National Asian Pacific American Bar Association “NAPABA”?**

Response: I became aware that the National Asian Pacific American Judicial Council is affiliated with the National Asian Pacific American Bar Association when I received these questions.

3. **Prior to receiving these questions were you aware NAPABA supports the nominations of Adeel Mangi and Judge Mustafa Kasubhai? If yes, when did you become aware?**

Response: No.

4. **Your handling of *Sasha Santana et. al. v. County of L.A. et. al.* garnered media attention. “mynewsLA.com” wrote that you:**

dismissed most of a consolidated lawsuit brought by relatives of two El Monte police officers fatally shot by a felon in that city in 2022, repeating a concern [you] expressed in September about whether Los Angeles County entities had breached any mandatory duties. . . “The crux of plaintiffs’ argument is that the D.A.’s Office and Gascón breached a mandatory duty to exercise discretion on an individualized, case-by-case basis,” the judge wrote. “However, because a prosecutor’s duty to initiate and conduct prosecutions ... is discretionary, mandate is not available to compel the district attorney to exercise prosecutorial discretion in any particular way.”

The Plaintiffs claimed that the Second District Court of Appeal’s decision in *Ass’n of Deputy Dist. Att’ys for Los Angeles Cnty. v. Gascon*, 79 Cal. App. 5th 503 (2022) “expressly, directly, and categorically affirmed that there is a ‘mandatory duty to plead prior strikes.’” Does your decision contradict the appellate court’s holding in *Ass’n of Deputy Dist. Att’ys for Los Angeles Cnty. v. Gascon*?

Response: No. My written decision explains that the California Court of Appeal for the Second District held in *Association of Deputy District Attorneys for Los Angeles County v. Gascon*, 79 Cal. App. 5th 503 (Cal. Ct. App. 2022), that the three strikes law required prosecutors to plead prior convictions, but did not require prosecutors to prove prior convictions. The Court of Appeal held that prosecutors retain the discretion to move to strike a prior conviction in the furtherance of justice under Penal Code section 1385, which the court may or may not grant, or for lack of sufficient evidence. Because the plaintiffs' argument was centered on a breach of an alleged duty to exercise discretion in proving or moving to strike a prior conviction on an individualized, case-by-case basis, which was found to be a discretionary act by the Court of Appeal, I concluded that the plaintiffs had not sufficiently alleged a breach of a mandatory duty. The plaintiffs did not appeal my decision.

5. **Please explain why you believe law enforcement should trust you to be a fair and impartial Judge despite your decision in *Sasha Santana et. al. v. County of L.A. et. al.***

Response: As a judge sitting in the Los Angeles Superior Court, where the Los Angeles County Sheriff's Department maintains safety and order in various courthouses, and having represented a law enforcement officer when I was an attorney, I appreciate the importance and significant role of law enforcement. I have worked closely with Los Angeles County Sheriff's deputies assigned to each criminal court over which I have presided, and I understand the sacrifices that law enforcement, and their families, make to keep us safe. The analysis set forth in my written decisions in that case demonstrates that I fairly and impartially applied the law to the facts, as I have done in every other case that I have decided. The plaintiffs in *Santana, et al. v. County of Los Angeles, et al.*, did not appeal my decisions.

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

Response: Yes.

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

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 oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No.

9. **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.

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

Response: No, the Constitution is a domestic document. The Supreme Court has considered English common law and British institutions, but only “*as they were when the instrument was framed and adopted.*” *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 39 (2022) (emphasis in original, citation omitted).

11. **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. A judge is obligated to apply the law fairly and impartially to the facts, without consideration of a judge’s personal views or preferences.

12. **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: Yes, the Supreme Court has stated that “not all international law obligations automatically constitute binding federal law enforceable in United States courts. ...[W]hile treaties ‘may comprise international commitments ... they are not domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be ‘self-executing’ and is ratified on these terms.” *Medellin v. Texas*, 552 U.S. 491, 504-05 (2008) (citations omitted). In his concurrence in the denial of rehearing en banc in *Al-Bihani v. Obama*, 619 F.3d 1, 52 (D.C. Cir. 2010) (Mem.), Judge Williams “agree[d] with much of” then-Judge Kavanaugh’s concurrence, but disagreed on certain points. *Id.* at 53. Specifically: “Judge Kavanaugh, I think, fails to adequately distinguish between treatment of international law norms as ‘judicially enforceable limits’ on Presidential authority, *id.* at 9, or as ‘domestic U.S. law,’ *id.* at 13, and use of such norms as a ‘basis for courts to alter their interpretation of federal statutes,’ *id.* at 32. By ‘alter their interpretation,’ I take Judge Kavanaugh to mean (as I said above) for a court to allow international law to persuade it to adopt a narrower interpretation of the President’s authority than it would otherwise have chosen. I will assume that Judge

Kavanaugh is correct as to the impropriety of the stronger use of international law (treating it as ‘domestic law’), but I believe him incorrect on the weaker (allowing it to affect a court’s statutory interpretation).” *Id.* at 53.

13. Please define the term “prosecutorial discretion.”

Response: Black’s Law Dictionary defines prosecutorial discretion as “[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).

14. 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. A judge is obligated to apply the law fairly and impartially to the facts, including by following Supreme Court precedent.

15. 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.

16. 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.

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

Response: A prisoner in custody under sentence of a federal court may seek and receive relief from the sentence by filing a petition pursuant to 28 U.S.C. § 2255 to “vacate, set

aside or correct the sentence” on the grounds 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,” or by filing a motion pursuant to 18 U.S.C. § 3582(c) for compassionate release, among other grounds.

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

Response: In these cases, the Supreme Court struck down the race-based admissions programs used by Harvard College and the University of North Carolina. The Supreme Court held that neither program survived strict scrutiny and concluded that “the Harvard and UNC admissions programs cannot be reconciled with the guarantees of the Equal Protection Clause. Both programs lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 230 (2023).

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

Response: Yes.

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

Response: I have participated in hiring decisions while at the Office of the Federal Public Defender and with the Los Angeles Superior Court.

- 20. 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.

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

Response: No.

- 22. Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship,**

internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, sex, sexuality, or gender identity?

Response: No, not to my knowledge.

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

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

Response: Yes. The Supreme Court held in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995), that “all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny.” *See also Mitchell v. Washington*, 818 F.3d 436, 444 (9th Cir. 2016) (“[T]he general rule is that when a state actor explicitly treats an individual differently on the basis of race, strict scrutiny is applied. ... [W]e note that the Supreme Court has ‘insisted on strict scrutiny in every context, even for so-called ‘benign’ racial classifications, such as race-conscious university admissions policies, race-based preferences in government contracts, and race-based districting intended to improve minority representation’”) (citations omitted).)

24. 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 wedding website design was speech protected by the First Amendment, and Colorado could not compel the website designer to create websites celebrating marriages that she does not endorse.

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

Is this a correct statement of the law?

Response: Yes. The Supreme Court cited *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), in *303 Creative LLC v. Elenis*, 600 U.S. 570, 584-85 (2023).

- 26. 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 Supreme Court and Ninth Circuit precedent. The Supreme Court has held that “[g]overnment 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, Ariz.*, 576 U.S. 155, 163 (2015). Supreme Court precedents “have also recognized a separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that 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 164 (citation omitted).

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

Response: The Supreme Court has held that true threats “are ‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’” *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (citation omitted).

- 28. 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 explained that issues of fact generally encompass “‘basic, primary, or historical facts: facts ‘in the sense of a recital of external events and the credibility of their narrators’.” *Thompson v. Keohane*, 516 U.S. 99, 109 (1995) (citation omitted). The Supreme Court has recognized that the “appropriate methodology for distinguishing questions of fact from questions of law has been, to say the least, elusive.” *Miller v. Fenton*, 474 U.S. 104, 113 (1985). “At least in those instances in which Congress has not spoken and in which the issue falls somewhere between a pristine legal standard and a simple historical fact, the fact/law distinction at times has turned on a determination that, as a matter of sound administration of justice, one judicial actor is better positioned than another to decide the issue in question.” *Id.* at 114. There, the Supreme Court noted prior decisions setting forth factors to consider in determining an issue to be one of “fact” or “law,” including the application of a relevant legal principle to the particular circumstances of a case and considerations in favor of extending deference to the trial court. *Id.* at 114-15.

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

Response: 18 U.S.C. § 3553(a) sets forth the factors a judge must consider in imposing a sentence. The statute does not direct that any one factor is more important than another. I would weigh all of the factors set forth in the statute when imposing a sentence, as well as follow precedent from the Supreme Court and the Ninth Circuit.

30. 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 judge and a federal judicial nominee, I am precluded from commenting on whether a Supreme Court decision was well-reasoned. I faithfully apply all binding Supreme Court precedent and will continue to do so if confirmed.

31. 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 judge and a federal judicial nominee, I am precluded from commenting on whether a Ninth Circuit decision was well-reasoned. I will faithfully apply all binding Ninth Circuit precedent if confirmed.

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

Response: 18 U.S.C. § 1507 provides criminal penalties for a person who “with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence.”

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

Response: I am not aware of any Supreme Court or Ninth Circuit precedent addressing the constitutionality of 18 U.S.C. § 1507, however, the Supreme Court has upheld a similar state statute. *See Cox v. Louisiana*, 379 U.S. 559 (1965). As a federal judicial nominee, I am precluded from opining on matters that might come before me, including the constitutionality of this particular statute.

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

- a. **Was *Brown v. Board of Education* correctly decided?**
- b. **Was *Loving v. Virginia* correctly decided?**
- c. **Was *Griswold v. Connecticut* correctly decided?**
- d. **Was *Roe v. Wade* correctly decided?**

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

Response: As a sitting judge and a federal judicial nominee, I am precluded from commenting on whether a Supreme Court decision was correctly decided. *See* Canon 3(A)(6) of the Code of Conduct for United States Judges and Canon 3B(9) of the California Code of Judicial Ethics. Consistent with the practice of prior judicial nominees, however, I can state that the issues of *de jure* segregation of schools and laws banning interracial marriage are unlikely to come before me, and therefore I can state that *Brown v. Board of Education*, 347 U.S. 483 (1954), and *Loving v. Virginia*, 388 U.S. 1 (1967) were correctly decided. In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the Supreme Court overruled *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). If confirmed, I would faithfully apply all binding Supreme Court and Ninth Circuit precedent.

35. 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 binding Supreme Court and Ninth Circuit precedent in evaluating whether a regulation or statutory provision infringes on Second Amendment rights. In *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022), the Supreme Court held that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’”

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

- a. Has anyone associated with Demand Justice, including Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond, requested that you provide any services, including but not limited to

research, advice, analysis, writing or giving speeches, or appearing at events or on panels?

Response: No.

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

Response: No.

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

Response: Prior to submitting an application to Senator Diane Feinstein's and Senator Alex Padilla's Judicial Advisory Committees, I was introduced to and spoke with Christopher Kang, who provided general information about the nominations process.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

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

Response: No.

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

Response: No.

- 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: No.

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

Response: On January 22, 2021, I submitted an application to Senator Diane Feinstein’s Judicial Advisory Committee. On February 17, 2021, I submitted an application to Senator Alex Padilla’s Judicial Advisory Committee. On April 23, 2021, I was interviewed by Senator Feinstein’s Central District Appointment Committee. On May 14, 2021, I was interviewed by the chair of Senator Feinstein’s Judicial Advisory Process. On August 24, 2021, I was interviewed by attorneys with the White House Counsel’s Office. On December 20, 2021, I was interviewed by Senator Padilla’s Judicial Commission. On January 22, 2024, I was interviewed by Senator Laphonza Butler’s Chief Counsel. On January 30, 2024, I was interviewed by Senator Laphonza Butler. On February 7, 2024, I was interviewed by attorneys with the White House Counsel’s Office. Since February 7,

2024, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On April 24, 2024, the President announced his intent to nominate me.

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

Response: No.

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

Response: No.

- 47. 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 Woodward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

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

Response: No.

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

Response: No.

- 50. During or leading up to your selection process, did you talk with any officials from or anyone directly associated with The Raben Group or the Committee for a Fair Judiciary, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

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

Response: No.

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

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

Response: Attorneys from the Office of Legal Policy provided general information to include in my questionnaire cases that reflect my breadth of experience as a judge, and I made all decisions about which cases to include.

53. 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 7, 2024, I was interviewed by attorneys with the White House Counsel's Office. Since February 7, 2024, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On April 24, 2024, the President announced his intent to nominate me.

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

Response: I received these questions on May 29, 2024. I completed a draft of my answers to these questions on my own. I provided the draft to the Office of Legal Policy and had one conversation about the draft. I submitted my finalized answers 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**

Anne Hwang, to be U.S. District Judge for the Central District of California

You spent twelve years serving as a federal public defender, including time as the Chief Deputy Federal Public Defender for the Central District of California. When I was the top prosecutor in the largest county in my state I appreciated the role the public defenders play in our system of justice. Many people often rely on public defenders to safeguard their right to due process. And given the nature of the work, public defenders are often tasked with representing people who are accused and subsequently convicted of horrific crimes.

- **Why do you think it is important that our justice system provides counsel for those who cannot afford an attorney?**

Response: In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Supreme Court held that the Sixth and Fourteenth Amendments guarantee the right to counsel for all indigent defendants. The Supreme Court stated that “[t]he assistance of counsel is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not still be done.” *Id.* at 343 (citations and alterations omitted). The Supreme Court further stated that “reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” *Id.* at 344.

- **Do you agree that it is important for public defenders to make sure that the government is meeting its burden of proof in order to preserve individual liberties and public confidence in the judiciary?**

Response: Yes. The Supreme Court noted in *Gideon v. Wainwright*, 372 U.S. 335 (1963) that “Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime....Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have money hire lawyers to defend are the strongest indications of the wide-spread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.” *Id.* at 344.

Senator Mike Lee
Questions for the Record
Anne Hwang, Nominee for District Court Judge for the Central District of California

1. How would you describe your judicial philosophy?

Response: My philosophy as a Superior Court judge is to listen to the parties with an open mind, to thoroughly research the law, and to apply the law fairly and impartially to the facts. In issuing decisions, I endeavor to provide clear opinions in an expeditious manner. If confirmed as a district judge, I will continue to abide by this philosophy.

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

Response: In interpreting a federal statute, I would look to applicable Supreme Court and Ninth Circuit precedent. If there was no binding precedent, I would start with the text of the statute. If the text is ambiguous, I would look to applicable canons of construction, canons of interpretation recognized by the Supreme Court and Ninth Circuit, persuasive authority from other circuits, and legislative history where authorized by Supreme Court and Ninth Circuit precedent.

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

Response: In interpreting a constitutional provision, I would look to applicable Supreme Court and Ninth Circuit precedent. In the unusual case of a constitutional question of first impression, I would first look to the text. If the meaning of the provision remained unclear, I would look to methods of interpretation recognized by the Supreme Court and the Ninth Circuit, such as a review of the historical background of the provision, and would consider persuasive authority from other circuits.

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

Response: The Supreme Court has held that the text and original meaning play a significant role in interpreting the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004).

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: Please see my response to Question 2.

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

Response: The plain meaning of a statute or constitutional provision refers to the “ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton County, Georgia*, 590 U.S. 644, 654 (2020); *see also New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 20 (2022).

7. What are the constitutional requirements for standing?

Response: The Supreme Court has held that a plaintiff “must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citations omitted).

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

Response: The powers of Congress are enumerated in Article I of the Constitution. Congress also has the power to enact laws that are necessary and proper to carry out those enumerated powers. *See, e.g., McCulloch v. Maryland*, 4 Wheat. 316, 405 (1819); *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 559 (2012) (“The power to ‘make all Laws which shall be necessary and proper for carrying into Execution’ the powers enumerated in the Constitution, Art. I, § 8, cl. 18, vests Congress with authority to enact provisions ‘incidental to the [enumerated] power, and conducive to its beneficial exercise.’ Although the Clause gives Congress authority to ‘legislate on that vast mass of incidental powers which must be involved in the constitution,’ it does not license the exercise of any ‘great substantive and independent power[s]’ beyond those specifically enumerated. Instead, the Clause is ‘merely a declaration, for the removal of all uncertainty, that the means of carrying into execution those [powers] otherwise granted are included in the grant’” (citations omitted).)

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

Response: In evaluating the constitutionality of a law that Congress enacted without reference to a specific Constitutional enumerated power, I would apply all binding Supreme Court and Ninth Circuit precedent. *See, e.g., Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (“The ‘question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.’”) (citation omitted).

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

Response: The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment “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.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). The Supreme Court has further held that in substantive-due-process cases, a “careful description” of the “asserted fundamental liberty interest” is required. *Id.* at 721. In *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), the Supreme Court listed prior cases which recognized “the right to marry a person of a different race,” “the right to marry while in prison,” “the right to obtain contraceptives,” “the right to reside with relatives,” “the right to make decisions about the education of one’s children,” “the right not to be sterilized without consent,” “and the right in certain circumstances not to undergo involuntary surgery, forced administration of drugs, or other substantially similar procedures,” as well as the “right to engage in private, consensual sexual acts” and the “right to marry a person of the same sex.” *Id.* at 256-57 (citations omitted).

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 overturned *Lochner v. New York*, 198 U.S. 45 (1905), in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). By contrast, the Supreme Court has held that substantive due process protects those personal rights as explained in *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

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

Response: The Supreme Court has “identified three broad categories of activity that Congress may regulate under its commerce power. First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress’ commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558-59 (1995) (citations omitted).

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

Response: The Supreme Court has recognized that a class that exhibits “obvious, immutable, or distinguishing characteristics that define them as a discrete group,” such as race, religion, national origin, and alienage, is a suspect class. *Lyng v. Castillo*, 477 U.S. 635, 638 (1986); *see also City of New Orleans v. Dukes*, 427 U.S.

297, 303 (1976); *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

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

Response: The Supreme Court has stated that the "Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty. Their solution to governmental power and its perils was simple: divide it. To prevent the 'gradual concentration' of power in the same hands, they enabled '[a]mbition ... to counteract ambition' at every turn." *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 223 (2020) (citations omitted).

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

Response: I would apply binding Supreme Court and Ninth Circuit precedent to determine a case in which one branch assumed an authority not granted it by the text of the Constitution. *See, e.g., Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) ("Perhaps the principal benefit of the federalist system is a check on abuses of government power. ... Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front") (citations omitted).)

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

Response: Empathy should play no role in a judge's determination of a case. A judge must decide cases based on the application of the law to the facts, without regard to any personal feelings about anyone involved in the case.

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

Response: Both must be avoided.

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

Response: I have not studied these trends in the Supreme Court's constitutional jurisprudence. As a district judge, I would faithfully follow all Supreme Court and Ninth Circuit precedent.

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

Response: Judicial review refers to the power of courts to evaluate the constitutionality of legislative acts. *Moore v. Harper*, 600 U.S. 1, 19-20 (2023). Judicial supremacy is the "doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review ... are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019).

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

Response: As a sitting judge and a federal judicial nominee, I am precluded from opining as to how elected officials should balance their obligations. However, if I were presented with a case involving a claim that an elected official failed to follow the Constitution or duly rendered judicial decisions, I would apply Supreme Court and Ninth Circuit precedent. For example, the Supreme Court has stated that "[n]o state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

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 role of a judge is to apply the law fairly and impartially to the facts. The judiciary does not exercise the powers of other branches of government under our Constitution. If confirmed, I will decide each case based on the facts and the law.

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: Federal district judges are bound by precedent of the Supreme Court and of their circuit, without regard to their personal views about the soundness of such precedent. I will follow binding Supreme Court and Ninth Circuit precedent regardless of any personal views about its correctness. District judges must “follow the case which directly controls” and has “direct application in a case.” *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122, 136 (2023) (citation omitted).

- 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 definition of “equity.” Black’s Law Dictionary defines equity to include “[f]airness; impartiality; evenhanded dealing.” Black’s Law Dictionary (11th ed. 2019). To the extent that the term “equity” became an issue in any case before me, I would apply Supreme Court and Ninth Circuit precedent and refer to the text of any statute or regulation that contained that term.

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

Response: My general understanding of the term “equity” comports with the definition set forth in response to Question 25. Generally, my understanding of the term “equality” means to be equal. To the extent that these terms became an issue in any case before me, I would apply Supreme Court and Ninth Circuit precedent and refer to the text of any statute or regulation that contained these terms.

- 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 case that interprets the Fourteenth Amendment's Equal Protection Clause to guarantee equity as defined in Question 25.

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

Response: I am not aware of a consensus definition of “systemic racism,” and I have not encountered a case where that term was an issue. To the extent that the term “systemic racism” became an issue in any case before me, I would apply Supreme Court and Ninth Circuit precedent and refer to the text of any statute or regulation that contained that term.

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

Response: I am not aware of a consensus definition of “critical race theory,” and I have not encountered a case where that term was an issue. To the extent that the term “critical race theory” became an issue in any case before me, I would apply Supreme Court and Ninth Circuit precedent and refer to the text of any statute or regulation that contained that term.

- 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 have been a member of the national Asian Pacific American Judicial Council (“NPAJC”) since 2023, a membership organization of the National Asian Pacific Bar Association (“NAPABA”). NAPABA has publicly taken many extreme, Left-leaning positions. As a member of NPAJC, you may not necessarily agree with every position stated by NAPABA. However, you decided to maintain membership in NPAJC despite NAPABA’s highly partisan positions. NAPABA has stated that state and local governmental entities that refuse to honor ICE detainer requests and limit voluntary cooperation with federal immigration enforcement should be “support[ed].” Do you agree? Do you apply the law as you hope it to be in immigration matters, or do you believe in applying the law as-written?**

Response: I became a member of the National Asian Pacific American Judicial Council (“NAPAJC”) in October 2023. I was unaware that NAPAJC was a membership organization of the National Asian Pacific American Bar Association (“NAPABA”) until these questions. I was not aware of this statement by NAPABA, played no role in its issuance, and it does not reflect views that I have expressed. I will apply the law as written, as well as any binding Supreme Court and Ninth Circuit precedent. As a sitting judge and a federal judicial nominee, I am precluded from

providing an opinion about whether state and local governmental entities should be supported.

- 32. Do you agree with NAPABA in opposing H.R. 734, “Protection of Women and Girls in Sports Act of 2023,” which would require school-age athletes to compete against members of their own biological sex? Do you believe that adolescent boys and girls should compete against members of the opposite sex in sports that are traditionally segregated by sex?**

Response: I became a member of the National Asian Pacific American Judicial Council (“NAPAJC”) in October 2023. I was unaware that NAPAJC was a membership organization of the National Asian Pacific American Bar Association (“NAPABA”) until these questions. I was not aware of this opposition by NAPABA, played no role in its issuance, and it does not reflect views that I have expressed. As a sitting judge and a federal judicial nominee, I am precluded from providing an opinion about H.R. 734 or whether adolescent boys and girls should compete against members of the opposite sex in sports that are traditionally segregated by sex.

- 33. Do you agree with NAPABA that large domestic land purchases by Chinese nationals should not be reviewed for possible connections to the Chinese Communist Party? If you disagree, why did you maintain your membership in NPAJC?**

Response: I became a member of the National Asian Pacific American Judicial Council (“NAPAJC”) in October 2023. I was unaware that NAPAJC was a membership organization of the National Asian Pacific American Bar Association (“NAPABA”) until these questions. I was not aware of this statement by NAPABA, played no role in its issuance, and it does not reflect views that I have expressed. As a sitting judge and a federal judicial nominee, I am precluded from providing an opinion about whether large domestic land purchases by Chinese nationals should be reviewed.

SENATOR TED CRUZ

U.S. Senate Committee on the Judiciary

Questions for the Record for Anne Hwang, 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. Racial discrimination is wrong and illegal pursuant to numerous federal and state statutes.

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 judge and a federal judicial nominee, I am precluded from opining on whether there are any unenumerated rights as yet unarticulated by the Supreme Court. The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment “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.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). The Supreme Court has further held that in substantive-due-process cases, a “careful description” of the “asserted fundamental liberty interest” is required. *Id.* at 721. I would faithfully apply all binding Supreme Court and Ninth Circuit precedent if presented with this issue.

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: My philosophy as a Superior Court judge is to listen to the parties with an open mind, to thoroughly research the law, and to apply the law fairly and impartially to the facts. In issuing decisions, I endeavor to provide clear opinions in an expeditious manner. If confirmed as a district judge, I will continue to abide by this philosophy. Because my role as a trial court judge is different from that of a Supreme Court justice, I am not able to analogize to any particular justice.

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

Response: Originalism refers to a method of interpretation that looks to the historical tradition and original public meaning at the time of adoption or enactment in determining the meaning of a particular text. *See, e.g., New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 20 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004). I would not characterize myself with any particular label because my role is to faithfully follow all binding Supreme Court and Ninth Circuit precedent, including precedent regarding the particular method of interpretation to use.

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 “the doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values.” I would not characterize myself with any particular label because my role is to faithfully follow all binding Supreme Court and Ninth Circuit precedent, including precedent regarding the particular method of interpretation to use.

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

Response: In the unusual case of a constitutional issue of first impression, I would look to the text and utilize the method of interpretation that the Supreme Court and the Ninth Circuit have used in considering analogous language. The Supreme Court has relied on the original public meaning as a method of interpretation in numerous contexts. *See, e.g., New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 20 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

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 relied on the original public meaning as a method of interpretation in numerous contexts. *See, e.g., New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 20 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004). However, in some limited circumstances, the Supreme Court has instructed that “contemporary community standards” may be relevant. *See, e.g., Miller v. California*, 413 U.S. 15 (1973). If confirmed, I would follow all binding Supreme Court and Ninth Circuit precedent.

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

Response: No.

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

Response: Yes, *Dobbs v. Jackson Women’s Health Organization* is binding precedent.

- a. **Was it correctly decided?**

Response: As a sitting judge and a federal judicial nominee, I am precluded from commenting on the correctness of binding Supreme Court precedent, which I will faithfully apply.

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

Response: Yes, *New York State Rifle & Pistol Association v. Bruen* is binding precedent.

a. Was it correctly decided?

Response: As a sitting judge and a federal judicial nominee, I am precluded from commenting on the correctness of binding Supreme Court precedent, which I will faithfully apply.

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

Response: Yes, *Brown v. Board of Education* is binding precedent.

a. Was it correctly decided?

Response: As a sitting judge and a federal judicial nominee, I am generally precluded from commenting on whether a Supreme Court decision was correctly decided. Consistent with the practice of prior judicial nominees, however, I can state that the issue of *de jure* segregation of schools is unlikely to come before me, and therefore I can state that *Brown v. Board of Education* was correctly decided.

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

Response: Yes, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* is binding precedent.

a. Was it correctly decided?

Response: As a sitting judge and a federal judicial nominee, I am precluded from commenting on the correctness of binding Supreme Court precedent, which I will faithfully apply.

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

Response: Yes, *Gibbons v. Ogden* is binding precedent.

a. Was it correctly decided?

Response: As a sitting judge and a federal judicial nominee, I am precluded from commenting on the correctness of binding Supreme Court precedent, which I will faithfully apply.

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

Response: 18 U.S.C. § 3142(e)(3) provides a rebuttable presumption in favor of pretrial detention for certain specified drug offenses, firearms, conspiracy, or terrorism offenses, human trafficking offenses, and offenses involving minor victims. 18 U.S.C. § 3142(e)(2) provides a rebuttable presumption in favor of pretrial detention where a defendant has committed certain offenses while on pretrial release within a certain period of time.

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

Response: “Responding to ‘the alarming problem of crimes committed by persons on release,’ ... Congress formulated the Bail Reform Act of 1984, ... as the solution to a bail crisis in the federal courts. The Act represents the National Legislature’s considered response to numerous perceived deficiencies in the federal bail process.” *United States v. Salerno*, 481 U.S. 739, 742 (1987).

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 various limits to what government may impose or require of private institutions, whether it be a religious organization or small business operated by observant owners. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732 (2020); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 584 U.S. 617 (2018).

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

Response: The Supreme Court has held that “[t]he Free Exercise Clause, which applies to the States under the Fourteenth Amendment, ‘protects religious observers against unequal treatment’ and against ‘laws that impose special disabilities on the basis of religious status.’” *Espinoza v. Montana Dep’t of Revenue*, 591 U.S. 464, 475 (2020) (citations omitted). Such actions trigger strict scrutiny under the First Amendment. *Id.* *See also Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993) (“Although a law targeting religious beliefs as such is never permissible, if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest.”) (citations omitted).

17. In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an

executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court’s holding on whether the religious entity-applicants were entitled to a preliminary injunction.

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020), the Supreme Court granted an application for injunctive relief because the applicants demonstrated that their First Amendment claims were likely to prevail, that denying them relief would lead to irreparable injury, and that granting relief would not harm the public interest. Regarding the likelihood of success on the merits, the Supreme Court concluded that the challenged restrictions violated the “minimum requirement of neutrality” to religion and could not be viewed as neutral because they singled out houses of worship for especially harsh treatment. *Id.* at 16-17. The Supreme Court further found that the restrictions were not narrowly tailored and therefore did not survive strict scrutiny. *Id.* at 18.

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

Response: In *Tandon v. Newsom*, 593 U.S. 61, 62-64 (2021), the Supreme Court granted an application for injunctive relief, finding that California’s COVID restrictions treated some comparable secular activities more favorably than at-home religious exercise, that comparability “is concerned with the risks various activities pose, not the reasons why people gather,” and that the government bears the burden to establish that a challenged law satisfies strict scrutiny, which had not been met.

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 School Dist.*, 597 U.S. 507 (2022).

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

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 584 U.S. 617, 638-39 (2018), the Supreme Court held that the Colorado Civil Rights Commission violated the Free Exercise Clause of the First Amendment by displaying hostility to a baker’s religion. No strict scrutiny was required.

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. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (“it is not for us to say that their religious beliefs are mistaken or insubstantial.

Instead, our ‘narrow function...in this context is to determine’ whether the line drawn reflects ‘an honest conviction’...” (citations omitted).)

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

Response: Yes, so long as the beliefs are rooted in religion and reflect an honest conviction. *See Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 713-14 (1981) (“Only beliefs rooted in religion are protected by the Free Exercise Clause, which, by its terms, gives special protection to the exercise of religion. The determination of what is a ‘religious’ belief or practice is more often than not a difficult and delicate task, as the division in the Indiana Supreme Court attests. However, the resolution of that question is not to turn upon a judicial perception to the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.”) (citation omitted); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (“it is not for us to say that their religious beliefs are mistaken or insubstantial. Instead, our ‘narrow function...in this context is to determine’ whether the line drawn reflects ‘an honest conviction’...” (citations omitted).)

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

Response: Please see my response to Question 21a above.

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

Response: My general understanding is that the Catholic Church does not support abortion.

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

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732 (2020), the Supreme Court held that the First Amendment barred an employment discrimination claim by two elementary school teachers. The Supreme Court considered “a variety of factors,” and concluded that “[w]hat matters, at bottom, is what an employee does.” *Id.* at 751-53. “[E]ducating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school.” *Id.* at 753-54. “When a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens

the school's independence in a way that the First Amendment does not allow." *Id.* at 762.

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

Response: In *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), the Supreme Court held that the City's decision to stop referring children to Catholic Social Services upon discovering the agency would not certify same-sex couples to be foster parents due to its religious beliefs about marriage violated the First Amendment. The Supreme Court found that the City's asserted interests did not survive strict scrutiny because the City did not offer a compelling reason why it has a particular interest in denying an exception to CSS while making them available to others. *Id.* at 541-42.

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

Response: In *Carson v. Makin*, 596 U.S. 767 (2022), the Supreme Court held that Maine's program of tuition assistance for parents that made private schools eligible to receive payments, so long as they are nonsectarian, violated the Free Exercise Clause of the First Amendment. The Supreme Court concluded that the State's antiestablishment interest was not a compelling interest to "justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise," and therefore did not survive strict scrutiny. *Id.* at 781.

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

Response: In *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), the Supreme Court held that the suspension of a football coach due to his post-game prayer violated the Free Exercise and Free Speech Clauses of the First Amendment. The Supreme Court noted that "[t]hese Clauses work in tandem. Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities." *Id.* at 523. The Supreme Court rejected the school district's justification of the suspension as necessary to avoid a violation of the Establishment Clause, reiterating that it had abandoned the test set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and instructing that "the Establishment Clause must be interpreted by reference to historical practices and understandings." *Id.* at 535 (citations omitted).

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's concurring opinion in *Mast v. Fillmore County*, 141 S. Ct. 2430, 2432 (2021) (Mem.), explains that the Religious Land Use and Institutionalized Persons Act (RLUIPA) requires the government to set forth a compelling interest in reference to the specific application of the rules to the particular community, not a general interest. The concurrence further explains that the court must give due weight to exemptions that other groups enjoy, as well as due weight to rules in other jurisdictions, under a strict scrutiny analysis. *Id.* at 2432-33.

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: 18 U.S.C. § 1507 provides criminal penalties for a person who “with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence.”

I am not aware of any Supreme Court or Ninth Circuit precedent addressing the constitutionality of 18 U.S.C. § 1507, however, the Supreme Court has upheld a similar state statute. *See Cox v. Louisiana*, 379 U.S. 559 (1965). As a federal judicial nominee, I am precluded from opining on matters that might come before me, including the interpretation of this particular statute.

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: I am not aware of any Supreme Court or Ninth Circuit precedent addressing the constitutionality of these considerations when making a political appointment. As to whether it is appropriate, as a sitting judge and a federal judicial nominee, I am precluded from opining as to how the executive branch should appropriately make a political appointment.

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

Response: Disparate impact “alone is not determinative.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). The Supreme Court has said that “[d]isproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination.” *Washington v. Davis*, 426 U.S. 229, 242 (1976).

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

Response: As a sitting judge and a federal judicial nominee, I am precluded from commenting on the appropriate number of justices on the Supreme Court.

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

Response: No.

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

Response: The Second Amendment “protect[s] the right of an ordinary, law-abiding citizen to possess a handgun in the home [and in public] for self-defense.” *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 8 (2022).

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

Response: In *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022), relying on *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court held that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’”

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

Response: Yes. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 602 (2008).

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

Response: No. *See, e.g., New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 70 (2022).

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

Response: No. *See, e.g., McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

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

Response: “Article II of the Constitution assigns the ‘executive Power’ to the President and provides that the President ‘shall take Care that the Laws be faithfully executed.’ U.S. Const., Art. II, § 1, cl. 1; § 3. Under Article II, the Executive Branch possesses authority to decide ‘how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.’” *United States v. Texas*, 599 U.S. 670, 678-79 (2023) (citations omitted). As a sitting judge and a federal judicial nominee, I am

precluded from opining as to how the executive branch should appropriately exercise its authority.

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

Response: “In our criminal justice system, the Government retains ‘broad discretion’ as to whom to prosecute.” *Wayte v. United States*, 470 U.S. 598, 607 (1985) (citations omitted). Black’s Law Dictionary defines prosecutorial discretion as “[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). An administrative rule must be promulgated in accordance with the Administrative Procedure Act.

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

Response: No.

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

Response: In *Alabama Association of Realtors v. Department of Health and Human Services*, 594 U.S. 758, 759 (2021), the Supreme Court vacated a district court’s stay of its judgment vacating a moratorium imposed by the Director of the Centers for Disease Control and Prevention on evictions of any tenants who live in a county experiencing substantial or high levels of COVID-19 transmission and who make certain declarations of financial need. The Supreme Court held that the applicants were “virtually certain to succeed on the merits of their argument that the CDC exceeded its authority,” concluding the statute on which the CDC relied, § 361(a) of the Public Health Service Act, did not provide the CDC with authority to impose the eviction moratorium. *Id.* The Supreme Court further held that “[e]ven if the text were ambiguous, the sheer scope of the CDC’s claimed authority under § 361(a) would counsel against the Government’s interpretation. We expect Congress to speak clearly when authorizing an agency to exercise powers of ‘vast ‘economic and political significance.’” *Id.* at 764.

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 judge and a federal judicial nominee, I am precluded from opining as to whether a particular action taken by a prosecutor is appropriate.

**Senator John Kennedy
Questions for the Record**

Anne Hwang

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

Response: Yes. 18 U.S.C. § 3591-3599 sets forth the procedures and circumstances for the imposition of a federal sentence of death.

- 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: My philosophy as a Superior Court judge is to listen to the parties with an open mind, to thoroughly research the law, and to apply the law fairly and impartially to the facts. In issuing decisions, I endeavor to provide clear opinions in an expeditious manner. If confirmed as a district judge, I will continue to abide by this philosophy.

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

Response: Yes. *See, e.g., New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

- 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: In interpreting a constitutional provision, I would look to applicable Supreme Court and Ninth Circuit precedent. In the unusual case of a constitutional question of first impression, I would first look to the text. If the meaning of the provision remained unclear, I would look to methods of interpretation recognized by the Supreme Court and

the Ninth Circuit, such as a review of the historical background of the provision, and would consider persuasive authority from other circuits.

8. Is textualism a legitimate method of statutory interpretation?

Response: Yes. *See, e.g., Bostock v. Clayton County, 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: The Supreme Court has stated that “in interpreting a statute a court should always turn first to one, cardinal canon before all others. [The Supreme Court has] stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). If the meaning of the provision is unclear, a judge should look to sources authorized by the Supreme Court and the circuit in interpreting similar provisions, such as applicable canons of construction, canons of interpretation recognized by the Supreme Court or the circuit, and persuasive authority from other circuits. The Supreme Court has “consulted legislative history when interpreting *ambiguous* statutory language,” but has cautioned that “[l]egislative history, for those who take it into account, is meant to clear up ambiguity, not create it.” *Bostock v. Clayton County, Georgia*, 590 U.S. 644, 674 (2020) (emphasis in original, citation omitted).

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

Response: No, the Constitution is an enduring document that can only be amended pursuant to Article V. *See, e.g., New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 28 (2022) (noting that the “meaning” of the Constitution is “fixed”).

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

Response: In *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021), the Supreme Court found that the petitioner was entitled to qualified immunity because the respondent had not identified a case that put the petitioner on notice that his specific conduct was unlawful. The Supreme Court reversed the decision of the Ninth Circuit, which relied on a case that the Supreme Court found to be materially distinguishable and therefore did not provide notice to the petitioner. *Id.* at 7.

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

Response: The Ninth Circuit has held that the “scope of the remedy must be no broader and no narrower than necessary to redress the injury shown by the plaintiff.” *California v. Azar*, 911 F.3d 558, 584 (9th Cir. 2018) (finding the district court abused its discretion in granting a nationwide injunction where an injunction that applies only to the plaintiff would provide complete relief). “The Supreme Court has repeatedly emphasized that nationwide injunctions have detrimental consequences to the development of law and deprive appellate courts of a wider range of perspectives.” *Id.* at 583. “The detrimental consequences of a nationwide injunction are not limited to their effects on judicial decisionmaking. There are also the equities of non-parties who are deprived the right to litigate in other forums.” *Id.* “Nationwide injunctions are also associated with forum shopping, which hinders the equitable administration of laws.” *Id.*

- 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: The Ninth Circuit has noted that “[w]e do not treat considered dicta from the Supreme Court lightly. Rather, we accord it appropriate deference. ... As we have frequently acknowledged, Supreme Court dicta ‘have a weight that is greater than ordinary judicial dicta as prophecy of what that Court might hold’; accordingly, we do ‘not blandly shrug them off because they were not a holding.’ ... Nevertheless, we have on occasion followed the Supreme Court’s admonition that, although dictum ‘may be followed if sufficiently persuasive,’ it ‘ought not to control the judgment in a subsequent suit.’” *United States v. Montero-Camargo*, 208 F.3d 1122, 1132 n.17 (2000) (citations omitted).

- 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; in making hiring decisions, I will select the most qualified applicant for the position.