Senator Dick Durbin
Ranking Member, Senate Judiciary Committee
Written Questions for Ed Artau
Nominee to be U.S. District Judge for the Southern District of Florida
July 2, 2025

1. You joined the Fourth District Court of Appeal's majority opinion in *Alexander v. Trump*, holding that President Trump's lawsuit against the individual members of the Pulitzer Prize Board for defamation and conspiracy could continue. President Trump sued the Board for bestowing its prize to publications for their reporting on alleged Trump-Russia collusion during the 2016 election and the Board's subsequent decision not to strip the publications of the recognition after Trump's written requests that they do so. Your concurring opinion went a step further, however, and addressed the merits of the President's defamation and conspiracy claims. You took it upon yourself to zealously make the President's case, opening and closing your opinion by echoing the President's rhetoric and writing, "FAKE NEWS." The partisan tone of your writing leaves the public with no question about your political preferences and raises concerns about your ability to be a neutral arbiter of the law.

a. Do you think it is appropriate for a judge to parrot the partisan talking points of one of the litigants in a case before them?

The preface to you question mischaracterizes my concurring opinion. My concurring opinion, as part of a unanimous panel that found jurisdiction in *Alexander v. Trump*, was correctly decided based solely on application of the procedural law governing the case, which requires that we accept as true the allegations of the President's well-plead complaint and any facts determined by the trial court to have been properly plead for purposes of determining the jurisdiction question at the motion to dismiss stage.

As the trial court which we affirmed in *Alexander v. Trump* explained in the order on appeal: "When ruling on a motion to dismiss, the trial court 'must limit itself to the four corners of the complaint, including any attached or incorporated exhibits, assuming the allegations in the complaint to be true and construing all reasonable inferences therefrom in favor of the non-moving party.'" (quoting *Cousins v. Post-Newsweek Stations Florida, Inc.*, 275 So. 3d 674, 678 (Fla. 3d DCA 2019)).

This is the standard the law requires that we follow as appellate judges. Therefore, this is the standard I correctly applied in my concurring opinion in *Alexander v. Trump*.

I consistently applied these same principles recently in my dissenting opinion in Daher Aerospace SA v. Blackford, --- So. 3d ----, No. 4D 2024-2453, 2025 WL 1572566 (Fla. 4th DCA June 4, 2025) (citing Alexander v. Trump).

b. Given the hyper-partisan tone of your concurring opinion, why should parties who oppose or disagree with the President believe that they will get a fair shot in your courtroom?

See my response to question 1.a.

2. This opinion was issued on February 12, 2025. According to your Senate Judiciary Questionnaire, you had been interviewing with your home state Senators in the months prior to the issuance of this decision. Just over two weeks later, you interviewed with attorneys from the White House regarding your nomination. You also met with President Trump on May 27, 2025.

a. On what day were you contacted by Senators Scott and Moody or their staff and advised that they would be recommending you to the White House for consideration?

I did not reach out to Senator Moody until February 14, 2025—which was after I had already issued my concurring opinion and completed all my judicial labor on the *Alexander v. Trump* case—because that is when I was first informed that Senator Scott intended to recommend that I be considered by Senator Moody. I then attempted to contact Senator Moody's Office on February 14, 2024, to ask if Senator Moody had any questions, but I was unable to speak with any staff member in her office.

I was thereafter not notified until February 20, 2025, when I received a call from a Deputy White House Counsel, who advised that the White House Counsel's Office was interested in scheduling an interview with me for February 27, 2025.

b. Did you discuss this case during your interview with the White House Counsel's Office?

I do not recall discussing any particular case with the White House Counsel's Office. My recollection is that the interview focused on my judicial philosophy and my general approach to interpreting and applying the law.

c. When you met with President Trump on May 27, did either of you specifically mention or allude *to Alexander v. Trump* or your concurring opinion?

No.

3. In 1995, the Governor of Florida launched an investigation, which found that you improperly lobbied for the judicial recommendation and appointment of Maria Sachs. Her husband helped appoint you to the Judicial Nominating Commission (JNC), which made recommendations to the Governor about appointments to the state bench. In his testimony to investigators, Mr. Sachs admitted to advocating for his wife to you and another member

of the JNC. According to public reporting, multiple sources stated that you tried to pave the way for Mrs. Sachs's nomination during her JNC interview, including by cutting off questioners who asked about her background and professional experiences. Notably, Mrs. Sachs reportedly misrepresented her experience level, salary, and other qualifications. A former JNC chair said that the campaign to select her "smacks of cronyism and backroom politics." You also retaliated against the JNC chair who brought forth the allegations that you improperly lobbied for Mrs. Sachs's appointment by voting to remove him from his position. The lawyer who you and fellow commissioners installed as the JNC chair later went to jail for his attempts to rig an election two years later.

a. Do you regret improperly advocating for Mrs. Sachs's appointment to the state bench while serving on the JNC?

I respectfully disagree with this characterization of the results of the investigation. The investigation did not find that I had inappropriately advocated for a candidate or that her husband had arranged for my appointment. Instead, as the 1997 article provided with my Senate Judiciary Committee Questionnaire notes, the gubernatorial panel "found no evidence of misconduct." It also noted that "[t]he probe was hampered by the refusal of five JNC members to cooperate with investigators," but "Artau was one of four members who cooperated fully."

Additionally, I was appointed by the entire 52-member Board of Governors of the Florida Bar; not one isolated member. And I was not the subject of any investigation into a rule violation and at no time did any investigation ever find that I should have recused myself. Rather, it was the Chair himself who was being investigated for violating the commission's rules. Seven out of the nine-members of the Judicial Nominating Commission (JNC), including myself, brought a written complaint against the Chair and voted to remove him because he was caught inappropriately contacting the Governor's office and making public statements falsely claiming that one of the JNC's nominees, Maria Sachs, who had been a prosecutor in Miami-Dade County with extensive experience having tried well over 100 jury trials in her legal career, was not qualified simply because he claimed she had a gap in her employment history by working only part-time for a brief period of time while on maternity leave after she became pregnant despite the fact that she was the nominee selected by a majority of the JNC's members because she was the applicant with the most amount of jury trial experience.

Moreover, the Committee voted to remove the Chair of the JNC because we concluded that the Chair had violated the rules governing judicial nominating commission that prohibit a commissioner, including the Chair, from contacting the Governor or any member of the Governor's office for the purpose of influencing the governor's ultimate decision, and that the Chair also violated the rules that prohibit any commissioner, including the Chair, from publicly ranking any of the JNC commission's nominees or disclosing any preference for a particular nominee after a nomination. As I said when I became the Chair, the Chair should state the will of the commission to the public and the media, not publicly express a

preference for a candidate, especially contrary to the view of the commission. See 1997 article provided with my Senate Judiciary Committee Questionnaire.

b. Do you regret retaliating against the JNC chair who brought forth the allegations that you improperly lobbied for Mrs. Sachs's appointment by voting to remove him from his position?

Please see my response to question 3a.

c. Do you regret installing a lawyer as JNC chair who later went to jail for attempting to rig an election two years later?

You are referring to Ted Brabham who had served as the Chair of the Democratic Party in Palm Beach County. He was unopposed and unanimously elected with the support of seven out of the nine commissioners to succeed the removed Chair because he had the most seniority on the Judicial Nominating Commission (JNC). We could not have predicted that he would later do something unrelated to his service on the Judicial Nominating Commission that would cause him criminal liability no more so than those who had installed him to Chair what was the majority political party in Palm Beach County in 1995. None of Mr. Brabham's later criminal actions were related to his service as Chair of the JNC.

4. Last year in *H.S. v. Department of Children & Families*, which concerned gender-affirming healthcare, you criticized a lower court judge for using a transgender child's chosen name and pronouns.

a. If parties in cases before you are transgender adults, will you use their preferred names and pronouns when referring to them during proceedings and in orders and opinions? Please explain why or why not.

I will treat all litigants with respect and attempt my best to accommodate all reasonable requests of the parties.

b. Would you respect the chosen pronouns of a transgender child before you in court, even if the parents oppose such usage? Please explain why or why not.

I will follow Florida law on matters that pertain to parental rights.

c. If you will not refer to parties before you by their preferred pronouns, why should they have confidence that you will treat them fairly?

I will treat all litigants with respect and attempt my best to accommodate all reasonable requests of the parties.

5. Did President Trump lose the 2020 election?

President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate regarding the conduct of the 2020 presidential election or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding the 2020 election or political commentary, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

6. Where were you on January 6, 2021?

I was in my Chambers at the Fourth District Court of Appeal in Palm Beach County, FL

7. Do you denounce the January 6 insurrection?

The events of January 6, 2021, are matters of significant political debate which may come before me as a Judge. Thus, as a judicial nominee, it would be inappropriate for me to answer this question or engage in any political commentary. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

8. Do you believe that January 6 rioters who were convicted of violent assaults on police officers should have been given full and unconditional pardons?

As a judicial nominee, it would be inappropriate for me to comment on the President's use of the pardon power, which Article II of the Constitution vests solely in the President. *See* Code of Conduct U.S. Judges, Canon 3A(6).

9. The Justice Department is currently defending the Trump Administration in a number of lawsuits challenging executive actions taken by the Administration. Federal judges—both Republican and Democratic appointees—have enjoined some of these actions, holding that they are illegal or unconstitutional. Alarmingly, President Trump, his allies, and even some nominees before the Senate Judiciary Committee have responded by questioning whether the executive branch must follow court orders.

a. What options do litigants—including the executive branch—have if they disagree with a court order?

My general understanding of the relevant legal considerations is as follows. If there is a lower-court order that binds the Executive Branch or an executive official or agency, the normal course is for the party to follow the order and seek appellate review if the party disagrees with the outcome; if the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed. With respect to potential exceptions to that rule, I am aware of scholarly work that has posited scenarios in which parties, including the Executive Branch or one of its officers, departments, or agencies, might permissibly

disregard a court order. *See generally, e.g.*, William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008) (lack of jurisdiction); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996) (constitutional error "so clear that it is not open to rational question"); *see also* 17 Corpus Juris Secundum Contempt §§ 56-65 (discussing contempt defenses). I am also aware of the legal distinction that parties and jurists have drawn between a court's binding "judgment[]" and its "statements in opinions." *Camreta v. Greene*, 563 U.S. 692, 704 (2011); *see* Abraham Lincoln, First Inaugural Address (Mar. 4, 1861) (discussing *Dred Scott v. Sanford*). And I am generally aware that, there are certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding. *See, e.g.*, *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009) ("Another long-recognized option is for a party to defy a disclosure order and incur court-imposed sanctions."). In *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, the Sixth Circuit explained that the "general rule" is that a non-party "seeking to appeal a discovery order must first disobey the order and suffer a contempt citation." 444 F.3d 462, 471 (6th Cir. 2006) (citing *Alexander v. United States*, 201 U.S. 117, 121-22 (1906)). Because a case involving these issues could come before me if I were confirmed as a judge, it would be inappropriate to provide an answer that categorically pre-determines the validity of potential legal arguments for or against these matters. *See* Code of Conduct U.S. Judges, Canon 3A(6). If any such issues came before me, I would commit to resolving them through careful consideration and application of the parties' arguments and the governing law and precedents.

b. Do you believe a litigant can ever lawfully defy an order from a lower federal court? If yes, in what circumstances?

There are several recognized instances where a party may defy a court order including, the court was without legal authority to issue the order, it is impossible to comply with the order, the order's terms are not clear, the order is stayed pending appeal, or the party wishes to be held in contempt to make the order immediately appealable. *See In re J & L Structural, Inc.* 299 B.R. 89, 96 (Bankr. W.D. Penn. 2003) ("An order may be void if the court entering it lacked subject-matter jurisdiction or lacked personal jurisdiction over the parties or if the order was not within the powers granted to the court by law."); *Charis v. Burgess*, 143 F.3d 1432, 1436 (11th Cir. 1998) ("A contemnor may be excused because of an 'inability' to comply with the terms of the order."); *United States v. Manafort*, 897 F.3d 340, 346 (D.C. Cir. 2018) ("The statutory requirement for clarity accords with the familiar rule that the court should not punish someone for violating an order if the terms of that order are unclear."); *In re Swan*, 506 B.R. 47, 51 (Bankr. W.D.N.Y. 2014) ("Whenever a party decides that he, she[,] or it cannot or will not perform an Order of the Court, the party is not free to disregard it. He, she[,] or it must seek relief from the order."); *Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.*, 2 F.3d 1397, 1405 n.16 (5th Cir. 1993) ("A discovery order, even one directed at a non-party, is not a final order and hence not appealable. Prior to appeal, the one to whom the order is directed must first defy it and risk being held in contempt. If he is so sanctioned, the contempt order is appealable."). Because these matters could arise before me as a judge, it would be inappropriate for me

to provide further comment on how the legal rules might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

c. Under the separation of powers, which branch of the federal government is responsible for determining whether a federal court order is lawful?

As a judicial nominee, it would be inappropriate for me to answer this hypothetical question. *See* Code of Conduct U.S. Judges, Canon 3A(6).

10. District judges have occasionally issued non-party injunctions, which may include "nationwide injunctions" and "universal injunctions."

a. Are non-party injunctions constitutional?

The Supreme Court has held that district courts may not issue "nationwide" or "universal" injunctions under the Judiciary Act of 1789. *See generally Trump v. CASA, Inc.*, --- S. Ct. ----, No. 24A884, No. 24A885, No. 24A886, 2025 WL 1773631 (June 27, 2025). Because these matters could arise before me as a judge, it would be inappropriate for me to provide further comment. *See* Code of Conduct U.S. Judges, Canon 3A(6).

b. Are non-party injunctions a legitimate exercise of judicial power?

Please see my answer to question 10a.

c. Is it ever appropriate for a district judge to issue a non-party injunction? If so, under what circumstances is it appropriate?

Please see my answer to question 10a.

d. As a litigator, have you ever sought a non-party injunction as a form of relief? If so, please list each matter in which you have sought such relief.

No.

11. At any point during your selection process, did you have any discussions with anyone—including individuals at the White House, the Justice Department, or any outside groups—about loyalty to President Trump? If so, please provide details.

No.

12. Does the U.S. Constitution permit a president to serve three terms?

The 22nd Amendment provides:

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to

which some other person was elected President shall be elected to the office of the President more than once.

To the extent this question seeks to elicit an answer that could be taken as opining on the broader political or policy debate regarding the conduct of presidential elections or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding elections, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

13. On Memorial Day, in a Truth Social post, President Trump referred to some judges whose decisions he disagrees with, as "USA HATING JUDGES" and "MONSTERS", who "…SUFFER FROM AN IDEOLOGY THAT IS SICK, AND VERY DANGEROUS FOR OUR COUNTRY…"[1]

As a judicial nominee, it would be inappropriate for me to answer this question. See Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

a. Do you agree that these federal judges are "USA HATING" and "MONSTERS" "…SUFFER FROM AN IDEOLOGY THAT IS SICK, AND VERY DANGEROUS FOR OUR COUNTRY…"?

As a judicial nominee, it would be inappropriate for me to answer this question. See Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

b. Do you believe this rhetoric endangers the lives of judges and their families?

As a judicial nominee, it would be inappropriate for me to answer this question. See Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

14. In addition to the President's own attacks on judges, his adviser Stephen Miller recently took to social media to call a federal trade court's ruling against President Trump's tariffs a "judicial coup"[2] and later reposted the images of the three judges who decided the case and wrote, "we are living under a judicial tyranny."[3]

[1] Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (May 26, 2025, 7:22AM), https://truthsocial.com/@realDonaldTrump/posts/114573871728757682.
[2] Stephen Miller (@StephenM), X, (May 28, 2025, 7:48PM), https://x.com/StephenM/status/1927874604531409314.
[3] Stephen Miller (@StephenM), X, (May 29, 2025, 8:25AM), https://x.com/StephenM/status/1928065122657845516.

a. Do you agree that these judges are engaged in a "judicial coup" and that "we are living under a judicial tyranny"?

As a judicial nominee, it would be inappropriate for me to answer this question. See Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

b. Do you believe this rhetoric endangers the lives of judges and their families?

As a judicial nominee, it would be inappropriate for me to answer this question. See Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

c. Would you feel comfortable with any politician or their adviser sharing a picture of you on social media if you issue a decision they disagree with?

As a judicial nominee, it would be inappropriate for me to answer this question. See Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

15. When, if ever, may a lower court depart from Supreme Court precedent?

It is never appropriate for a lower court to depart from directly controlling Supreme Court precedent. *See Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [lower court] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.").

16. When, in your opinion, would it be appropriate for a circuit court to overturn its own precedent?

Circuit courts should follow their own internal guidelines and relevant controlling precedents in determining whether to overturn their own precedent.

17. When, in your opinion, would it be appropriate for the Supreme Court to overrule its own precedent?

The Supreme Court applies the stare decisis factors set out in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), when determining whether to overrule precedent.

18. Please answer yes or no as to whether the following cases were correctly decided by the Supreme Court:

a. Brown v. Board of Education
b. Plyler v. Doe
c. Loving v. Virginia
d. Griswold v. Connecticut
e. Trump v. United States

f. Dobbs v. Jackson Women's Health Organization
g. New York State Rifle & Pistol Association, Inc. v. Bruen
h. Obergefell v. Hodges
i. Bostock v. Clayton County
j. Masterpiece Cakeshop v. Colorado
k. 303 Creative LLC v. Elenis
l. ***United States v. Rahimi***
m. ***Loper Bright Enterprises v. Raimondo***

Preface: As Justice Kagan explained, and many other judicial nominees across administrations have reiterated, it is generally not appropriate for a judicial nominee to "grade" or give a "thumbs-up or thumbs-down" to particular precedents of the Supreme Court. If confirmed as a judge, all of the Supreme Court's pronouncements would be binding on me. Under the Code of Conduct for United States Judges, I have a duty as a judicial nominee to refrain from commenting on the merits or demerits of the Supreme Court's binding precedents because doing so creates the impression that I would have difficulty applying binding law to adjudicate cases. *See* Code of Conduct U.S. Judges, Canon 3A(6).

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a. *Brown v. Board of Education*, 347 U.S. 483 (1954), is a landmark ruling that promotes racial equality and rejected the manifestly unjust and incorrect separate-but-equal rule of *Plessy v. Ferguson*. Consistent with the position of prior judicial nominees, I consider *Brown* to be one of the limited exceptions to the general principle that a judicial nominee should not comment on the Supreme Court's precedents. I agree with prior nominees that the underlying premise of the *Brown* decision is beyond dispute and that judges can express their agreement with that principle without calling into question their ability to apply the law faithfully to cases raising similar issues. Therefore, just as other nominees for judicial office have done, I can, consistent with the Code of Conduct, confirm that *Brown* was rightly decided.

b. *Plyler* is a binding precedent of the Supreme Court and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 18, preface.

c. Similar to *Brown*, *Loving v. Virginia*, 388 U.S. 1 (1967), is a landmark ruling, faithfully applying the Equal Protection Clause, that I can, consistent with the Code of Conduct and the practice of other nominees for judicial office, confirm that *Loving* was correctly decided.

d. *Griswold* is a binding precedent of the Supreme Court and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 18, preface.

e. *Trump* is a binding precedent of the Supreme Court and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 18, preface.

f. *Dobbs* is a binding precedent of the Supreme Court and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 18, preface.

g. *Bruen* is a binding precedent of the Supreme Court and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 18, preface.

h. *Obergefell* is a binding precedent of the Supreme Court and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 18, preface.

i. *Bostock* is a binding precedent of the Supreme Court and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 18, preface.

j. *Masterpiece Cakeshop* is a binding precedent of the Supreme Court and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 18, preface.

k. *303 Creative* is a binding precedent of the Supreme Court and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 18, preface.

l. *Rahimi* is a binding precedent of the Supreme Court and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 18, preface.

m. *Loper Bright* is a binding precedent of the Supreme Court and if confirmed, I would faithfully apply it. Otherwise, please see my answer to 18, preface.

19. With respect to constitutional interpretation, do you believe judges should rely on the "original meaning" of the Constitution?

As a lower court judge, my principal task would be to faithfully apply applicable precedent of the Supreme Court and the Eleventh Circuit. In interpreting the Constitution, I would employ methodologies consistent with the methods that the Supreme Court and the Eleventh Circuit apply when considering such issues, including the original meaning of the Constitution.

20. How do you decide when the Constitution's "original meaning" should be controlling?

See my answer to question 19.

21. Does the "original meaning" of the Constitution support a constitutional right to same-sex marriage?

In *Obergefell v. Hodges*, 576 U.S. 644 (2015), the Supreme Court held that the Fourteenth Amendment requires a state to license marriages between two people of the same sex on the same terms and conditions as marriages between two people of the opposite sex. As a lower court judge, I would be bound to apply all Supreme Court precedents. Because other matters related to this question are the subject of ongoing litigation and could appear before me as a judge, it would be inappropriate for me as a judicial nominee to comment further. *See* Code of Conduct U.S. Judges, Canon 3A(6).

22. Does the "original meaning" of the Constitution support the constitutional right to marry persons of a different race?

In *Loving v. Virginia*, 388 U.S. 1 (1967), the Supreme Court invalidated a state law prohibiting interracial couples from marrying. As discussed in my answer to question 18c., and consistent with the answers of prior nominees, I can state, consistent with the Code of Conduct, that *Loving* correctly applied the Equal Protection Clause.

23. What is your understanding of the Equal Protection and Due Process clauses of the Fourteenth Amendment?

Under existing Supreme Court precedent, the Equal Protection Clause limits the government's ability to classify persons either in a way that lacks rational basis or in a way that infringes upon fundamental rights or acts on the basis of quasi-suspect or suspect characteristics. *See, e.g.*, *Armoun v. City of Indianapolis, Ind.*, 566 U.S. 673 (2012); *Students for Fair Admission, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181 (2023). The Supreme Court has also interpreted the Due Process Clause to establish both procedural rights and substantive rights. *See, e.g.*, *Jones v. Flowers*, 547 U.S. 220 (2006); *Meyer v. Nebraska*, 262 U.S. 390 (1923). Because other matters related to this question are the subject of ongoing litigation and could appear before me as a judge, it would be inappropriate for me as a judicial nominee to comment further. *See* Code of Conduct U.S. Judges, Canon 3A(6).

24. How do these clauses apply to individuals that the Framers of the amendment likely did not have in mind, such as women? Or LGBTQ+ individuals?

The Supreme Court has addressed these issues in cases such as *United States v. Virginia*, 518 U.S. 515 (1996), *Romer v. Evans*, 517 U.S. 620 (1996); *Lawrence v. Texas*, 539 U.S. 558 (2003), and *Obergefell v. Hodges*, 576 U.S. 644 (2015). Because other matters related to this question are the subject of ongoing litigation and could appear before me as a judge, it would be inappropriate for me as a judicial nominee to comment further. *See* Code of Conduct U.S. Judges, Canon 3A(6).

25. Do you believe that judges should be "originalist" and adhere to the original public meaning of constitutional provisions when applying those provisions today?

Please see my answer to question 19.

26. If so, do you believe that courts should adhere to the original public meaning of the Foreign Emoluments Clause when interpreting and applying the Clause today?

Please see my answer to question 19.

27. Under the U.S. Constitution, who is entitled to First Amendment protections?

Because related matters could appear before me as a judge, it would be inappropriate for me to provide further comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

28. 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?

I would apply the relevant and binding decisions from the Supreme Court and the Eleventh Circuit on the issue. Because related matters could appear before me as a judge, it would be inappropriate for me to provide further comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

29. What is the standard for determining whether a statement is protected speech under the true threats doctrine?

As the Supreme Court stated in *Counterman v. Colorado*, 600 U.S. 66 (2023), a speaker conveys a "true threat" when he or she recklessly engages in a "'serious expression[]' [indicating] that [the] speaker means to 'commit an act of unlawful violence.'" *Id.* at 74, 79 (quoting *Virginia v. Black*, 538 U.S. 343, 359 (2003)). How these principles apply in practice may come before me as a judge. Thus, as a judicial nominee, it would be inappropriate for me to further comment. *See* Code of Conduct U.S. Judges, Canon 3A(6).

30. Is every individual within the United States entitled to due process?

Because this issue could appear before me as a judge, it would be inappropriate for me to comment. *See* Code of Conduct U.S. Judges, Canon 3A(6).

31. Can U.S. citizens be transported to other countries for the purpose of being detained, incarcerated, or otherwise penalized?

Because this issue is actively being litigated and could appear before me as a judge, it would be inappropriate for me to comment. *See* Code of Conduct U.S. Judges, Canon 3A(6).

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32. The Fourteenth Amendment states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

a. Is every person born in the United States a citizen under the Fourteenth Amendment?

Because this issue is actively being litigated and could appear before me as a judge, it would be inappropriate for me to comment. *See* Code of Conduct U.S. Judges, Canon 3A(6).

b. Is the citizenship or immigration status of the parents of an individual born in the United States relevant for determining whether the individual is a citizen under the Fourteenth Amendment?

Because this issue is actively being litigated and could appear before me as a judge, it would be inappropriate for me to comment. *See* Code of Conduct U.S. Judges, Canon 3A(6).

33. Do you believe that demographic and professional diversity on the federal bench is important? Please explain your views.

As a judicial nominee, it would be inappropriate for me to answer this question. *See* Code of Conduct U.S. Judges, Canon 3A(6).

34. The bipartisan *First Step Act of 2018*, which was signed into law by President Trump, is one of the most important pieces of criminal justice legislation to be enacted during my time in Congress. At its core, the Act was based on a few key, evidence-based principles. First, incarcerated people can and should have meaningful access to rehabilitative programming and support in order to reduce recidivism and help our communities prosper. Second, overincarceration through the use of draconian mandatory minimum sentences does not serve the purposes of sentencing and ultimately causes greater, unnecessary harm to our communities. With these rehabilitative principles in mind, one thing Congress sought to achieve through this Act was giving greater discretion to judges—both before and after sentencing—to ensure that the criminal justice system effectively and efficiently fosters public safety for the benefit of all Americans.

a. How do you view the role of federal judges in implementing the *First Step Act*?

My role would be to correctly apply and follow the First Step Act.

b. Will you commit to fully and fairly considering the individualized circumstances of each defendant who comes before you when imposing sentences to ensure that they are properly tailored to promote the goals of sentencing and avoid terms of imprisonment in excess of what is necessary?

Yes. Consistent with the duties of federal judges, I will faithfully apply all law, including the First Step Act with regard to sentencing matters.

35. The Federalist Society seeks to "reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law."

a. In your Questionnaire, you state that you have been a member of the Federalist Society since 1985, and helped co-found the organization's Miami Chapter. What is your understanding of the "traditional values" the Federalist Society seeks to promote?

According to its website, the Federalist Society exists "to sponsor fair, serious, and open debate about the need to enhance individual freedom and the role of the courts in saying what the law is rather than what they wish it to be" and "do[es] not lobby for legislation, take policy positions, or sponsor or endorse nominees and candidates for public service."

b. President Trump wrote on Truth Social that the Federalist Society gave him "bad advice" on "numerous Judicial Nominations." He also wrote that Leonard Leo is a "sleazebag" who "probably hates America." If you are not familiar with this post, please refer to it in the footnote.[4]

i. Do you agree with President Trump that the Federalist Society provided President Trump with bad advice during his first term? Why or why not?

To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding elections or political commentary, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

ii. Do you agree with President Trump that Leo is a sleazebag who probably hates America? Why or why not?

To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding elections or political commentary, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

iii. If you are confirmed, do you plan to remain affiliated with the Federalist Society?

Yes.

c. During your selection process, have you spoken to or corresponded with any individuals associated with the Federalist Society, including Leonard Leo or Steven G. Calabresi? If so, please provide details of those discussions.

I have not spoken with either Leonard Leo or Steven Calabresi during this nomination process, but I have spoken to numerous other Federalist Society leaders and members encountered at meetings or who are professional colleagues.

[4] Donald J. Trump (@realDonaldTrump), Truth Social (May 29, 2025, 8:10 PM), https://truthsocial.com/@realDonaldTrump/posts/114593880455063168.

d. Have you ever been asked to and/or provided services to the Federalist Society, including research, analysis, advice, speeches, or appearing at events?

Yes, I have served as moderator and speaker at Federalist Society meetings and conferences as disclosed in my Senate Judiciary Questionnaire.

e. Have you ever been paid honoraria by the Federalist Society? If so, how much were you paid, and for what services?

I was not paid honoraria for any speeches or presentations by the Federalist Society.

36. The Teneo Network states that its purpose is to "Recruit, Connect, and Deploy talented conservatives who lead opinion and shape the industries that shape society."

a. During your selection process, have you spoken to or corresponded with any individuals associated with the Teneo Network, including Leonard Leo? If so, please provide details of those discussions.

Not to my knowledge.

b. Have you ever been asked to and/or provided services to the Teneo Network, including research, analysis, advice, speeches, or appearing at events?

No.

c. Have you ever been paid honoraria by the Teneo Network? If so, how much were you paid, and for what services?

No.

37. The Heritage Foundation states that its mission is to "formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense." Heritage Action, which is affiliated with the Heritage Foundation, seeks to "fight for conservative policies in Washington, D.C. and in state capitals across the country."

a. During your selection process, have you spoken to or corresponded with any individuals associated with the Heritage Foundation or Heritage Action, including Kevin D. Roberts? If so, please provide details of those discussions.

Not to my knowledge.

b. Have you ever been asked to and/or provided services to the Heritage Foundation or Heritage Action, including research, analysis, advice, speeches, or appearing at events?

Not to my knowledge.

c. Were you ever involved in or asked to contribute to Project 2025 in any way?

No.

d. Have you ever been paid honoraria by the Heritage Foundation or Heritage Action? If so, how much were you paid, and for what services?

No.

38. The America First Policy Institute (AFPI) states that its "guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do."

a. During your selection process, have you spoken to or corresponded with any individuals associated with AFPI? If so, please provide details of those discussions.

Not to my knowledge.

b. Have you ever been asked to and/or provided services to AFPI, including research, analysis, advice, speeches, or appearing at events?

No.

c. Have you ever been paid honoraria by AFPI? If so, how much were you paid, and for what services?

No.

39. The America First Legal Institute (AFLI) states that it seeks to "oppose the radical left's anti-jobs, anti-freedom, anti-faith, anti-borders, anti-police, and anti-American crusade."

a. During your selection process, have you spoken to or corresponded with any individuals associated with AFLI, including Stephen Miller, Gene Hamilton, or Daniel Epstein? If so, please provide details of those discussions.

I have spoken to Daniel Epstein because he is my colleague as a fellow professor at St. Thomas University College of Law where I serve as an Adjunct Professor. He provided general words of encouragement and advice as a fellow professor of law.

b. Have you ever been asked to and/or provided services to AFLI, including but not limited to research, analysis, advice, speeches, or appearing at events?

No.

c. Have you ever been paid honoraria by AFLI? If so, how much were you paid, and for what services?

No.

40. The Article III Project is an organization which claims that, "The left is weaponizing the power of the judiciary against ordinary citizens."

a. During your selection process, have you spoken to or corresponded with any individuals associated with the Article III Project, including Mike Davis, Will Chamberlain, or Josh Hammer? If so, please provide details of those discussions.

I spoke with Mike Davis and Josh Hammer after meeting them at Federalist Society Meetings. They both provided general words of encouragement.

b. Have you ever been asked to and/or provided services to the Article III Project, including research, analysis, advice, speeches, or appearing at events?

No.

c. Have you ever been paid honoraria by the Article III Project? If so, how much were you paid, and for what services?

No.

41. The Alliance Defending Freedom (ADF) states that it is "the world's largest legal organization committed to protecting religious freedom, free speech, the sanctity of life, marriage and family, and parental rights."

a. During your selection process, have you spoken to or corresponded with any individuals associated with ADF? If so, please provide details of those discussions.

Not to my knowledge.

b. Have you ever been asked to and/or provided services to ADF, including research, analysis, advice, speeches, or appearing at events?

No.

c. Have you ever been paid honoraria by ADF? If so, how much were you paid, and for what services?

No.

42. The Concord Fund, also known as the Judicial Crisis Network, states that it is committed "to the Constitution and the Founders' vision of a nation of limited government; dedicated to the rule of law; with a fair and impartial judiciary." It is affiliated with the 85 Fund, also known as the Honest Elections Project and the Judicial Education Project.

a. During your selection process, have you spoken to or corresponded with any individuals associated with these organizations, including Leonard Leo or Carrie Severino? If so, please provide details of those discussions.

I have not spoken during the selection process to either Leonard Leo or Carrie Severino. And to my knowledge, I have not spoken to anyone affiliated with those organizations or projects.

b. Have you ever been asked to and/or provided services to these organizations, including research, analysis, advice, speeches, or appearing at events?

No.

c. Have you ever been paid honoraria by these organizations? If so, how much were you paid, and for what services?

No**.**

d. Do you have any concerns about outside groups or special interests making undisclosed donations to front organizations like the Concord Fund or 85 Fund in support of your nomination? Note that I am not asking whether you have solicited any such donations, I am asking whether you would find such donations to be problematic.

As a judicial nominee, it would be inappropriate for me to comment about political or other donations. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

e. If you learn of any such donations, will you commit to call for the undisclosed donors to make their donations public so that if you are confirmed you can have this information when you make decisions about recusal in cases that these donors may have an interest in?

As a judicial nominee, it would be inappropriate for me to comment about political or other donations. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

f. Will you condemn any attempt to make undisclosed donations to the Concord Fund or 85 Fund on behalf of your nomination?

As a judicial nominee, it would be inappropriate for me to comment about political or other donations. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

Nomination of Ed Artau
Nominee to the U.S. District Court for the Southern District of Florida
Questions for the Record
Submitted July 2, 2025

QUESTIONS FROM SENATOR WHITEHOUSE

1. You said in your questionnaire that you met with President Trump on May 27.

    a. What did you discuss at that meeting?

    We discussed my legal credentials and qualifications for a position as a District Court Judge for the Southern District of Florida.

    b. Did he ask you to make any commitments? If so, what did he ask you?

    No.

    c. Did you make any commitments to President Trump? If so, to what did you commit?

    No.

2. You wrote a concurring opinion in a defamation lawsuit brought by President Trump while you were seeking and under consideration for this nomination.

    a. How many times have you contacted Senator Rick Scott or his office to express your interest in being nominated to the federal bench?

    I was appointed by then-Governor Rick Scott to serve as a state trial court judge in 2014. Senator Scott's office initially contacted me around July 27, 2022, to ask if I was interested in being considered for nomination to serve a federal judge during the previous administration as part of a compromise deal. Subsequently, I was interviewed by Senator Scott once in 2023.

    On November 14, 2024, I met with Senator Scott's then-general counsel, as I have done several times over the years when I have been in Washington, DC to attend the Federalist Society National Lawyer's Convention. We were unable to meaningfully discuss the possibility of a potential judicial nomination with the new administration when I met with Senator Scott's General Counsel on November 14, 2024, because the Senator's Office did not know if Senator Rubio would remain or be replaced, and if so, by whom.

    A month and a half later, on or about December 31, 2024, I was notified that I had been assigned to a panel to hear the *Alexander v. Trump* case. At the time I was assigned the case and while I was working on the case, I did not know whether Senator Scott's office would recommend that then-Senator Rubio or his successor would consider me as a potential candidate to recommend to the White House.

I first reached out to Senator Moody on February 14, 2025—which is after I had already issued my concurring opinion and completed all my judicial labor on the *Alexander v. Trump* case—because that is when I was first informed that Senator Scott intended to recommend that I be considered by Senator Moody.

On February 20, 2025, I learned for the first time that I was under consideration by the White House when I spoke with a member of the White House Counsel's Office about scheduling an interview for the federal district court vacancy.

b. How many times have Senator Scott or his staff interviewed you for a potential nomination to the federal bench?

Senator Rick Scott only interviewed me once, by telephone, on January 24, 2023, when I was asked by Senator Scott's office if I would consider being submitted to President Joe Biden as a possible compromise nominee. The compromise was never consummated. I was not otherwise interviewed by Senator Scott's staff.

c. During 2024, on what dates did you contact Senator Scott or his office to express your interest in being nominated to the federal bench?

See answer to 2a.

d. Is it true that your fall 2024 meeting with Senator Scott's staff regarding your interest in this nomination occurred after President Trump won the 2024 presidential election?

On November 14, 2024, I met with Senator Scott's then-general counsel, as I have done several times over the years when I have been in Washington, DC to attend the Federalist Society National Lawyer's Convention, which occurred after the 2024 election. We were unable to meaningfully discuss the possibility of a potential judicial nomination with the new administration when I met with Senator Scott's General Counsel on November 14, 2024, because the Senator's Office did not know if Senator Rubio would remain or be replaced, and if so, by whom.

e. Is it true that you reached out to Senator Moody or her staff to express your interest in being nominated to the federal bench after her appointment to the Senate on January 21, 2025?

I first reached out to Senator Moody on February 14, 2025—which is after I had already issued my concurring opinion and completed all my judicial labor on the *Alexander v. Trump* case—because that is when I was first informed that Senator Scott intended to recommend that I be considered by Senator Moody. I attempted to contact Senator Moody's Office on February 14, 2024, to ask if Senator Moody had any questions, but I was unable to speak with any staff member in Senator Moody's office.

f. On what date did Senators Scott and Moody, or their staffs, inform you that they were recommending that the White House consider you for this nomination?

Because I was unable to communicate with Senator Moody's office when I first reached out to her office on February 14, 2025, I was not informed that the Senators had both agreed to recommend me until February 20, 2025 when the White House Counsel's Office contacted me to schedule an interview.

g. On what date did the White House Counsel's Office or other officials from the White House first contact you regarding your interest in this nomination?

I was first contacted by the White House Counsel's Office on February 20, 2025, and informed that the White House Counsel's Office had an interest in interviewing me, along with others, for the vacancy on the U.S. District Court for the Southern District of Florida.

h. Is it true that you interviewed with the White House Counsel's Office regarding this nomination on February 27, 2025?

Yes.

i. On what date were you assigned to the defamation case filed by President Trump?

I was first advised that I was assigned on a panel to determine the non-final jurisdictional appeal in *Alexander v. Trump* on or about December 31, 2025.

j. On what date did you first start drafting your concurring opinion in that case?

January 9, 2025.

k. On what date did you finish drafting your concurring opinion in that case?

On January 28, 2025, when my appellate panel on the *Alexander v. Trump* case entered our final votes on the case and submitted the unanimous majority opinion, together with my concurring opinion, for final internal circulation and issuance.

l. While you were drafting this opinion, had you ever heard of President Trump's repeated, public criticisms of the Supreme Court's decision in *New York Times v. Sullivan*?

I do not recall hearing any public comments from President Trump about *New York Times v. Sullivan*, while I was drafting my concurring opinion. I was familiar with Justice Thomas's long-standing opinion that *New York Times v. Sullivan* is not consistent with the original understanding of the First Amendment. I was also familiar with Justice Gorsuch's more recent opinion concurring with Justice Thomas. I wrote on this issue, quoting both Justice Thomas and Justice Gorsuch, in a non-binding concurring opinion because it is the duty of judges to express what the law should correctly reflect. However, I made it clear in my concurring opinion that as an inferior

court, I am bound to follow Supreme Court precedent, including *New York Times v. Sullivan*.

3. According to news reports, in 1995 the Florida Governor's Office investigated you for using your position on a state Judicial Nominating Commission to push for the appointment of the spouse of the person who secured your spot on the Commission.

    a. Is it true that you were the subject of an investigation by the Florida Governor's Office?

    No. I was not the subject of any investigation into a rule violation and at no time did any investigation ever find that I had engaged in any misconduct or rule violation. Rather, it was the Chair of the Judicial Nominating Commission (JNC) who was being investigated for violating the commission's rules. Seven out of the nine-members of the Judicial Nominating Commission (JNC), including me, brought a written complaint against the Chair because he was caught inappropriately contacting the Governor's office and making public statements falsely claiming that one of the JNC's nominees, Maria Sachs, who had been a prosecutor in Miami-Dade County with extensive experience having tried well over 100 jury trials in her legal career, was not qualified simply because he claimed she had a gap in her employment history by working only part-time for a brief period of time while on maternity leave after she became pregnant despite the fact that she was the nominee selected by a majority of the JNC's members because she was the applicant with the most amount of jury trial experience.

    b. Is it true that investigators concluded that your conduct was improper? If not, what was their conclusion?

    No. I respectfully disagree with this characterization of the results of the investigation. After the dispute in 1995, I was named as the chairman of the Judicial Nominating Commission. A 1997 article provided to the Committee in my Senate Judiciary Committee Questionnaire notes that the gubernatorial panel "found no evidence of misconduct." It also noted that "[t]he probe was hampered by the refusal of five JNC members to cooperate with investigators," but "Artau was one of four members who cooperated fully."

    Moreover, the Committee voted to remove the Chair of the JNC because we concluded that the Chair had violated the rules governing judicial nominating commission that prohibit a commissioner, including the Chair, from contacting the Governor or any member of the Governor's office for the purpose of influencing the governor's ultimate decision, and that the Chair also violated the rules that prohibit any commissioner, including the Chair, from publicly ranking any of the JNC commission's nominees or disclosing any preference for a particular nominee after a nomination. As I said when I became the Chair, the Chair should state the will of the commission to the public and the media, not publicly express a preference for a candidate, especially contrary to the view of the commission. *See* 1997 article provided to the Committee in my Senate Judiciary Committee Questionnaire.

    The investigation concluded that the seven commissioners on the Judicial Nominating Commission (JNC), including myself, did that right thing when we filed our complaint

against the Chair because we had the authority to enforce the JNC rules and remove him from continuing to serve as Chair. The investigation into the Chair's misconduct concluded that the Chair violated the rules governing judicial nominating commissions that prohibit a commissioner, including the Chair, from contacting the Governor or any member of the Governor's office for the purpose of influencing the governor's ultimate decision, and that the Chair also violated the rules that prohibit any commissioner, including the Chair, from publicly ranking any of the JNC commission's nominees or disclosing any preference for a particular nominee after a nomination.

c. Please provide a copy of any report or other work-product resulting from the investigation.

I have not been able to locate any such records from 1995 (30 years ago), but please see the 1997 article provided to the Committee in my Senate Judiciary Committee Questionnaire.

4. You said in your questionnaire that you have been a member of the Federalist Society since 1985.

a. Do you know Leonard Leo? If so:

I have met Leonard Leo on a few occasions.

i. How do you know Leo?

From my contacts with the Federalist Society.

ii. How often you communicate with Leo?

Not often. Only on a few occasions at past Federalist Society Meetings over the years.

b. Do you agree with President Trump that Leonard Leo is a "sleazebag" who "probably hates America"? Explain.

As a judicial nominee it is not appropriate for me to comment on political matters or disputes. *See* Code of Conduct U.S. Judges, Canon 3(A)(6); Canon 5.

5. Have you had any conversations with President Trump or members of the Trump administration concerning your personal views on any policy or case law? If so, please identify with whom you spoke and describe those conversations with specificity.

No.

6. Have you ever spoken with the following individuals or groups about your nomination? If so, please describe your conversations with them with specificity.

a. Leonard Leo? No.

b. CarrieSeverino? No.

Mike Davis?

Yes. I spoke with Mike Davis after meeting him at a Federalist Society meeting, but I did not speak to him about my nomination as I had not been nominated until well after that meeting.

c. Any member of The Article III Project?

In addition to Mike Davis, I spoke with Josh Hammer after meeting him at a Federalist Society meeting, but I did not speak to him about my nomination as I had not been nominated until well after that meeting.

7. Please explain your understanding of existing case law regarding:

a. The executive branch's obligation to comply with federal court orders.

There are several recognized instances where a party may defy a court order including, the court was without legal authority to issue the order, it is impossible to comply with the order, the order's terms are not clear, the order is stayed pending appeal, or the party wishes to be held in contempt to make the order immediately appealable. *See In re J & L Structural, Inc.* 299 B.R. 89, 96 (Bankr. W.D. Penn. 2003) ("An order may be void if the court entering it lacked subject-matter jurisdiction or lacked personal jurisdiction over the parties or if the order was not within the powers granted to the court by law."); *Charis v. Burgess*, 143 F.3d 1432, 1436 (11th Cir. 1998) ("A contemnor may be excused because of an 'inability' to comply with the terms of the order."); *United States v. Manafort*, 897 F.3d 340, 346 (D.C. Cir. 2018) ("The statutory requirement for clarity accords with the familiar rule that the court should not punish someone for violating an order if the terms of that order are unclear."); *In re Swan*, 506 B.R. 47, 51 (Bankr. W.D.N.Y. 2014) ("Whenever a party decides that he, she[,] or it cannot or will not perform an Order of the Court, the party is not free to disregard it. He, she[,] or it must seek relief from the order."); *Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.*, 2 F.3d 1397, 1405 n.16 (5th Cir. 1993) ("A discovery order, even one directed at a non-party, is not a final order and hence not appealable. Prior to appeal, the one to whom the order is directed must first defy it and risk being held in contempt. If he is so sanctioned, the contempt order is appealable."). Because these matters could arise before me as a judge, it would be inappropriate for me to provide further comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

b. Remedies available to a federal court to ensure executive branch compliance with a court order.

It is my understanding that federal courts can seek to ensure compliance with court orders through sanctions and civil or criminal contempt procedures. However, before doing so the courts should hold hearings with notice and due process, which may include requiring that parties file status reports or make court appearances to explain compliance efforts and progress.

c. Federal government lawyers' duty of candor to federal courts before which those lawyers appear.

All lawyers have a duty of candor toward the tribunal, which are further described in the rules regulating the bar of the applicable jurisdiction.

How these rules apply in practice involve fact and case specific questions that could arise before me as a judge, and on which it would be inappropriate for me to further comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6).

d. The president's legal obligations under the Constitution's Take Care Clause.

Through the Take Care Clause, "Article II confers on the President 'the general administrative control of those executing the laws.'" *Free Enter. Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 492 (2010) (quoting *Myers v. United States*, 272 U.S. 52, 164 (1926)). Thus, the President has certain authority and discretion to prioritize enforcement of federal law. *See id.* at 493; *see also United States v. Texas*, 599 U.S. 670, 678 (2023) ("[L]awsuits alleging that the Executive Branch has made an insufficient number of arrests or brought an insufficient number of prosecutions run up against the Executive's Article II authority to enforce federal law.").

How these or any other Supreme Court cases regarding the Take Care Clause may apply to a course of action by the President is an issue that could arise before me as a judge. Thus, as a judicial nominee, it would be inappropriate for me to provide further comment. *See* Code of Conduct U.S. Judges, Canon 3A(6).

e. The limits of the executive branch's power under the anti-commandeering doctrine.

The anti-commandeering doctrine prevents Congress from forcing the States to assist in the execution of federal law. *See Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 471 (2018) ("[C]onspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States. The anticommandeering doctrine simply represents the recognition of this limit on congressional authority.").

How this doctrine may apply to the Executive Branch is an issue that could arise before me as a judge. Thus, as a judicial nominee, it would be inappropriate for me to provide further comment. *See* Code of Conduct U.S. Judges, Canon 3A(6).

f. The president's ability or inability to impound congressionally appropriated funds.

In the last 150 years, multiple presidents "have claimed Executive authority to withhold appropriated funds even absent an express conferral of discretion to do so." *Clinton v. City of New York*, 524 U.S. 417, 467 (1998) (Scalia, J., concurring in part and dissenting in part) (emphasis removed). It has been recognized that Congress has the authority to grant the President discretion to withhold funds. *See id.* ("Congress may confer discretion upon the Executive to withhold appropriated funds, even funds appropriated for a specific purpose[.]").

How Supreme Court precedent and statutory or constitutional provisions govern the President's ability or inability to impound congressionally appropriated funds is an issue implicated by active litigation and that could arise before me as a judge. Thus, as a judicial nominee, it would be inappropriate for me to provide further comment. *See* Code of Conduct U.S. Judges, Canon 3A(6).

g. The federal government's ability to enact laws or regulations that burden Second Amendment rights.

If the federal government enacts laws or regulations burdening Second Amendment rights, the burden is on the government to prove "that the regulation is consistent with this Nation's historical tradition of firearm regulation." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022). Because the permissible scope of firearms regulation is an issue implicated by active litigation and that could arise before me as a judge, it would be inappropriate for me, as a judicial nominee, to provide further comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

h. The federal government's ability to enact generally applicable laws that are not motivated by animus but nonetheless burden religious practices.

Under the Free Exercise Clause, a neutral law of general applicability is subject to strict scrutiny analysis if it "substantially interefer[es] with" or "pose[s] 'a very real threat of undermining'" the religious practice. *Mahmoud v. Taylor*, --- S. Ct. ----, ----, No. 2024-0297, 2025 WL 1773627, at *22 (June 27, 2025). For the law "[t]o survive strict scrutiny, a government must demonstrate that its policy 'advances "interests of the highest order" and is narrowly tailored to achieve those interests.'" *Id.* (quoting *Fulton v. Philadelphia*, 593 U.S. 522, 541 (2021)). Because these matters are subject to active litigation and could arise before me as a judge, it would be inappropriate for me to provide further comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

i. Substantive due process under the Fifth and Fourteenth Amendments.

The Fifth and Fourteenth Amendments' Due Process Clauses operate differently than each other. *See generally Fuld v. Palestine Liberation Org.*, 606 U.S. ----, ----, No. 2024-0020, 2024-0151, 2025 WL 1716140 (June 20, 2025). Because these matters could arise before me as a judge, it would be inappropriate for me to provide further comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

j. The Constitution's protection of unenumerated rights.

The Supreme Court has recognized that the Constitution protects unenumerated rights, but it "exercise[s] the utmost care whenever . . . asked to break new ground in this field." *Dep't of State v. Muñoz*, 602 U.S. 899, 910 (2024) (first alteration in original) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (2024)). Because these matters could arise before me as a judge, it would be inappropriate for me to provide further comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

k. The Constitution's protection of freedom of the press.

As the Supreme Court has recognized, "[t]he right of freedom of speech and press has broad scope." *Martin v. City of Struthers, Ohio*, 319 U.S. 141, 143 (1943). Because these matters could arise before me as a judge, it would be inappropriate for me to provide further comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

l. The free speech rights of immigrants residing in the United States.

Because these matters are subject to active litigation and could arise before me as a judge, it would be inappropriate for me to provide comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

m. The federal government's authority to fire employees for their political views or opinions.

Because these matters are subject to active litigation and could arise before me as a judge, it would be inappropriate for me to provide comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

n. The federal government's authority to punish private citizens for their political views, opinions, or private lawful activities.

Because these matters are subject to active litigation and could arise before me as a judge, it would be inappropriate for me to provide comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

o. The constitutionality of campaign finance disclosure requirements.

The Supreme Court applies strict scrutiny to campaign finance disclosure requirements. *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 744 (2008). For such a requirement to survive strict scrutiny, "there must be 'a "relevant correlation" or "substantial relation" between the governmental interest and the information required to be disclosed[.]'" *Id.* (quoting *Buckley v. Valeo*, 424 U.S. 1, 64 (1976)). Because these matters could arise before me as a judge, it would be inappropriate for me to provide further comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

8. The Seventh Amendment ensures the right to a jury "in suits at common law."

   a. What role does the civil jury play in our constitutional system?

   The right to trial by jury was such an important right to the Founders that they included the denial of this right among the "King of Great Britain[']s . . . history of repeated injuries and usurpations" in the Declaration of Independence. The right to a civil jury enshrined in the Seventh Amendment "preserved . . . the right which existed under the English common law when the amendment was adopted." *Balt. & Carolina Line v. Redman*, 295 U.S. 654, 657 (1935). It also ensured that the civil jury cannot be "indirect[ly] impaired through possible enlargements of the power of reexamination existing under the common law, and to that end declares that 'no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.'" *Id.*

   b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses? Explain.

   Because these matters could arise before me as a judge, it would be inappropriate for me to provide further comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

   c. Should an individual's Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act? Explain.

   Because these matters could arise before me as a judge, it would be inappropriate for me to provide further comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

9. Does the 22nd Amendment permit a president to be elected more than twice?

   The 22nd Amendment provides:

   No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once.

   To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate regarding the conduct of presidential elections or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding elections or political commentary, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

10. Please describe your understanding of natural law.

In his book *Two Treatises of Government*, John Locke described natural law as the law that governs mankind and binds all people "to the preservation of the life, the liberty, health, limb, or goods of another."

a. What authority does natural law carry in federal case law?

As a lower court judge, my principal task would be to faithfully apply applicable precedent of the Supreme Court and the Eleventh Circuit. In interpreting the Constitution, I would employ methodologies consistent with the methods that the Supreme Court and the Eleventh Circuit apply when considering such issues.

b. When do you think it is appropriate for a federal judge to rely on natural law?

Please see my answer to question 10a.

c. If confirmed, do you plan to incorporate natural law into your decisions?

Please see my answer to question 10a.

11. Please describe your understanding of originalism.

Originalism is a method of constitutional interpretation where jurists interpret the Constitution consistently with the original public meaning of a constitutional provision.

a. Do you consider yourself an originalist?

Yes.

b. Based on your understanding of originalism, was *Citizens United v. Federal Election Commission* an originalist decision? Why or why not?

As Justice Kagan explained, and many other judicial nominees across administrations have reiterated, it is generally not appropriate for a judicial nominee to "grade" or give a "thumbs-up or thumbs-down" to particular precedents of the Supreme Court. If confirmed as a judge, all of the Supreme Court's pronouncements would be binding on me. Under the Code of Conduct for United States Judges, I have a duty as a judicial nominee to refrain from commenting on the merits or demerits of the Supreme Court's binding precedents because doing so creates the impression that I would have difficulty applying binding law to adjudicate parties' cases. *See* Code of Conduct U.S. Judges, Canon 3A(6).

c. Based on your understanding of originalism, was *Trump v. United States* an originalist decision? Why or why not?

As Justice Kagan explained, and many other judicial nominees across administrations have reiterated, it is generally not appropriate for a judicial nominee to "grade" or give a "thumbs-up or thumbs-down" to particular precedents of the Supreme Court. If confirmed as a judge, all of the Supreme Court's pronouncements would be binding on me. Under the Code of Conduct for United States Judges, I have a duty as a judicial nominee to refrain from commenting on the merits or demerits of the Supreme Court's binding precedents because doing so creates the impression that I would have difficulty applying binding law to adjudicate parties' cases. *See* Code of Conduct U.S. Judges, Canon 3A(6).

12. Please describe your understanding of textualism.

Similar to originalism, textualism requires a judge to interpret a text as written, consistent with its grammatical structure and meaning when enacted.

a. Do you consider yourself a textualist?

Yes.

b. How should a court analyzing a federal statute account for the "Findings" or "Purposes" sections of such statutes?

The prefatory-materials canon states that "[a] preamble, purpose clause, or recital is a permissible indicator of meaning." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts xiv (2012).

13. Please describe your understanding of the different roles of district and appellate courts with respect to fact-finding.

Generally, district courts are the courts that make findings of fact, either by the court itself or a jury. Appellate courts then rely on the findings of fact made at the district court and, if the findings of facts are challenged, review the findings of fact for whether they are supported by legally sufficient evidence.

a. What deference should courts grant facts found by Congress when reviewing legislation expanding or limiting individual rights?

Courts should follow Supreme Court precedents on the issue.

b. Separate from legal holdings, are lower courts bound to adhere to factual findings by the Supreme Court?

My understanding is that the Supreme Court does not generally make factual findings, unless sitting in original jurisdiction, which would not be reviewable by the lower courts. That being said, lower courts may not depart from directly controlling Supreme Court precedent or a Supreme Court order in a case. *See Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application

in a case, yet appears to rest on reasons rejected in some other line of decisions, the [lower court] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.").

c. If you are confirmed, what standard will you use to determine when it is appropriate to depart from otherwise binding appellate case law because of differences in the facts of a case?

If fortunate to be confirmed, I will faithfully apply precedent from the Supreme Court.

14. If confirmed, how will you conduct historical analyses under *New York State Rifle & Pistol Association v. Bruen*?

If fortunate to be confirmed, I will faithfully conduct historical analyses consistent with the manner the Supreme Court articulated in *Bruen*.

a. How will you assess the veracity of historical claims made by parties?

Consistent with a judge's role as a neutral arbiter, I would independently assess the veracity of historical claims by consulting relevant sources and evidence of historical claims.

How will you assess the veracity of historical claims made by amici curiae?

a. Please see my answer to question 14a.

15. The U.S. Sentencing Commission recently prioritized the "[c]ompilation and dissemination of information on court-sponsored programs relating to diversion, alternatives-to-incarceration, and reentry." Courts can tailor these programs to meet specific needs of defendants before them. These include programs focused on mental health, substance use disorder, veterans, and juveniles.

a. Do you support the use of programs such as these? Yes.

b. If confirmed, what steps will you take to participate in or support programs such as these within the jurisdiction to which you would be confirmed?

I would utilize these programs in the appropriate cases where the parties before the Court qualify for them based on fair criteria.

16. If confirmed, will you attend, to the extent possible, any trainings provided by the Federal Judicial Center for newly appointed judges—including on abiding with federal ethics laws and the Code of Conduct for United States Judges?

Yes. As an Adjunct Professor at St. Thomas University College of Law and as the current Dean of the Advanced Judicial Studies College for our Florida Judiciary, I am a big believer in judicial education.

17. If confirmed, you will be called upon to maintain impartiality, which requires being open to legal arguments that may lead to outcomes you dislike.

    a. If you are confirmed, what steps will you take to ensure that you are exposed and open to a range of ideological and legal viewpoints outside of the courtroom—in particular, those that you do not agree with?

    I will remain open-minded and thoughtfully consider all arguments presented to the court.

    b. During your time as a legal professional, what steps have you taken to ensure that you are exposed and open to a range of ideological and legal viewpoints—in particular, those that you do not agree with?

    I am engaged as an educator by serving as an Adjunct Professor at St. Thomas University College of Law, as well as Dean and Faculty for the educational programs made available to our State of Florida Judiciary.

    c. If confirmed, do you plan to hire qualified law clerks who do not share your ideological or legal viewpoints?

    If confirmed, I will hire the best qualified law clerks in a neutral and impartial manner.

18. If confirmed, you will be responsible for managing and exercising authority over law clerks and other court personnel.

    a. What professional experience do you have overseeing and managing others?

    I have been managing my chambers and staff for the last eleven years as both a state trial judge and a state appellate judge. Before becoming a judge, I managed a team of approximately 20 lawyers and numerous paralegals and administrative assistants as General Counsel for the South Florida Water Management District.

    b. How do you plan to recruit and hire law clerks?

    By utilizing the Online System for Clerkship Application and Review (OSCAR), and recruiting from law schools and other available sources.

19. If confirmed, do you have plans to integrate artificial intelligence into your work as a federal judge? If so, how?

    I have no current plans to integrate artificial intelligence into my work as a federal judge, if confirmed, but I remain open-minded should there be any such intelligence that can assist with the fair and impartial administration of justice in my chambers.

20. Have you ever caused to be deleted any posts or publications originally published under your name or an account associated with you? If so, please provide those posts or publications in full.

No.

21. Have you ever removed or asked for your name to be removed from any publication that previously bore your name? If so, please provide these publications in full.

No.

22. Have you ever been accused, in any setting, of the following? If so, please describe the accusation with specificity, the actions you took in response, and how the accusation was resolved.

    a. Sexual harassment? No.

    b. Sex-based discrimination? No.

    c. Race-based discrimination? No.

    d. Discrimination on the basis of national origin? No.

    e. Discrimination on the basis of religion? No.

    f. Workplace misconduct of any kind? No.

23. Did Joe Biden win the 2020 presidential election?

President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate regarding the conduct of the 2020 presidential election or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding the 2020 election, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

24. Yes or no: Was the U.S. Capitol attacked by a violent mob on January 6, 2021?

Pursuant to the Judicial Canons, it would be inappropriate for me to comment on what happened on January 6, 2021, as there may be cases that will come before me involving the incidents of that day. Moreover, to the extent this question seeks to elicit political commentary it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

25. Where were you on January 6, 2021?

I was in my chambers at the Fourth District Court of Appeal in Palm Beach County, FL

Nomination of Ed Artau to the
United States District Court for the Southern District of Florida
Questions for the Record
Submitted July 1, 2025

QUESTIONS FROM SENATOR COONS

1. At any point during the process that led to your nomination, did you make any representations or commitments to anyone—including but not limited to individuals at the White House, at the Justice Department, or at outside groups—as to how you would handle a particular case, investigation, or matter, if confirmed? If so, explain fully.

   No.

   a. At any point during the process that led to your nomination, were you asked about your opinion on any cases that involve President Trump or the Trump administration?

   No.

2. In your Senate Judiciary Questionnaire, you note that, on May 27, 2025, you met with President Trump concerning your nomination.

   a. Where did that meeting occur?

      In the Oval Office

   b. How long did that meeting last?

      About a half hour

   c. Who attended the meeting other than you and President Trump?

      White House Counsel; Deputy White House Counsel; and my colleagues that were nominated to the U.S. District Court for the Middle District of Florida: Kyle Dudek, Ann Leigh Gaylord Moe, Jordan Pratt, and John Guard.

   d. What was discussed at the meeting?

   We discussed our legal credentials and qualifications for the position as a District Court Judge.

   e. What questions were you asked by President Trump and how did you answer them?

The President asked questions about our background and credentials and asked if we knew each other before the nomination process. We answered that most of us did know each other from the legal community and we thanked the President for the opportunity to meet him.

3. On November 14, 2024—less than two weeks after President Trump was elected—you met with Senator Rick Scott about your interest in a potential nomination to the district court. While you were in the interview process for this nomination, you were on a panel of judges that ruled in Trump's favor in a case against the Pulitzer Prize Board. The panel released its decision on February 12, 2025. On February 27, 2025, you interviewed with the White House about your nomination.

    a. Why did you not recuse yourself from this case when you were—at the same time as you were actively participating in the matter—seeking a nomination to the federal bench from one of the parties?

I was interviewed by Senator Scott on January 24, 2023, after I was asked by Senator Scott's Office on July 27, 2022, if I would consider being submitted to President Joe Biden as a possible compromise nominee. The compromise was never consummated.

On November 14, 2024, when I was in Washington, DC to attend the annual Federalist Society National Lawyers Convention, I stopped by Senator Scott's office, as I do every year when attending the convention, to meet with his General Counsel who I knew well because he had served on the Governor's staff when I was first appointed to serve as a state trial judge by then-Governor Scott. We were unable to meaningfully discuss the possibility of a potential judicial nomination with the new administration when I met with Senator Scott's General Counsel on November 14, 2024, because the Senator's Office did not know if Senator Rubio would remain or be replaced, and if so, by whom.

I did not reach out to Senator Moody until February 14, 2025—which is after I had already issued my concurring opinion and completed all my judicial labor on the *Alexander v. Trump* case—because that is when I was first informed that Senator Scott intended to recommend that I be considered by Senator Moody. I then attempted to contact Senator Moody's Office on February 14, 2024, to ask if Senator Moody had any questions, but I was unable to speak with any staff member in her office.

On February 20, 2025, I received a call from a Deputy White House Counsel, who advised that the White House Counsel's Office was interested in scheduling an interview with me for February 27, 2025.

While Canon 3, and the applicable caselaw that governs disqualification of an appellate judge, requires that I not disqualify myself under these circumstances, had I been contacted by the White House Counsel's Office before I had completed my judicial labor and issued my concurring opinion in the *Alexander v. Trump* case, I would have disclosed the contact with the White House and remitted my disqualification pursuant to Canon 3F, which would have allowed the parties the possibility of waiving disqualification, absent which I would have entered an order of disqualification so that another member of my court could replace

me on the panel to avoid any appearance of impropriety arising from interviewing with the President's office while the President's personal case remained pending.

b. Did you consider informing both parties about your effort to secure a nomination to the federal court from President Trump? If not, why not?

No, because Canon 3 requires that I not disqualify under these circumstances and I had nothing to disclose other than the fact that I remained in high regard by Senator Scott who was not a party before me. In addition, I was not undergoing any effort to secure a nomination from the President at the time, nor was I in communication with the President or any staff member about a potential nomination while the *Alexander v. Trump* case remained pending. In addition, the meeting with Senator Scott's former General Counsel took place before I received the assignment of the *Alexander v. Trump* case, and my attempted communication with Senator Moody's office took place after I had already completed all judicial labor in the *Alexander v. Trump* case, including the final public issuance of my concurring opinion.

Had I been contacted by the White House Counsel's Office before I had completed my judicial labor and issued my concurring opinion in the *Alexander v. Trump* case, I would have disclosed the contact with the White House and remitted my disqualification pursuant to Canon 3F, which would have allowed the parties the possibility of waiving disqualification, absent which I would have entered an order of disqualification so that another member of my court could replace me on the panel to avoid any appearance of impropriety arising from interviewing with the President's office while the President's personal case remained pending.

c. Do you think it would have been appropriate for you to adjudicate this case if you had an application for employment pending with the Pulitzer Prize Board?

No, it would not have been appropriate for me to adjudicate the case, unless waived by the parties, if I had been contacted by the Pulitzer Prize Board for employment while the case was pending. Likewise, had I been contacted by the White House Counsel's Office before I had completed my judicial labor and issued my concurring opinion in the *Alexander v. Trump* case, I would have disclosed the contact with the White House and remitted my disqualification pursuant to Canon 3F, which would have allowed the parties the possibility of waiving disqualification, absent which I would have entered an order of disqualification so that another member of my court could replace me on the panel to avoid any appearance of impropriety arising from interviewing with the President's office while the President's personal case remained pending.

d. When do you think a judge ought to recuse themselves, if they are being considered for employment by one of the parties?

A judge should consider remitting disqualification pursuant to Canon 3F if they are contacted by the employing authority while a case remains pending. In my case, I was

not contacted by the White House or otherwise notified that the White House was considering me until February 20, 2025, which was after I had completed my judicial labor and the panel had publicly issued its opinions in *Alexander v. Trump*.

e. The opinion released by the panel of judges, including yourself, argued that the Supreme Court should overturn its decision in *New York Times Company v. Sullivan*, precedent that makes it more difficult for public officials to sue journalists. Do you think it's appropriate for judges to suggest that precedent by the highest court be overturned?

I was familiar with Justice Thomas's long-standing opinion that *New York v. Sullivan* is not consistent with the original understanding of the First Amendment. I was also familiar with Justice Gorsuch's more recent opinion concurring with Justice Thomas. I wrote on this issue, quoting both Justice Thomas and Justice Gorsuch, in a non-binding concurring opinion because it is the duty of judges to express what the law should correctly reflect. However, I made it clear in my concurring opinion that as an inferior court I am bound to follow Supreme Court precedent.

4. How would you describe your judicial philosophy?

I would describe my judicial philosophy as a textualist and originalist who will always do his very best to follow the rule of law. I also view my role as a judge to be fair and impartial to all who may have cases before me and to decide each case solely on the merits without prejudice or favor.

5. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

Because such issues could come before me as a judge, it would be inappropriate for me to comment on them. See Code of Conduct U.S. Judges, Canon 3A(6). I would, of course, follow Supreme Court precedent on these types of cases.

a. Would you consider whether the right is expressly enumerated in the Constitution?

I would consider whether the right is expressly enumerated in the text of the Constitution or recognized by Supreme Court precedent. Because such issues could come before me as a judge, it would be inappropriate for me to comment further on them. *See* Code of Conduct U.S. Judges, Canon 3A(6).

b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

I would consider whether a right is deeply rooted in the nation's history and tradition and would consult historical sources and the common law. Because such issues could come

before me as a judge, it would be inappropriate for me to further comment on them. *See* Code of Conduct U.S. Judges, Canon 3A(6).

c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of another court of appeals?

I would consider whether the right has previously been recognized by precedent. Because such issues could come before me as a judge, it would be inappropriate for me to comment on them. *See* Code of Conduct U.S. Judges, Canon 3A(6).

d. Would you consider whether a *similar* right has previously been recognized by Supreme Court or circuit precedent?

I would consider whether any such right has previously been recognized by precedent. Because such issues could come before me as a judge, it would be inappropriate for me to comment on them. *See* Code of Conduct U.S. Judges, Canon 3A(6).

e. What other factors would you consider?

See responses to questions 5. a–d. Because such issues could come before me as a judge, it would be inappropriate for me to comment on them. *See* Code of Conduct U.S. Judges, Canon 3A(6).

6. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a higher court? Please explain.

It is never appropriate for a lower court to depart from directly controlling Supreme Court or Circuit Court precedent, or to disregard a Supreme Court or Circuit Court order in a case. *See Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [lower court] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."). Likewise, Article VI of the Constitution provides that "the Judges in every State shall be bound" by "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof[.]"

7. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "[h]igher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 576 U.S. 644, 668 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow

lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.

a. When is it appropriate for a court to consider evidence that sheds light on our changing understanding of society?

If confirmed, I would faithfully apply any relevant precedents of the Supreme Court and the Eleventh Circuit governing the consideration of such evidence.

b. What is the role of sociology, scientific evidence, and data in judicial analysis?

If confirmed, I would faithfully apply any relevant precedents of the Supreme Court and the Eleventh Circuit governing the consideration of such evidence.

8. I have been proud to co-lead the bipartisan *Safer Supervision Act*, a bill to reform our federal supervised release system that has received substantial conservative and law enforcement support. The premise of the bill is that our federal supervision system has strayed far from how Congress designed it, as courts impose it mechanically in essentially every case, which means that probation officers do not have time to properly supervise those who most need it. The bill reinforces courts' existing obligations under 18 U.S.C. §§ 3553 and 3583 to impose supervision as warranted by the individual facts of the case and encourages more robust use of early termination when warranted to provide positive incentives encouraging rehabilitation. At the encouragement of a bipartisan group of members of Congress, the U.S. Sentencing Commission recently finalized an amendment to supervision guidelines implementing certain parts of the bill; this amendment will go in effect in November.

a. As a sentencing judge, would you endeavor to impose supervision thoughtfully and on the basis of the individual facts of the case consistent with 18 U.S.C. § 3553 and 18 U.S.C. § 3583?

Yes.

b. Would you agree that the availability of early termination under 18 U.S.C. § 3583(e)(1) can provide individuals positive incentives to rehabilitate?

Yes, in appropriate qualifying cases this could provide individuals with positive incentives to rehabilitate.

c. Will you commit if confirmed to reviewing the *Safer Supervision Act* and the recent Sentencing Commission amendment and considering them as you develop your approach to sentencing of supervised release?

Yes, of course, I would commit to doing so.

9. What is the remedy if the President violates his constitutional duty to faithfully execute the laws?

As a judicial nominee, it would be inappropriate for me to answer this question as it may come before me or call for political commentary. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

10. Is President Trump eligible to be elected President for a third term?

The 22nd Amendment provides:

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once.

To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate regarding the conduct of presidential elections or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding elections or political commentary, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

11. Who won the 2020 U.S. Presidential Election?

President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate regarding the conduct of the 2020 presidential election or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding the 2020 election, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

12. Would it be constitutional for the President of the United States to punish a private person for a viewpoint that person expresses in a newspaper op-ed?

    As a judicial nominee, it would be inappropriate for me to answer a hypothetical such as this. *See* Code of Conduct U.S. Judges, Canon 3A(6).

13. Would it be constitutional for the President of the United States to terminate government contracts with a private person specifically because that person donated to members of the opposite political party?

As a judicial nominee, it would be inappropriate for me to answer a hypothetical such as this. *See* Code of Conduct U.S. Judges, Canon 3A(6).

14. Would it ever be appropriate for the President of the United States to punish a law firm for taking on a client that the President did not like?

As a judicial nominee, it would be inappropriate for me to answer a hypothetical such as this. *See* Code of Conduct U.S. Judges, Canon 3A(6).

15. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives? If you do not agree, please explain whether this right is protected or not and which constitutional rights or provisions encompass it.

As a judicial nominee, it would be inappropriate for me to answer a hypothetical such as this. *See* Code of Conduct U.S. Judges, Canon 3A(6).

16. Do you agree that there is a constitutional right to privacy that protects the right to in vitro fertilization (IVF)? If you do not agree, please explain whether this right is protected or not and which constitutional rights or provisions encompass it.

As a judicial nominee, it would be inappropriate for me to answer a hypothetical such as this. *See* Code of Conduct U.S. Judges, Canon 3A(6).

17. Do you believe that immigrants, regardless of legal status, are entitled to due process and fair adjudication of their claims?

As a judicial nominee, it would be inappropriate for me to answer a hypothetical such as this. *See* Code of Conduct U.S. Judges, Canon 3A(6).

18. What role does morality play in determining whether a challenged law or regulation is unconstitutional or otherwise illegal?

Morality is an issue Congress can consider during the legislative process. My role as a District Court Judge, if confirmed, would be to faithfully interpret and apply the laws Congress has enacted, our Constitution, and the precedent of the Eleventh Circuit and the Supreme Court.

19. What role, if any, should the practical consequences of a particular ruling play in a judge's rendering of a decision?

There are circumstances, such as in granting injunctive relief, where practical considerations are part of the analysis. See generally Winter v. Nat'l Res. Def. Council, Inc., 555 U.S. 7 (2008). However, outside of these contexts, and perhaps sentencing, it is generally not appropriate for judges to consider practical considerations when interpreting and applying the law.

20. What role, if any, should empathy play in a judge's decision-making process?

Judges should not decide cases based on their personal views but rather on the applicable legal authority. *Cf.* 28 U.S.C. § 453 (oath of judicial office). Judges, however, should keep in mind that their decisions have real-world effects and endeavor to reach and explain their decisions in ways that are fairly reasoned, grounded in the law, and readily accessible to the parties and the public.

21. What role, if any, should a judge's personal life experience play in his or her decision-making process?

Hopefully, a judge's life experiences will have prepared the judge with the necessary characteristics and integrity to undertake the important duties of the office.

22. Should you be confirmed, would you ever inform parties before you that they do not need to comply with your orders?

If confirmed, I would expect parties to follow my orders.

a. Under what circumstances would you tell a party they could decide not to comply with your orders?

Under certain limited circumstances, including, if I grant a stay, if enforcement should be suspended pending appeal, if a higher court grants a stay, if a higher court reverses the order in whole or in part, if I grant rehearing to further consider the order, or if I am presented with new evidence or arguments that should be considered before enforcing the order. Generally, if there is a lower-court order that binds a party, the normal course is for the party to follow the order and seek appellate review if the party disagrees with the outcome; if the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed.

b. What would you do if a party refuses to comply with one of your orders?

It is my understanding that federal courts typically seek to ensure compliance with court orders through sanctions and civil and criminal contempt procedures, as well as by requiring that parties file status reports and make court appearances to explain compliance efforts and progress. The Supreme Court, for its part, has cautioned that "the contempt power" is something that "uniquely is 'liable to abuse,'" *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994), and that "care is needed to avoid arbitrary or oppressive conclusions," *Bloom v. Illinois*, 391 U.S. 194, 202 (1986) (citation omitted). I would apply these instructions and any other governing law and precedents to assess whether any allegations of noncompliance were correct or whether any recognized defenses apply.

23. Discuss your proposed hiring process for law clerks.

I plan to hire law clerks based on merit and in accordance with all applicable laws.

a. Do you think law clerks should be protected by Title VII of the Civil Rights Act?

As a judicial nominee, it would be inappropriate for me to comment on policy reasons for or against Title VII applying to employees of the federal government, including judicial law clerks. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

24. Some district court judges have issued standing orders indicating that the court will favor holding an oral argument when there is a representation that the argument would be handled by a junior lawyer. Such efforts are intended to provide more speaking opportunities in court for junior lawyers. Would you consider issuing a standing order that would encourage more junior lawyers to handle oral arguments? Why or why not?

Because oral argument can be important during the litigation process and can impact the outcome of a case, I do not believe that it is the role of a judge to grant oral argument on the basis of who plans to give oral argument. Instead, I will grant oral argument on the basis of whether oral argument is warranted and leave for the attorneys, in consultation with their clients, the determination of who will give the oral argument.

a. How else would you support the skills development of junior lawyers appearing before you?

Just as I have done throughout my career, I would participate in seminars and CLE's to give junior lawyers the opportunity to interact with and learn from sitting judges. These seminars could incorporate moot court practice for less experienced lawyers.

25. In the past year, multiple studies have revealed ongoing problems with workplace conduct policies and outcomes in the federal judiciary. In a national climate survey, hundreds of judiciary employees reported that they experienced sexual harassment, discrimination, or other forms of misconduct on the job. A study by the Federal Judicial Center and the National Academy of Public Administration found the branch has failed to set up trusted reporting systems for employees who experience misconduct or ensure those handling complaints are adequately trained.

a. If confirmed, what proactive steps would you take to ensure that the clerks and judicial assistants who work in your chambers are treated with respect and are not subject to misconduct?

I would hold regular training for my Chambers to ensure that anyone working in my Chambers complies with high ethical, moral and legal standards.

b. What proactive steps would you take to ensure that any workplace-related concerns that your clerks and judicial assistants may have are fully addressed?

I would require that any concerns be reported to me so they could be immediately and properly addressed.

c. If you are confirmed and you later hear from a colleague or your chambers staff that another judge is acting inappropriately, what steps would you take to help ensure the problem is addressed?

I would investigate the matter and take prompt and appropriate action to rectify the matter.

26. When it comes to conducting yourself ethically, who in the legal profession do you see as a role model?

Chief Justice Roberts.

27. Have you participated in any workplace conduct training sessions conducted by your court, your circuit or other judiciary personnel? If so, please briefly describe the curriculum and note how many times you've participated in these sessions.

Yes, I participated in a workplace conduct training session conducted by the Fifteenth Judicial Circuit in Palm Beach County. I have also participated in related training administered by the Advanced Judicial Studies College, for which I serve as Dean and faculty member, as well as the Florida Judicial College, for which I serve on the faculty.

28. In your Senate Judiciary Questionnaire, you disclosed that you are a member of the Federalist Society, a group whose members often advocate an "originalist" interpretation of the Constitution. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the "circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light" on the amendment's original meaning, "it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." 347 U.S. at 489, 490-93. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

Brown v. Board of Education, 347 U.S. 483 (1954), is a landmark ruling that promotes racial equality and rejected the manifestly unjust and incorrect separate-but-equal rule of *Plessy v. Ferguson*. Consistent with the position of prior judicial nominees, I consider *Brown* to be one of the limited exceptions to the general principle that a judicial nominee should not comment on the Supreme Court's precedents. I agree with prior nominees that the underlying premise of the *Brown* decision is beyond dispute and that judges can express their agreement with that principle without calling into question their ability to apply the law faithfully to cases raising similar issues. Therefore, just as other nominees for judicial office have done, I can, consistent with the Code of Conduct, confirm that *Brown* was rightly decided.

a. Should the public's understanding of a constitutional provision's meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?

The Supreme Court has held, judges "are bound to interpret the constitution in the light of the law as it existed at the time it was adopted[.]" *Mattox v. United States*, 156 U.S. 237, 243 (1895). As a judicial nominee, it would be inappropriate for me to further answer a hypothetical such as this. *See* Code of Conduct U.S. Judges, Canon 3A(6).

b. Does the public's original understanding of the scope of a constitutional provision constrain its application decades later?

See response to question 28.a.

c. What sources would you employ to discern the contours of a constitutional provision?

I would use sources that are relevant to determining the Constitution's meaning, including, but not limited to, Supreme Court and Circuit Court precedent, the Constitution itself, historical documents, the common law, and other interpretive sources.

Questions for the Record for Judge Ed Artau
Submitted by Senator Richard Blumenthal
July 2, 2025

1. On February 12, 2025, you authored a concurrence in *Alexander v. Trump*. In that case, President Trump sued nineteen individual members of the Pulitzer Prize Board for defamation and conspiracy based on their awarding of the Prize to journalists who reported on Trump-Russia collusion during the 2016 election and their subsequent refusal to strip those journalists of the award. In that concurrence, you parroted Trump's talking points, incorrectly calling the Russia story "now-debunked allegations." And you called into question the seminal Supreme Court decision *New York Times v. Sullivan*, a landmark case protecting free speech and freedom of the press.

   Per your Senate Judiciary Questionnaire, on February 27, 2025, you interviewed with attorneys from the White House Counsel's Office, after which you were advised that you were under consideration for a judicial nomination.

   a. What specific steps did you take to seek a judicial nomination prior to February 12, 2025?

Response: The preface to your question mischaracterizes my concurring opinion. The applicable procedural law governing the case is that we accept as true allegations in a well-plead complaint and any facts determined by the trial court to have been properly plead for the purpose of determining the jurisdiction question at the motion to dismiss stage. As may be apparent from my Senate Judiciary Questionnaire, I frequently write separately by authoring either a concurring or dissenting opinion on legal issues I find interesting and where I think additional discussion is warranted.

With respect to the rest of your question, I was appointed by then-Governor Rick Scott to serve as a state trial court judge in 2014. Senator Scott's office initially contacted me around July 27, 2022, to ask if I was interested in being considered for nomination to serve a federal judge during the previous administration as part of a compromise deal. Subsequently, I was interviewed by Senator Scott once in 2023.

On November 14, 2024, I met with Senator Scott's then-general counsel, as I have done several times over the years when I have been in Washington, DC to attend the Federalist Society National Lawyer's Convention. We were unable to meaningfully discuss the possibility of a potential judicial nomination with the new administration when I met with Senator Scott's General Counsel on November 14, 2024, because the Senator's Office did not know if Senator Rubio would remain or be replaced, and if so, by whom.

A month and a half later, on or about December 31, 2024, I was notified that I had been assigned to a panel to hear the *Alexander v. Trump* case. At the time I was assigned the case and while I was working on the case, I did not know whether Senator Scott's office would recommend that then-Senator Rubio or his successor would consider me as a potential candidate to recommend to the White House.

I first reached out to Senator Moody on February 14, 2025—which is after I had already issued my concurring opinion and completed all my judicial labor on the *Alexander v. Trump* case—because that is when I was first informed that Senator Scott intended to recommend that I be considered by Senator Moody.

On February 20, 2025, I learned for the first time that I was under consideration by the White House when I spoke with a member of the White House Counsel's Office about scheduling an interview for the federal district court vacancy.

b. When did you first speak with Senator Scott about a judicial nomination?

Response: Please see my response to question 1a.

c. When did you first speak with Senator Scott's staff and/or representatives about a judicial nomination?

Response: Please see my response to question 1a..

d. How many times did you speak with Senator Scott, his staff, and/or his representatives about a judicial nomination before February 12, 2025?

Response: Please see my response to question 1a..

a. Please list the date of each discussion with Senator Scott, his staff, and any other representatives concerning a potential judicial nomination.

Response: Please see my response to question 1a.

e. In any of your meetings with Senator Scott, his staff, and/or his representatives, did you discuss the pending case of *Alexander v. Trump*?

Response: No.

a. If so, with whom did you discuss it, what did you discuss, and when did the discussion occur?

Response: Not Applicable.

f. When did you first speak with Senator Moody about a judicial nomination?

Response: The first day I spoke with Senator Moody personally about my nomination was on June 25, 2025, in Hart Senate hearing room 216, shortly before my Senate Judiciary Committee confirmation hearing.

g. When did you first speak with Senator Moody's staff and/or representatives about a judicial nomination?

Response: I reached out to Senator Moody' office on February 14, 2025, because that is when I was first informed that Senator Scott intended to recommend that I be considered by Senator Moody.

h. How many times did you speak with Senator Moody, her staff, and/or her representatives about a judicial nomination before February 12, 2025?

Response: None.

a. Please list the date of each discussion with Senator Moody, her staff, and any other representatives concerning a potential judicial nomination.

Response: The first day I spoke with Senator Moody about my nomination was on June 25, 2025, in Hart Senate hearing room 216, shortly before my Senate Judiciary Committee confirmation hearing.

i. In any of your meetings with Senator Moody, her staff, and/or her representatives, did you discuss the pending case of *Alexander v. Trump*?

Response: No.

a. If so, with whom did you discuss it, what did you discuss, and when did the discussion occur?

Response: Not Applicable

j. When was the first time you spoke with anyone in the Trump Administration about a judicial nomination?

Response: February 20, 2025.

a. With whom did you speak?

Response: A Deputy White House Counsel.

b. What did you discuss?

Response: We discussed my availability for an interview on February 27, 2025.

c. Did you discuss *Alexander v. Trump*?

Response: No.

k. When was the first time you spoke with anyone in the White House about a judicial nomination?

Response: February 20, 2025.

a. With whom did you speak?

Response: A Deputy White House Counsel.

b. What did you discuss?

Response: We discussed my availability for an interview on February 27, 2025.

c. Did you discuss *Alexander v. Trump*?

Response: No.

l. Did you have any communications, meetings, or contacts related to your judicial nomination, with either a member of the Administration or someone acting as on behalf of the Administration, before the publication of your February 12, 2025, concurrence that you have not disclosed?

Response: No.

In your Senate Judiciary Committee Questionnaire, you stated that you met with President Trump concerning your nomination on May 27, 2025.

m. What did you discuss?

Response: We discussed my legal credentials and qualifications for a position as a District Court Judge for the Southern District of Florida.

a. Did you discuss *Alexander v. Trump*?

Response: No.

n. Did you meet with President Trump about your nomination at any other point? If so, when and what did you discuss?

Response: No.

2. You testified to Senator Blumenthal that Florida Canon 3E provides "only four bases" for a judge's recusal in a case. However, Canon 3E provides six enumerated instances in which judges "shall disqualify" themselves if their "impartiality might reasonably be questioned." And the Canon specifically makes the list non-exhaustive, contemplating a larger universe of recusals, in that it states recusals are appropriate in situations "including but not limited to" the six enumerated instances.

a. Do you acknowledge that Canon 3E establishes a non-exhaustive list of bases for judicial qualification with the relevant standard being whether a "judge's impartiality might be reasonably be questioned[?]"

Response: My answer at the hearing was that there were "only four bases *that could possibly apply to me*." I acknowledge that Canon 3E includes a non-exhaustive list of six enumerated grounds for disqualification.

b. Did you consider recusal in *Alexander v. Trump* based on your ongoing nomination process?

Response: Yes, I sought guidance from the Florida Judicial Canons and available precedent articulating the proper standard for disqualification or recusal of a State of Florida appellate judge, which is more stringent than disqualification or recusal of a State of Florid atrial judge.

None of the six enumerated grounds for recusal or disqualification provided by Florida Canon 3E applied to me under these circumstances. Canon 3 requires that I not disqualify under these circumstances. The fact that I had been in contact with Senator Scott did not require disqualification because he was not a party before me. In addition, I was not undergoing any effort to secure a nomination from the President at the time, nor was I in communication with the President or any staff member about a potential nomination while the *Alexander v. Trump* case remained pending. In addition, the meeting with Senator Scott's former General Counsel took place before I received the assignment of the *Alexander v. Trump* case, and my attempted communication with Senator Moody's office took place after I had already completed all judicial labor in the *Alexander v. Trump* case, including the final public issuance of my concurring opinion.

Had I been contacted by the White House Counsel's Office before I had completed my judicial labor and issued my concurring opinion in the *Alexander v. Trump* case, I would have disclosed the contact with the White House and remitted my disqualification pursuant to Canon 3F, which would have allowed the parties the possibility of waiving disqualification, absent which I would have entered an order of disqualification so that another member of my court could replace me on the panel to avoid any appearance of impropriety arising from interviewing with the President's office while the President's personal case remained pending.

Indeed, the *Alexander v. Trump* case did return to my court on an entirely new and unrelated non-final appeal while my nomination was pending, and it was not assigned to me, nor would I have served on it while I remained under consideration for nomination by President Trump and in contact with the White House Counsel's Office. *See Alexander v. Trump*, --- So. 3d ----, No. 4D2025-1019, 2025 WL 1509267 (Fla. 4th DCA May 28, 2025) (Klingensmith, C.J., Warner, J., and May, J., presiding).

For additional information, please see my responses to questions 1a and 2a.

i. Did you seek any ethics guidance or advice concerning your participation in *Alexander v. Trump*?

Response: I sought guidance from the Florida Judicial Canons and available precedent articulating the proper standard for disqualification of a State of Florida appellate judge, which is more stringent than the standard for disqualification of a State of Florida trial judge.

ii. If you considered recusal, what led you to conclude participation was appropriate?

Response: See my answers to 2a. & 2b.

c. Florida circuit and county judges are chosen via election, and appellate judges are appointed by the Governor. A Judicial Nominating Commission evaluates potential nominees and submits three to six candidates to the Governor, who selects a nominee from that list.

i. If a circuit or county judge with ambition to serve as an appellate judge is assigned a case in which a party is a member of the Judicial Nominating Commission, should that judge recuse him or herself because his or her "impartiality might reasonably be questioned" in relation to a potential appellate nomination?

Response: To the extent this question invites an opinion and individualized or hypothetical questions that could arise in a case assigned to me, as a sitting judge and a judicial nominee, it would be inappropriate for me to comment further.

But, as a general matter, Florida law provides that participating either favorably or unfavorably in the nomination or election of a judge is not necessarily grounds, in and of itself, for disqualification. *See*, *e.g.*, Florida Supreme Court Committee on Standards of Conduct Governing Judges Opinion 97-14 ("This Canon, by its very nature, requires case-by-case decisions. The Code does not disqualify a potential candidate for judicial appointment from all cases in which a member of the Judicial Nominating Commission is involved. The inquiring judge must determine whether disqualification is appropriate on a case-by-case basis."); *Perrotto v. R.J. Reynolds Tobacco Co.*, 169 So. 3d 284, 286 (Fla. 4th DCA 2015) (Disqualification is generally not required on the grounds that an attorney opposed a "judge's application for office" without more because "it is assumed that a judge will not be biased" simply because a lawyer opposes a nomination of a judge to higher office.); *McDermott v. Grossman*, 429 So. 2d 393, 393-94 (Fla. 3d DCA 1983) ("Where a lawyer voices his opposition to the election of a judge, it is assumed that the judge will not thereafter harbor prejudice against the lawyer affecting the judge's ability to be impartial in cases in which the lawyer is involved."); *City of Lakeland v. Vocelle*, 656 So. 2d 612, 612-13 (Fla. 1st DCA 1995) ("[T]here is a presumption

that a judge will remain impartial even where counsel of record has voiced opposition to the . . . reappointment" of a Judge of Compensation Claims "at a hearing of the Judicial Nominating Commission" and had "met with the Governor's legal counsel in an attempt to influence the Governor to not reappoint" the judge."); *Mt. Sinai Medical Center v. Brown*, 493 So. 2d 512, 514-15 (Fla. 1st DCA 1986) (Motion to disqualify is "legally insufficient" where an employer's attorney actively participated in the judicial officer's "failure to be recommended for reappointment by the Judicial Nominating Commission."); MacKenzie v. Super Kids Bargain Store, Inc., 565 So. 2d 1332, 1335 (Fla.1990) (holding that campaign contribution to a judge does not require disqualification); Braynen v. State, 895 So. 2d 1169, 1169 (Fla. 4th DCA 2005) (holding disqualification is not required where Petitioner's counsel was on steering committee supporting trial judge's opponent); Zaias v. Kaye, 643 So. 2d 687, 687–88 (Fla. 3d DCA 1994) (holding that counsel's campaign contribution and service as member of committee supporting judge's campaign did not require disqualification).

1. If the judge is aware that the Judicial Nominating Commission is considering the judge for submission to the Governor, should that judge recuse him or herself because his or her "impartiality might reasonably be questioned" in relation to a potential appellate nomination?

Response: Please see my answers to questions 2b and 2c.i.

ii. If a circuit or county judge with ambition to serve as an appellate judge is assigned a case in which the Governor is a party, should that judge recuse him or herself because his or her "impartiality might reasonably be questioned" in relation to a potential appellate nomination?

Response: Please see answer to 2b and 2c.i.

Florida Canon 3, and precedent governing recusal or disqualification by appellate judges in Florida, which is much more stringent than recusal or disqualification by a trial judge in Florida, does not require or call for a judge to recuse or be disqualified simply because the judge is interested in a "potential nomination."

1. If the judge's name was submitted as a potential nominee to the Governor by the Judicial Nominating Committee, but the Governor has not yet selected a nominee, should that judge recuse him or herself because his or her "impartiality might reasonably be questioned" with respect to a potential appellate nomination?

Response: Please see my answer to 2.c.i.

d. Given that you were actively seeking a federal judicial nomination while deciding a case involving the President who would make that nomination, could your impartiality in *Alexander v. Trump* not reasonably be questioned under Canon 3E's standard?

Response: Please see my answers to questions 2a and 2b.

3. In 1995, you served on the Judicial Nominating Commission in Palm Beach County. A gubernatorial investigation found you had inappropriately lobbied for a candidate whose husband had arranged for your appointment. The investigation also found that you should have recused yourself. Instead of doing so, however, you voted to remove the Chair of the Judicial Nominating Convention, who had brought forth the misconduct allegations.

a. Do you disavow your actions around the consideration of Maria Sachs?

Response: No. I respectfully disagree with this characterization of the results of the investigation. The investigation did not find that I had inappropriately advocated for a candidate or that her husband had arranged for my appointment. Instead, as the 1997 article provided with my Senate Judiciary Committee Questionnaire notes, the gubernatorial panel "found no evidence of misconduct." It also noted that "[t]he probe was hampered by the refusal of five JNC members to cooperate with investigators," but "Artau was one of four members who cooperated fully."

Additionally, I was appointed by the entire 52-member Board of Governors of the Florida Bar; not one isolated member. And I was not the subject of any investigation into a rule violation and at no time did any investigation ever find that I should have recused myself. Rather, it was the Chair himself who was being investigated for violating the commission's rules. Seven out of the nine-members of the Judicial Nominating Commission (JNC), including myself, brought a written complaint against the Chair and voted to remove him because he was caught inappropriately contacting the Governor's office and making public statements falsely claiming that one of the JNC's nominees, Maria Sachs, who had been a prosecutor in Miami-Dade County with extensive experience having tried well over 100 jury trials in her legal career, was not qualified simply because he claimed she had a gap in her employment history by working only part-time for a brief period of time while on maternity leave after she became pregnant despite the fact that she was the nominee selected by a majority of the JNC's members because she was the applicant with the most amount of jury trial experience.

Moreover, the Committee voted to remove the Chair of the JNC because we concluded that the Chair had violated the rules governing judicial nominating commission that prohibit a commissioner, including the Chair, from contacting the Governor or any member of the Governor's office for the purpose of influencing the governor's ultimate decision, and that the Chair also violated the rules that prohibit any commissioner, including the Chair, from

publicly ranking any of the JNC commission's nominees or disclosing any preference for a particular nominee after a nomination. As I said when I became the Chair, the Chair should state the will of the commission to the public and the media, not publicly express a preference for a candidate, especially contrary to the view of the commission. See 1997 article provided with my Senate Judiciary Committee Questionnaire.

4. If confirmed, will you recuse yourself from any case where a reasonable person, knowing all the relevant facts, might question your impartiality, even if you personally believe you can be fair?

   I believe that both the appearance of impartiality and actual impartiality are important in maintain public confidence in our system of justice. If confirmed, I will address all actual or potential conflicts of interest by reference to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

   a. If confirmed, will you recuse yourself from cases involving individuals, organizations, or entities to which you or your family members have made political contributions or provided political support?

   Response: Please see my answer to question 4.

   b. If confirmed, will you recuse yourself from cases involving former clients, former law firms, or organizations with which you have had significant professional relationships?

   Response: Please see my answer to question 4.

   c. If confirmed, will you recuse yourself from cases involving personal friends, social acquaintances, or individuals with whom you have ongoing personal relationships?

   Response: Please see my answer to question 4.

5. If confirmed, will you commit to avoiding all *ex parte* communications about pending cases, including informal discussions at social events or professional gatherings?

   Response: Yes.

   d. If confirmed, will you avoid discussing pending cases or judicial business with elected officials, political appointees, or political operatives?

   Response: Yes.

e. If confirmed, will you commit to declining meetings or communications with lobbyists, advocacy groups, or special interests seeking to influence your judicial decisions?

Response: Yes.

f. If confirmed, will you refrain from making public statements about legal or political issues that could reasonably be expected to come before your court?

Response: Yes.

6. If confirmed, will you commit to filing complete and accurate financial disclosure reports that include all required information about your financial interests and activities?

Response: Yes.

g. If confirmed, will you decline all gifts from parties who might appear before your court or who have interests that could be affected by your judicial decisions?

Response: Yes.

h. If confirmed, will you decline privately funded travel, hospitality, or entertainment that could create an appearance of impropriety or special access?

Response: Yes.

i. If confirmed, will you ensure that any teaching, speaking, or writing activities comply with judicial ethics requirements and do not create conflicts with your judicial duties?

Response: Yes.

7. The House Republican-authored budget reconciliation bill had included a provision that would have limited federal judges' ability to hold government officials in contempt. While the Senate Parliamentarian ruled that the provision violated the Byrd Rule, and it was, therefore, removed, it would have prohibited federal courts from issuing contempt penalties against officials who disobey preliminary injunctions or Temporary Restraining Orders if the party seeking the order did not provide financial security to cover potential future damages for wrongful enjoining.

The contempt power was first codified in law in the Judiciary Act of 1789. In 1873, the Supreme Court described it as "inherent in all courts" and "essential to the preservation of order in judicial proceedings and to the enforcement of the judgements, orders, and writs of the courts, and consequently to the due administration of justice." Yet House Republicans are seeking to exempt government officials from this key tool for judicial enforcement.

a. Do you believe the contempt power is "essential . . . to the due administration of justice[?]"

Response: This passage appears in the U.S. Supreme Court's decision in *Ex Parte Robinson*, 86 U.S. 505, 510 (1873). If confirmed, I would be bound by Supreme Court precedent governing the contempt power of the federal courts and congressional authority to regulate it, including *Ex Parte Robinson*, and I would faithfully follow such precedent and any other applicable binding precedent. To the extent that this question asks me to weigh in on a matter of current political controversy, under the canons of judicial conduct, I must decline to do so. *See* Code of Conduct U.S. Judges, Canon 3A(6).

b. Do you believe that federal judges should be limited in their ability to hold government officials who defy court orders in contempt?

Response: As a judicial nominee, it would be inappropriate for me to comment on political matters such as this. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

8. If confirmed, you, like all other members of the federal bench, would have the ability to issue orders. On February 9, 2025, Vice President Vance posted on X that "[j]udges aren't allowed to control the executive's legitimate power." This raises an extremely concerning specter of Executive Branch defiance of court orders.

a. If confirmed, would you have the ability to issue orders?

Response: Yes.

i. Would you have the ability to enforce those orders?

Response: Yes.

ii. What powers would you have to enforce those orders?

Response: It is my understanding that federal courts typically seek to ensure compliance with court orders through sanctions and civil and criminal contempt procedures, as well as by requiring that parties file status reports and make court appearances to explain compliance efforts and progress. The Supreme Court, for its part, has cautioned that "the contempt power" is something that "uniquely is 'liable to abuse,'" *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994), and that "care is needed to avoid arbitrary or oppressive conclusions," *Bloom v. Illinois*, 391 U.S. 194, 202 (1968) (citation omitted). I would apply these instructions and any other governing law and precedents to assess whether any allegations of noncompliance were correct or whether any recognized defenses apply.

b. Does there exist a legal basis for federal Executive Branch officials to defy federal court orders? If so, what basis and in which circumstances?

Response: There are several recognized instances where a party may defy a court order including, the court was without legal authority to issue the order, it is impossible to comply with the order, the order's terms are not clear, the order is stayed pending appeal, or the party wishes to be held in contempt to make the order immediately appealable. *See In re J & L Structural, Inc.* 299 B.R. 89, 96 (Bankr. W.D. Penn. 2003) ("An order may be void if the court entering it lacked subject-matter jurisdiction or lacked personal jurisdiction over the parties or if the order was not within the powers granted to the court by law."); *Charis v. Burgess*, 143 F.3d 1432, 1436 (11th Cir. 1998) ("A contemnor may be excused because of an 'inability' to comply with the terms of the order."); *United States v. Manafort*, 897 F.3d 340, 346 (D.C. Cir. 2018) ("The statutory requirement for clarity accords with the familiar rule that the court should not punish someone for violating an order if the terms of that order are unclear."); *In re Swan*, 506 B.R. 47, 51 (Bankr. W.D.N.Y. 2014) ("Whenever a party decides that he, she[,] or it cannot or will not perform an Order of the Court, the party is not free to disregard it. He, she[,] or it must seek relief from the order."); *Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.*, 2 F.3d 1397, 1405 n.16 (5th Cir. 1993) ("A discovery order, even one directed at a non-party, is not a final order and hence not appealable. Prior to appeal, the one to whom the order is directed must first defy it and risk being held in contempt. If he is so sanctioned, the contempt order is appealable."). Because these matters could arise before me as a judge, it would be inappropriate for me to provide further comment on how the legal rules might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

c. Does there exist a legal basis for state officials to defy federal court orders? If so, what basis and in which circumstances?

Response: Please see my answer to question 8b.

d. What would make a court order unlawful?

Response: One recognized way that an order could be unlawful is if it was entered without jurisdiction. *See In re J & L Structural, Inc.* 299 B.R. 89, 96 (Bankr. W.D. Penn. 2003) ("An order may be void if the court entering it lacked subject-matter jurisdiction or lacked personal jurisdiction over the parties or if the order was not within the powers granted to the court by law."). To the extent there are other ways an order could be unlawful, this could be an issue that comes before me as a judge, so it would be inappropriate for me to further comment. *See* Code of Conduct U.S. Judges, Canon 3A(6).

i. What is the process a party should follow if it believes a court order to be unlawful?

Response: My understanding is that, among other things, parties could seek rehearing, appeal the order (and if the order is not appealable, be held in contempt to make the order appealable), or petition an appropriate writ.

ii. Is it ever acceptable to not follow this process? When and why?

Response: Because this issue could come before me as a judge, it would not be appropriate for me to answer this question. See Code of Conduct U.S. Judges, Canon 3A(6).

9. Were you in Washington, D.C. on January 6, 2021?

Response: No. I was working in my Chambers at the Fourth District Court of Appeal in Palm Beach County, Florida.

a. Were you inside the U.S. Capitol or on the U.S. Capitol grounds on January 6, 2021?

Response: No. I was working in my Chambers at the Fourth District Court of Appeal in Palm Beach County, Florida.

Senator Mazie K. Hirono
Questions for the Record
Ed Artau
Nominee to the U.S. District Court for the Southern District of Florida

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

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

   No.

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

   No.

2. A federal district court judge has the power to issue court orders. If confirmed for this position, you will have such power.

   a. As a federal judge, what tools will be at your disposal to ensure compliance with your court orders?

   It is my understanding that federal courts typically seek to ensure compliance with court orders through sanctions and civil and criminal contempt procedures, as well as by requiring that parties file status reports and make court appearances to explain compliance efforts and progress. The Supreme Court, for its part, has cautioned that "the contempt power" is something that "uniquely is 'liable to abuse,'" *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994), and that "care is needed to avoid arbitrary or oppressive conclusions," *Bloom v. Illinois*, 391 U.S. 194, 202 (1968) (citation omitted). I would apply these instructions and any other governing law and precedents to assess whether any allegations of noncompliance were correct or whether any recognized defenses apply.

      i. When should each of these tools be used?

   Any tool of compliance reasonably necessary should be used, if needed, to compel compliance. Because such issues could come before me as a judge, it would be inappropriate for me to comment further on them. *See* Code of Conduct U.S. Judges, Canon 3A(6).

   b. Is it ever permissible for a party in a case to disregard a court order?

There are several recognized instances where a party may defy a court order including, the court was without legal authority to issue the order, it is impossible to comply with the order, the order's terms are not clear, the order is stayed pending appeal, or the party wishes to be held in contempt to make the order immediately appealable. See In re J & L Structural, Inc. 299 B.R. 89, 96 (Bankr. W.D. Penn. 2003) ("An order may be void if the court entering it lacked subject-matter jurisdiction or lacked personal jurisdiction over the parties or if the order was not within the powers granted to the court by law."); Charis v. Burgess, 143 F.3d 1432, 1436 (11th Cir. 1998) ("A contemnor may be excused because of an 'inability' to comply with the terms of the order."); United States v. Manafort, 897 F.3d 340, 346 (D.C. Cir. 2018) ("The statutory requirement for clarity accords with the familiar rule that the court should not punish someone for violating an order if the terms of that order are unclear."); In re Swan, 506 B.R. 47, 51 (Bankr. W.D.N.Y. 2014) ("Whenever a party decides that he, she[,] or it cannot or will not perform an Order of the Court, the party is not free to disregard it. He, she[,] or it must seek relief from the order."); Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc., 2 F.3d 1397, 1405 n.16 (5th Cir. 1993) ("A discovery order, even one directed at a non-party, is not a final order and hence not appealable. Prior to appeal, the one to whom the order is directed must first defy it and risk being held in contempt. If he is so sanctioned, the contempt order is appealable."). Because these matters could arise before me as a judge, it would be inappropriate for me to provide further comment on how the legal rules might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

i. Is the President of the United States allowed to disregard a court order?

My general understanding of the relevant legal considerations is as follows. If there is a lower-court order that binds the Executive Branch or an executive official or agency, the normal course is for the party to follow the order and seek appellate review if the party disagrees with the outcome. If the Supreme Court issues an order upon the conclusion of appellate review, that order is to be followed. With respect to potential exceptions to that rule, I am aware of scholarly work that has posited scenarios in which parties, including the Executive Branch or one of its officers, departments, or agencies, might permissibly disregard a court order. *See generally, e.g.*, William Baude, *The Judgment Power*, 96 Geo. L.J. 1807 (2008) (lack of jurisdiction); Gary Lawson & Christopher D. Moore, *The Executive Power of Constitutional Interpretation*, 81 Iowa L. Rev. 1267, 1326 (1996) (constitutional error "so clear that it is not open to rational question"); *see also* 17 Corpus Juris Secundum Contempt §§ 56-65 (discussing contempt defenses). I am also aware of the legal distinction that parties and jurists have drawn between a court's binding "judgment[]" and its "statements in opinions." *Camreta v. Greene*, 563 U.S. 692, 704 (2011); *see* Abraham Lincoln, First Inaugural Address (Mar. 4, 1861) (discussing *Dred Scott v. Sanford*). And I am generally aware that, there are certain interlocutory orders might be immediately appealable only via the avenue of a contempt finding. *See, e.g.*, *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009) ("Another long-recognized option is for a party to defy a

disclosure order and incur court-imposed sanctions."). In *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, the Sixth Circuit explained that the "general rule" is that a non-party "seeking to appeal a discovery order must first disobey the order and suffer a contempt citation." 444 F.3d 462, 471 (6th Cir. 2006) (citing *Alexander v. United States*, 201 U.S. 117, 121-22 (1906)). Because a case involving these issues could come before me if I were confirmed as a judge, it would be inappropriate to provide an answer that categorically pre-determines the validity of potential legal arguments for or against such matters. *See* Code of Conduct U.S. Judges, Canon 3A(6). If any such issues came before me, I would commit to resolving them through careful consideration and application of the parties' arguments and the governing law and precedents.

ii. How should a federal judge respond if the President unlawfully disregards the judge's court order?

See response to question 2b.i.

c. What does it mean for a judge to hold a party in "contempt of court"?

Federal courts can use this power to ensure compliance with court orders through sanctions and civil and criminal contempt procedures.

i. Does the federal judiciary have the authority to hold the President in contempt of court?

Because this matter could arise before me as a judge, it would be inappropriate for me to provide further comment on how the legal rules might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

1. If so, where does that authority come from?

Because this matter could arise before me as a judge, it would be inappropriate for me to provide further comment on how the legal rules or applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

2. If no, why not?

Because this matter could arise before me as a judge, it would be inappropriate for me to provide further comment on how the legal rules or applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

3. On February 12, 2025, you issued a concurring opinion in *Alexander v. Trump* in which you parroted President Trump's talking points in the case. You quoted President Trump's own tweets in the opinion, calling the alleged Russian interference in the 2016 presidential election "FAKE NEWS," a "phony Witch Hunt" and "a big hoax." You further contended

that the allegations that President Trump colluded with the Russians to win the election are "now-debunked."

a. According to your disclosures to this committee, on February 27 – 15 days after you issued that concurring opinion – you interviewed with attorneys from the White House Counsel's Office for this nomination. Is that correct?

The preface to your question mischaracterizes my concurring opinion. The applicable procedural law governing the case that we accept as true allegations in a well-plead complaint at the motion to dismiss stage.

As the trial court explained in the order on appeal: "When ruling on a motion to dismiss, the trial court 'must limit itself to the four corners of the complaint, including any attached or incorporated exhibits, assuming the allegations in the complaint to be true and construing all reasonable inferences therefrom in favor of the non-moving party.'" (quoting *Cousins v. Post-Newsweek Stations Fla., Inc.*, 275 So. 3d 674, 678 (Fla. 3d DCA 2019)).

I consistently applied these same principles recently in my dissenting opinion in *Daher Aerospace SA v. Blackford*, --- So. 3d ----, No. 4D2024-2453, 2025 WL 1572566 (Fla. 4th DCA June 4, 2025) (citing *Alexander v. Trump*).

With respect to the rest of your question, yes, but to clarify I had no communication with the White House, nor was I aware that the White House was considering me until February 20, 2025, when I was first called and informed that the White House had an interest in interviewing me—which did not happen until after the panel I served on had publicly issued its February 12, 2025 unanimous opinion in *Alexander v. Trump*, including my concurring opinion.

b. During that interview, in your conversation with President Trump, or in any other communication in relation to your role as a federal district court judge, was your concurring opinion in *Alexander* discussed or referenced? If so, list the date and means and provide a summary of any such communication.

I did not share the *Alexander v. Trump* opinion with Senator Rick Scott because it had not been issued by the unanimous appellate panel until February 12, 2025. However, the opinion in *Alexander v. Trump* case had already publicly issued by the time I was interviewed by the White House Counsel's Office on February 27, 2025, for the vacancy on the U.S. District Court for the Southern District of Florida. Therefore, the opinion I had authored was included in my background in the similar manner that the Senate was provided with a list of all cases that I have authored as part of the confirmation process. Both the nominating process and the confirmation process require similar rigorous background evaluation, which would of course include a list of cases I have authored.

4. You are a founding member of the Miami Lawyers Chapter of the Federalist Society. You have also received the Good Shepherd Award from Florida's Federalist Society recognizing you as "a distinguished member of the Florida Federalist Society" and acknowledging your "commitment to the Society." Under your leadership, the Miami Chapter hosted lawyer Cleta Mitchell, a prominent "Stop the Steal" proponent and campaign advisor to President Trump in 2020. Mitchell later started the Election Integrity Network and worked alongside Stephen Miller and Mark Meadows at the Conservative Partnership Institute.

    a. Who won the 2020 presidential election?

    President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate regarding the conduct of the 2020 presidential election or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding the 2020 election, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

    b. If your answer to the question above includes the word "certified," explain why President Trump was not certified as the winner of the 2020 election.

    See my response to question 4a.

5. In 1995, the Florida Governor's office conducted an ethics investigation and found that you acted improperly as a member of Florida's Judicial Nominating Commission by advocating for a judicial nominee – Maria Sachs – whose husband helped you secure your appointment to the Commission.

    a. Is that a fair summary of the investigation's findings?

    I respectfully disagree with this characterization of the results of the investigation. The investigation did not find that I had inappropriately lobbied for a candidate or that her husband had arranged for my appointment. Instead, as the 1997 article provided with my Senate Judiciary Committee Questionnaire notes, the gubernatorial panel "found no evidence of misconduct." It also noted that "[t]he probe was hampered by the refusal of five JNC members to cooperate with investigators," but "Artau was one of four members who cooperated fully."

    Additionally, I was appointed by the entire 52-member Board of Governors of the Florida Bar; not one isolated member. And I was not the subject of any investigation into a rule violation and at no time did any investigation ever find that I should have recused myself. Rather, it was the Chair himself who was being investigated for violating the commission's rules. Seven out of the nine-members of the Judicial Nominating Commission (JNC),

including myself, brought a written complaint against the Chair and voted to remove him because he was caught inappropriately contacting the Governor's office and making public statements falsely claiming that one of the JNC's nominees, Maria Sachs, who had been a prosecutor in Miami-Dade County with extensive experience having tried well over 100 jury trials in her legal career, was not qualified simply because he claimed she had a gap in her employment history by working only part-time for a brief period of time while on maternity leave after she became pregnant despite the fact that she was the nominee selected by a majority of the JNC's members because she was the applicant with the most amount of jury trial experience. As I said when I became the Chair, the Chair should state the will of the commission to the public and the media, not publicly express a preference for a candidate, especially contrary to the view of the commission. See 1997 article provided with my Senate Judiciary Committee Questionnaire

b. How can this Committee trust that you will adhere to high ethical standards required of judges in light of this prior behavior?

I did adhere to high ethical standards. The commission I served on removed the Chair because he violated the rules as found by the Governor's own investigation. The investigation concluded that the seven commissioners on the Judicial Nominating Commission (JNC), including myself, did that right thing when we filed our complaint against the Chair because we had the authority to enforce the JNC rules and remove him from continuing to serve as Chair. The investigation into the Chair's misconduct concluded that the Chair violated the rules governing judicial nominating commissions that prohibit a commissioner, including the Chair, from contacting the Governor or any member of the Governor's office for the purpose of influencing the Governor's ultimate decision, and that the Chair also violated the rules that prohibit any commissioner, including the Chair, from publicly ranking any of the JNC commission's nominees or disclosing any preference for a particular nominee after a nomination.

Nomination of Ed Artau
Nominee to be U.S. District Judge for the Southern District of Florida
Questions for the Record
Submitted July 2, 2025

QUESTIONS FROM SENATOR CORY A. BOOKER

1. During the hearing on your nomination, Senator Padilla asked you and your fellow nominees whether members of the executive branch are required to follow court orders. You responded, "generally speaking, all parties that are subjected to a court order are required to follow orders," but that "there are a few exceptions."

    a. What are the exceptions to the general rule that parties subjected to a court order must follow that court order?

    Response: There are several recognized instances where a party may defy a court order including, the court was without legal authority to issue the order, it is impossible to comply with the order, the order's terms are not clear, the order is stayed pending appeal, or the party wishes to be held in contempt to make the order immediately appealable. *See In re J & L Structural, Inc.* 299 B.R. 89, 96 (Bankr. W.D. Penn. 2003) ("An order may be void if the court entering it lacked subject-matter jurisdiction or lacked personal jurisdiction over the parties or if the order was not within the powers granted to the court by law."); *Charis v. Burgess*, 143 F.3d 1432, 1436 (11th Cir. 1998) ("A contemnor may be excused because of an 'inability' to comply with the terms of the order."); *United States v. Manafort*, 897 F.3d 340, 346 (D.C. Cir. 2018) ("The statutory requirement for clarity accords with the familiar rule that the court should not punish someone for violating an order if the terms of that order are unclear."); *In re Swan*, 506 B.R. 47, 51 (Bankr. W.D.N.Y. 2014) ("Whenever a party decides that he, she[,] or it cannot or will not perform an Order of the Court, the party is not free to disregard it. He, she[,] or it must seek relief from the order."); *Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.*, 2 F.3d 1397, 1405 n.16 (5th Cir. 1993) ("A discovery order, even one directed at a non-party, is not a final order and hence not appealable. Prior to appeal, the one to whom the order is directed must first defy it and risk being held in contempt. If he is so sanctioned, the contempt order is appealable."). Because these matters could arise before me as a judge, it would be inappropriate for me to provide further comment on how the legal rules might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

2. On February 12, 2025, a judicial panel that you sat on ruled favorably for President Trump in his defamation case against the Pulitzer Prize Board.[1] In your Senate Judiciary Questionnaire, you wrote that you were interviewed by the White House Counsel's Office for a potential judicial nomination on February 27, 2025, two weeks after you ruled in favor of the President.

[1] Hailey Fuchs, *A judge sided with Trump. Behind the scenes, he was lobbying for a nomination*, POLITICO (June 20, 2025), https://www.politico.com/news/2025/06/20/ed-artau-trump-judge-nomination-florida-00415408.

a. When were you advised that Senators Scott and Moody would be recommending you to the White House for consideration for a potential nomination to the federal bench?

Response: I reached out to Senator Moody's office for the first time on February 14, 2025, because that is when I was first informed that Senator Scott intended to recommend that I be considered by Senator Moody. I then attempted to contact Senator Moody's Office on February 14, 2024—which is after I had issued my concurring opinion and completed all my judicial labor on the *Alexander v. Trump* case—to ask if Senator Moody had any questions, but I was unable to speak with any staff member in Senator Moody's office.

No one informed me that the two Florida Senators had both agreed to recommend that the White House Counsel's Office consider me, along with others, for possible nomination to serve on the U.S. District Court for the Southern District of Florida until I was contacted by the White House Counsel's Office on February 20, 2025, to schedule me for an interview.

b. When were you first notified of your upcoming interview with the White House Counsel's Office for a potential nomination to the federal bench?

Response: February 20, 2025

c. At the time you were notified of your upcoming interview with the White House Counsel's Office, what was the disposition of that case, *Alexander v. Trump*, before the court?

Response: The *Alexander v. Trump* case was completely disposed of and the panel's opinion, including the unanimous majority opinion and my concurring opinion, had already been publicly issued by the time I was first notified on February 20, 2025, that the White House had any interest in interviewing me for the vacancy on the U.S. District Court in the Southern District of Florida.

i. Had briefs been filed in the case?

Response: Not only had the briefs been previously filed in the *Alexander v. Trump* case, but the entire case had been fully and completed disposed of with the final opinions being publicly issued, together with my concurring opinion, by the time I was first notified on February 20, 2025, that the White House had any interest in interviewing me.

ii. Had oral arguments taken place, with you sitting on the presiding panel?

Response: Oral argument was never granted in the *Alexander v. Trump* case which is typical in non-final appeals. Moreover, the entire case had been fully and completed disposed of with the final unanimous majority opinion being publicly issued, together with my concurring opinion, by the time I was first notified on February 20, 2025, that the White House had any interest in interviewing me.

d. Did you consider whether to recuse yourself in this matter? Why or why not.

Response: I sought guidance from the Florida judicial canons and available precedent articulating the proper standard for disqualification or recusal of a State of Florida appellate judge, which is more stringent than disqualification or recusal of a State of Florida trial judge.

None of the six enumerated grounds for recusal or disqualification provided by Florida Canon 3E applied to me under these circumstances. Canon 3 required that I not disqualify under these circumstances. The fact that I had been in contact with Senator Scott did not require disqualification because he was not a party before me. In addition, I was not undergoing any effort to secure a nomination from the President at the time, nor was I in communication with the President or any staff member about a potential nomination while the *Alexander v. Trump* case remained pending. In addition, the meeting with Senator Scott's former General Counsel took place before I received the assignment of the *Alexander v. Trump* case, and my attempted communication with Senator Moody's office took place after I had already completed all judicial labor in the *Alexander v. Trump* case, including the final public issuance of my concurring opinion.

Had I been contacted by the White House Counsel's Office before I had completed my judicial labor and issued my concurring opinion in the *Alexander v. Trump* case, I would have disclosed the contact with the White House and remitted my disqualification pursuant to Canon 3F, which would have allowed the parties the possibility of waiving disqualification, absent which I would have entered an order of disqualification so that another member of my court could replace me on the panel to avoid any appearance of impropriety arising from interviewing with the President's office while the President's personal case remained pending.

Indeed, the *Alexander v. Trump* case did return to my court on an entirely new and unrelated non-final appeal while my nomination was pending, and it was not assigned to me, nor would I have served on it while I remained under consideration for nomination by President Trump and in contact with the White House Counsel's Office. *See Alexander v. Trump*, --- So. 3d ----, No. 4D2025-1019, 2025 WL 1509267 (Fla. 4th DCA May 28, 2025) (Klingensmith, C.J., Warner, J., and May, J., presiding).

e. Provide the ethical justification for not recusing yourself from this matter while interviewing with President Trump's White House Counsel's Office for a nomination.

Response: Please see my response to question 2d.

3. The American Bar Association (ABA) Standing Committee on the Federal Judiciary has conducted extensive peer evaluations of the professional qualifications of a president's nominees to become federal judges for seven decades. This practice has endured through 18 presidential administrations, under Republican and Democratic presidents.

   On May 29, 2025, Attorney General Pam Bondi ended this longstanding practice when she informed the ABA that, "[T]he Office of Legal Policy will no longer direct nominees to provide waivers allowing the ABA access to nonpublic information, including bar records. Nominees will also not respond to questionnaires prepared by the ABA and will not sit for interviews with the ABA."[2]

   a. Do you agree with AG Bondi that "the ABA no longer functions as a fair arbiter of nominees' qualifications and its ratings invariably and demonstrably favor nominees put forth by Democratic administrations"?

      Response: As a judicial nominee, it would be inappropriate for me to comment on political matters such as this. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

4. How would you characterize your judicial philosophy?

Response: I would describe my judicial philosophy as a textualist and originalist who will always do his very best to follow the rule of law. I also view my role as a judge to be fair and impartial to all who may have cases before me and to decide each case solely on the merits without prejudice or favor.

5. What do you understand originalism to mean?

Response: Originalism is a method of constitutional interpretation where jurists interpret the Constitution consistently with the original public meaning of a constitutional provision.

6. Do you consider yourself an originalist?

Response: Yes.

7. What do you understand textualism to mean?

Response: Similar to originalism, textualism requires a judge to interpret a text as written, consistent with its grammatical structure and meaning when enacted.

8. Do you consider yourself a textualist?

[2] Letter from Attorney General Pam Bondi to William R. Bay, President, American Bar Association (May 29, 2025), https://www.justice.gov/ag/media/1402156/dl?inline.

Response: Yes.

9. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. Some federal judges consider legislative history when analyzing the meaning of a statute.

   a. If you are confirmed to serve on the federal bench, would you consult and cite legislative history to analyze or interpret a federal statute?

   Response: As Justice Scalia has explained, judges should not rely on legislative history because the uncodified "intent of the legislature [is not] the proper criterion of the law." Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of the United States Federal Courts in Interpreting the Constitution and Laws, in A Matter of Interpretation* 31 (Amy Gutmann ed. 2018).

   b. Do you believe that congressional intent matters when interpreting a statute? Why or why not.

   Response: The congressional intent as reflected by the words Congress decided to include in a statute, in its proper context, is the primary method of determining congressional intent.

10. According to an academic study, Black men were 65 percent more likely than similarly-situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.[3]

    a. What do you attribute this to?

    Response: As a judicial nominee, it would be inappropriate for me to opine on the cause of this. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

11. A recent report by the United States Sentencing Commission observed demographic differences in sentences imposed during the five-year period studied, with Black men receiving federal prison sentences that were 13.4 percent longer than white men.[4]

    a. What do you attribute this to?

    Response: As a judicial nominee, it would be inappropriate for me to opine on the cause of this. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

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[3] Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

[4] U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING 2 (Nov. 2023), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20231114_Demographic-Differences.pdf.

12. What role do you think federal judges, who review difficult, complex criminal cases, can play in ensuring that a person's race did not factor into a prosecutor's decision or other instances where officials exercise discretion in our criminal justice system?

Response: A Judge should ensure that all defendants are provided a fair and impartial process, including a fair and impartial trial with the selection of a fair and unbiased jury, and that any sentence based on a conviction be imposed in a fair, impartial and neutral manner.

13. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? Why or why not.

Response: As a judicial nominee, it would be inappropriate for me to comment on this topic. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

14. Please indicate whether you have ever published written material or made any public statements relating to the following topics. If so, provide a description of the written or public statement, the date and place/publication where the statement was made or published, and a summary of its subject matter. If you have not disclosed a copy of the publication or a transcript of the statement to the Judiciary Committee, please attach a copy or link to the materials and explain why you have not previously disclosed them.
    a. Abortion
    b. Affirmative action
    c. Contraceptives or birth control
    d. Gender-affirming care
    e. Firearms
    f. Immigration
    g. Same-sex marriage
    h. Miscegenation
    i. Participation of transgender people in sports
    j. Service of transgender people in the U.S. military
    k. Racial discrimination
    l. Sex discrimination
    m. Religious discrimination
    n. Disability discrimination
    o. Climate change or environmental disasters
    p. "DEI" or Diversity Equity and Inclusion

Response: I do not recall ever publishing written material or making any public statements related to the listed topics. For lists of cases I presided over that may relate to these topics, please see my responses in the Senate Judiciary Questionnaire for judicial nominees.

15. Under what circumstances would it be acceptable for an executive branch official to ignore or defy a federal court order?

Response: Please see my answer to question 1a.

a. If an executive branch official ignores or defies a federal court order, what legal analysis would you employ to determine whether that official should be held in contempt?

Response: It is my understanding that federal courts typically seek to ensure compliance with court orders through sanctions and civil and criminal contempt procedures, as well as by requiring that parties file status reports and make court appearances to explain compliance efforts and progress. The Supreme Court, for its part, has cautioned that "the contempt power" is something that "uniquely is 'liable to abuse,'" *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994), and that "care is needed to avoid arbitrary or oppressive conclusions," *Bloom v. Illinois*, 391 U.S. 194, 202 (1968) (citation omitted). I would apply these instructions and any other governing law and precedents to assess whether any allegations of noncompliance were correct or whether any recognized defenses apply.

b. Is there any legal basis that would allow an executive branch official to ignore or defy temporary restraining orders and preliminary injunctions issued by federal district court judges? Please provide each one and the justification.

Response: Please see my answer to question 1a.

16. Does the president have the power to ignore or nullify laws passed by Congress?

Response: Because this issue could come before me as a judge, it would not be appropriate for me to answer this question. *See* Code of Conduct U.S. Judges, Canon 3A(6).

17. Does the president have the power to withhold funds appropriated by Congress?

Response: In a partial concurrence, Justice Scalia explained that over the last 150 years, multiple presidents "have claimed Executive authority to withhold appropriated funds even absent an express conferral of discretion to do so." *Clinton v. City of New York*, 524 U.S. 417, 467 (1998) (Scalia, J., concurring in party and dissenting in part) (emphasis removed). He further opined that Congress has the authority to grant the President discretion to withhold funds. *See id.* ("Congress may confer discretion upon the Executive to withhold appropriated funds, even funds appropriated for a specific purpose[.]").

How Supreme Court precedent and statutory or constitutional provisions govern the President's ability or inability to impound congressionally appropriated funds is an issue implicated by active litigation and that could arise before me as a judge. Thus, as a judicial nominee, it would be inappropriate for me to provide further comment. *See* Code of Conduct U.S. Judges, Canon 3A(6).

18. Does the president have the power to discriminate by withholding funds against state or local jurisdictions based on the political party of a jurisdictions elected officials?

Response: Because this issue could come before me as a judge, it would not be appropriate for me to answer this question. *See* Code of Conduct U.S. Judges, Canon 3A(6).

19. Does the Supremacy Clause of the U.S. Constitution establish that federal laws supersede conflicting state laws?

Response: The Supremacy Clause provides that federal law "made in pursuance [to the Constitution] . . . shall be the supreme Law of the Land[.]"

a. The Emergency Medical Treatment and Labor Act (EMTALA) is a federal law enacted in 1986 that requires hospitals to provide emergency care, including emergency abortion care. Do you agree that EMTALA, as a federal law, supersedes conflicting state laws?

Response: Because this is a question that could come before me as a judge, it would be inappropriate for me to answer it. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

20. Does the Fifth Amendment of the U.S. Constitution apply to non-citizens present in the United States?

Response: Because this is a question that could come before me as a judge, it would be inappropriate for me to answer it. *See* Code of Conduct U.S. Judges, Canon 3A(6).

21. Is it constitutional for Congress to delegate to federal agencies the power to implement statutes through rulemaking?

Response: Because this is a question that could come before me as a judge, it would be inappropriate for me to answer it. See Code of Conduct U.S. Judges, Canon 3A(6).

22. Was *Brown v. Board of Education*, 347 U.S. 483 (1954), correctly decided?

Response: As Justice Kagan explained, and many other judicial nominees across administrations have reiterated, it is generally not appropriate for a judicial nominee to "grade" or give a "thumbs-up or thumbs-down" to particular precedents of the Supreme Court. If confirmed as a judge, all of the Supreme Court's pronouncements would be binding on me. Under the Code of Conduct for United States Judges, I have a duty as a judicial nominee to refrain from commenting on the merits or demerits of the Supreme Court's binding precedents because doing so creates the impression that I would have difficulty applying binding law to adjudicate parties' cases. *Brown v. Board of Education*, 347 U.S. 483 (1954), however, is a landmark ruling that promotes racial equality and rejected the manifestly unjust and incorrect separate-but-equal rule of *Plessy v. Ferguson*. Consistent with the position of prior judicial nominees, I consider *Brown* to be one of the limited exceptions to the general principle that a judicial nominee should not comment on the Supreme Court's precedents. I agree with prior nominees that the underlying premise of the *Brown* decision is beyond dispute and that judges can express their agreement with that principle without calling into question their ability to apply the law faithfully to cases raising similar issues. Therefore, just as other nominees for judicial office have done, I can, consistent with the Code of Conduct, confirm that *Brown* was rightly decided.

23. Is *Griswold v. Connecticut*, 381 U.S. 479 (1965), binding precedent? Please describe the facts and holding of this case.

Response: As Justice Kagan explained, and many other judicial nominees across administrations have reiterated, it is generally not appropriate for a judicial nominee to "grade" or give a "thumbs-up or thumbs-down" to particular precedents of the Supreme Court. If confirmed as a judge, all of the Supreme Court's pronouncements would be binding on me. Under the Code of Conduct for United States Judges, I have a duty as a judicial nominee to refrain from commenting on the merits or demerits of the Supreme Court's binding precedents because doing so creates the impression that I would have difficulty applying binding law to adjudicate parties' cases. *See* Code of Conduct U.S. Judges, Canon 3A(6).

24. Is *Lawrence v. Texas*, 539 U.S. 558 (2003), binding precedent? Please describe the facts and holding of this case.

Response: As Justice Kagan explained, and many other judicial nominees across administrations have reiterated, it is generally not appropriate for a judicial nominee to "grade" or give a "thumbs-up or thumbs-down" to particular precedents of the Supreme Court. If confirmed as a judge, all of the Supreme Court's pronouncements would be binding on me. Under the Code of Conduct for United States Judges, I have a duty as a judicial nominee to refrain from commenting on the merits or demerits of the Supreme Court's binding precedents because doing so creates the impression that I would have difficulty applying binding law to adjudicate parties' cases.

25. Is *Obergefell v. Hodges*, 576 U.S. 644 (2015), binding precedent? Please describe the facts and holding of this case.

Response: As Justice Kagan explained, and many other judicial nominees across administrations have reiterated, it is generally not appropriate for a judicial nominee to "grade" or give a "thumbs-up or thumbs-down" to particular precedents of the Supreme Court. If confirmed as a judge, all of the Supreme Court's pronouncements would be binding on me. Under the Code of Conduct for United States Judges, I have a duty as a judicial nominee to refrain from commenting on the merits or demerits of the Supreme Court's binding precedents because doing so creates the impression that I would have difficulty applying binding law to adjudicate parties' cases. *See* Code of Conduct U.S. Judges, Canon 3A(6).

26. Do you believe that President Biden won the 2020 election? Note that this question is not asking who was certified as president in the 2020 election.

Response: President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate regarding the conduct of the 2020 presidential election or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding the 2020 election,

is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

a. Did Biden win a majority of the electoral vote in the 2020 election?

Response: See my response to Question 26.

b. Do you believe that the results of the 2020 election, meaning the vote count, were accurate? If not, please provide why not and examples.

Response: See my response to Question 26.

27. The 22nd Amendment says that "no person shall be elected to the office of the President more than twice."[5]

a. Do you agree that President Trump was elected to the office of the President in the 2016 election?

Response: President Trump was certified the winner of the 2016 election and served as the 45th President of the United States. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate regarding the conduct of presidential elections or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding elections or political commentary, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

b. Did Trump win a majority of the electoral vote in the 2016 election?

Response: When President Trump was certified the winner of the 2016 election, he was awarded a majority of the electoral vote. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate regarding the conduct of presidential elections or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding elections or political commentary, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

c. Do you agree that President Trump was elected to the office of the President in the 2024 election?

Response: President Trump was certified the winner of the 2024 election and is currently serving as the 47th President of the United States. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate regarding the conduct of presidential elections or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding

[5] U.S. CONST. amend. XXII.

elections or political commentary, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

d. Did Trump win a majority of the electoral vote in the 2024 election?

Response: When President Trump was certified the winner of the 2024 election, he was awarded a majority of the electoral vote. To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate regarding the conduct of presidential elections or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding elections or political commentary, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

e. Do you agree that the 22nd Amendment, absent a constitutional amendment, prevents President Trump from running for a third presidential term?

Response: The 22nd Amendment provides:

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once.

To the extent this question seeks to elicit an answer that could be taken as opining on the broader political debate regarding the conduct of presidential elections or on statements by any political figure, my response, consistent with the position of prior judicial nominees when asked questions regarding elections or political commentary, is that it would be improper to offer any such comment as a judicial nominee. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

28. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

Response: No.

29. Have you spoken or corresponded with Elon Musk since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

Response: No.

30. Have you spoken or corresponded with any member of the Department of Government Efficiency (DOGE) since November 2024? If yes, identify the member(s) and provide the dates, mode, and content of those discussions and communications.

Response: No.

31. Have you spoken or corresponded with Stephen Miller since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

Response: No.

32. Have you spoken or corresponded with Chad Mizelle since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

Response: Yes. Chad Mizelle called to congratulate me on May 28, 2025, after President Trump announced my nomination. Chad Mizelle also met with the Florida District Court Nominees from both the Southern District of Florida (me), and the Middle District of Florida, in his office on June 24, 2025—the day before our Senate Judiciary Committee Confirmation Hearing.

33. Have you spoken or corresponded with Pam Bondi since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

Response: Attorney General Pam Bondi called to congratulate me on May 28, 2025, after President Trump announced my nomination.

34. Have you spoken or corresponded with Todd Blanche since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

Response: No.

35. Have you spoken or corresponded with Emil Bove since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

Response: Yes, I spoke to Nominee Emil Bove on June 26, 2025—the day after our Senate Judiciary Committee Confirmation Hearing—in connection with our mutual attendance at the Administrative Office of the United States Courts Judicial Nominee Orientation Program.

36. Have you spoken or corresponded with Leonard Leo since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

Response: No.

37. Have you—personally or through any of your affiliated companies or organizations, agents, or employees—provided financial support or other resources to any members of the Proud Boys or of the Oath Keepers for their legal fees or for other purposes? If yes, state the amount of financial support provided, dates provided, and for what purposes.

Response: No.

38. Have you ever spoken or corresponded with any of the following individuals? If yes, provide the dates, mode, and content of those discussions and communications.
    a. Enrique Tarrio
    b. Stewart Rhodes
    c. Kelly Meggs
    d. Kenneth Harrelson
    e. Thomas Caldwell
    f. Jessica Watkins
    g. Roberto Minuta
    h. Edward Vallejo
    i. David Moerschel
    j. Joseph Hackett
    k. Ethan Nordean
    l. Joseph Biggs
    m. Zachary Rehl
    n. Dominic Pezzola
    o. Jeremy Bertino
    p. Julian Khater

    Response: No.

39. Have you ever spoken or corresponded with any individuals convicted and later pardoned of offenses related to the January 6, 2021 attack on the U.S. Capitol? If yes, identify the individual(s) and provide the dates, mode, and content of those discussions and communications.

    Response: No.

40. Have you ever been demoted, terminated, or experienced any other adverse employment action?

    Response: No.

    a. If yes, please describe the events that led to the adverse employment action.

    Response: Not Applicable.

    b. If no, please affirm that, since becoming a legal adult, you have left each place of employment voluntarily and not subject to the request or suggestion of any employer.

    Response: Since adulthood, I have left each place of prior employment voluntarily and did not leave subject to any request or suggestion of any employer.

41. Federal judges must file annual financial disclosure reports and periodic transaction reports. If you are confirmed to the federal bench, do you commit to filing these disclosures and to doing so on time?

Response: Yes.

42. Article III Project (A3P) "defends constitutionalist judges and the rule of law." According to Mike Davis, Founder & President of A3P, "I started the Article III Project in 2019 after I helped Trump win the Gorsuch and Kavanaugh fights. We saw then how relentless—and evil—too many of today's Democrats have become. They're Marxists who hate America. They believe in censorship. They have politicized and weaponized our justice systems."[6]

    a. Do you agree with the above statement?

    Response: As a judicial nominee, it would be inappropriate for me to comment on political matters such as this. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

    b. Have you discussed any aspect of your nomination to the federal bench with any officials from or anyone directly associated with A3P, or did anyone do so on your behalf? If yes, identify the individual(s) and provide the dates, mode, and content of those discussions and communications.

    Response: I spoke with Mike Davis in February and Josh Hammer in March after meeting them at Federalist Society Meetings, but I did not speak to them about my nomination as I had not been nominated until well after those meetings.

    c. Are you currently in contact with anyone associated with A3P? If so, who?

    Response: No.

    d. Have you ever been in contact with anyone associated with A3P? If so, who?

    Response: I spoke with Mike Davis in February and Josh Hammer in March after meeting them at Federalist Society Meetings.

43. Since you were first approached about the possibility of being nominated, did anyone associated with the Trump Administration or Senate Republicans provide you guidance or advice about which cases to list on your Senate Judiciary Questionnaire (SJQ)?

    Response: No.

    a. Who?

    Response: Not Applicable

[6] https://www.article3project.org/about

b. What advice did they give?

Response: Not Applicable

c. Did anyone suggest that you omit or include any particular case or type of case in your SJQ?

Response: No

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

Response: I spoke with Mike Davis in February and Josh Hammer in March after meeting them at Federalist Society Meetings. They both provided general words of encouragement.

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

Response: I would have spoken to numerous leaders and members of the Federalist Society at meetings and conferences.

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

Response: I interviewed with the White House Counsel's Office on February 27, 2025. I was subsequently advised that I was under consideration for the nomination, and I was referred to the Office of Legal Policy at the Department of Justice to assist with the nomination process. On May 27, 2025, I met with President Trump concerning my nomination. I had subsequent meetings with the Office of Legal Policy to prepare for my Senate Judiciary Committee Hearing and respond to any follow-up requested by the Senate Judiciary Committee.

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

Response: I reviewed the questions, researched any issues that required further support, and answered the written questions. I also communicated with the Office of Legal Policy at the Department of Justice in connection with answering these written questions. My answers are my own.

Questions for the Record from Senator Alex Padilla
Senate Judiciary Committee
"Nominations"

June 25, 2025

Questions for Mr. Ed Artau:

1. Please identify any and all situations where it is permissible for a party, including the Executive Branch or one of its officers, departments, or agencies, to defy a court order.

   There are several recognized instances where a party may defy a court order including, the court was without legal authority to issue the order, it is impossible to comply with the order, the order's terms are not clear, the order is stayed pending appeal, or the party wishes to be held in contempt to make the order immediately appealable. *See In re J & L Structural, Inc.* 299 B.R. 89, 96 (Bankr. W.D. Penn. 2003) ("An order may be void if the court entering it lacked subject-matter jurisdiction or lacked personal jurisdiction over the parties or if the order was not within the powers granted to the court by law."); *Charis v. Burgess*, 143 F.3d 1432, 1436 (11th Cir. 1998) ("A contemnor may be excused because of an 'inability' to comply with the terms of the order."); *United States v. Manafort*, 897 F.3d 340, 346 (D.C. Cir. 2018) ("The statutory requirement for clarity accords with the familiar rule that the court should not punish someone for violating an order if the terms of that order are unclear."); *In re Swan*, 506 B.R. 47, 51 (Bankr. W.D.N.Y. 2014) ("Whenever a party decides that he, she[,] or it cannot or will not perform an Order of the Court, the party is not free to disregard it. He, she[,] or it must seek relief from the order."); *Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.*, 2 F.3d 1397, 1405 n.16 (5th Cir. 1993) ("A discovery order, even one directed at a non-party, is not a final order and hence not appealable. Prior to appeal, the one to whom the order is directed must first defy it and risk being held in contempt. If he is so sanctioned, the contempt order is appealable."). Because these matters could arise before me as a judge, it would be inappropriate for me to provide further comment on how the applicable law might apply. *See* Code of Conduct U.S. Judges, Canon 3A(6).

2. Please identify any and all situations in which you would advise a client to ignore or defy a court order.

   I have never advised a client to ignore or defy a court order. I would instead advise a client consistent with what is legally permitted.

3. Is it appropriate for the President of the United States to threaten or harass a judge when he disagrees with the outcome of a case over which that judge is presiding, or disagrees with aspects of a judge's decision or order?

   Judges, like anybody else, are subject to criticism in our democracy. Under the First Amendment, anybody is permitted to criticize rulings of judges with which they disagree. To the extent the question asks to comment on political disputes or matters that may come

before me as a judge, it would be inappropriate for me as a judicial nominee to do so. *See* Code of Conduct U.S. Judges, Canon 3A(6); Canon 5.

4. In the process of applying to become a judge, did you have any conversations with President Trump, a member of his staff, or a member of an outside group about policy or personal positions or beliefs you would have on the bench, or decisions you would make on the bench?

   No.

Questions for the Record
Sen. Adam Schiff (CA)

Ed Artau, Nominee to the United States District Court for the Southern District of Florida

1. Did you meet with Senator Rick Scott (R-FL) or members of his staff on or around November 14, 2024?

On November 14, 2024, I met with Senator Scott's then-general counsel, as I have done several times over the years when I have been in town..

   a. During that meeting, did you discuss your interest in serving as a federal judge in the Southern District of Florida with Senator Rick Scott or his staff?

Yes, during this meeting, I discussed with Senator Scott's then-general counsel my interest in being nominated to serve as a federal district court judge. We were not able to meaningfully discuss it during this meeting because the Senator's Office did not know if then-Senator Rubio would remain or be replaced, and if so, by whom.

2. At the time of your November 2024 meeting with Senator Rick Scott, were you assigned to a case in which Donald Trump was the plaintiff, *Alexander v. Trump*, as a judge on Florida's Fourth District Court of Appeals?

No, I had not received the *Alexander v. Trump* case, nor did I even know it existed when I met with Senator Scott's General Counsel on November 14, 2024. It was not until a month and a half later, on or about December 31, 2024, I was notified that I had been assigned to a panel to hear the *Alexander v. Trump* case. Please note that I did not meet with Senator Rick Scott on November 14, 2024. I only met with his General Counsel on that date.

3. On February 12, 2025, the panel upon which you served in *Alexander v. Trump* ruled in President Trump's favor. In the decision, you wrote a concurrence, stating:

> "FAKE NEWS." "The phony Witch Hunt." And "a big hoax." President Donald J. Trump has publicly used these phrases to describe the now debunked allegations that he colluded with the Russians to win the 2016 presidential election.

Three months later, on May 28, 2025, President Trump formally announced your nomination to the Southern District of Florida. Did you share the opinion in *Alexander v. Trump* with Senator Rick Scott or any members of President Trump's Administration prior to your nomination?

I did not share the *Alexander v. Trump* opinion with Senator Rick Scott's office because it had not been issued by the unanimous appellate panel until February 12, 2025. However, the opinion in *Alexander v. Trump* case had already publicly issued and my judicial labor

on that case had already concluded by the time I was interviewed with the White House Counsel's Office on February 27, 2025. Therefore, the opinion I had authored was included in my background in the similar manner that the Senate was provided with a list of all cases that I have authored as part of the confirmation process. Both the nominating process and the confirmation process require similar rigorous background evaluation, which would of course include a list of cases I had authored.

4. Did you interview with any White House staff prior to your nomination? If so, please list the dates that you interviewed with the White House below.

   Yes. I interviewed with the White House Counsel's Office on February 27, 2025.

5. Are you familiar with the Florida Supreme Court's Code of Judicial Conduct?

   a. Are you familiar with Canon 1, which states that a judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary?"

      The quote you provided is not found in Canon 1. Canon 1 of the Florida Supreme Court's Code of Judicial Conduct provides that: "An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective." I am familiar with the above correct version of Canon 1.

   b. Are you familiar with Canon 2(B), which says: "A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment"?

      Yes, and I did not, nor have I ever allowed "family, social, political or other relationships to influence" any ruling or opinion I have ever issued as a Judge. I am also familiar with canon 3 which is the canon I followed in evaluating whether I was able to serve on the *Alexander v. Trump* case. Canon 3 requires that I not disqualify under these circumstances because the appellate panel completed its judicial labor on the *Alexander v. Trump* case and the opinion had already been publicly issued before February 20, 2025, when I was first notified that the White House Counsel's Office had an interest in interviewing me for the vacancy on the U.S. District Court for the Southern District of Florida.

      While Canon 3, and the applicable caselaw that governs disqualification of an appellate judge, requires that I not disqualify myself under these circumstances, had

I been contacted by the White House Counsel's Office before I had completed my judicial labor and issued my concurring opinion in the *Alexander v. Trump* case, I would have disclosed the contact with the White House and remitted my disqualification pursuant to Canon 3F, which would have allowed the parties the possibility of waiving disqualification, absent which I would have entered an order of disqualification so that another member of my court could replace me on the panel to avoid any appearance of impropriety arising from interviewing with the President's office while the President's personal case remained pending.

6. Did your interest in being appointed to the federal bench by President Trump influence your concurrence in *Alexander v. Trump* in any way?

   No. My concurring opinion, as part of a unanimous panel that found jurisdiction in *Alexander v. Trump*, was correctly decided based solely on application of the procedural law governing the case, which requires that we accept as true the allegations of the President's well-plead complaint and any facts determined by the trial court to have been properly plead for purposes of determining the jurisdiction question at the motion to dismiss stage.

   As the trial court which we affirmed in *Alexander v. Trump* explained in the order on appeal: "When ruling on a motion to dismiss, the trial court 'must limit itself to the four corners of the complaint, including any attached or incorporated exhibits, assuming the allegations in the complaint to be true and construing all reasonable inferences therefrom in favor of the non-moving party.'" (quoting *Cousins v. Post-Newsweek Stations Florida, Inc.*, 275 So. 3d 674, 678 (Fla. 3d DCA 2019)).

   This is the standard the law requires that we follow as appellate judges. Therefore, this is the standard I correctly applied in my concurring opinion in *Alexander v. Trump*.

   I consistently applied these same principles recently in my dissenting opinion in Daher Aerospace SA v. Blackford, --- So. 3d ----, No. 4D 2024-2453, 2025 WL 1572566 (Fla. 4th DCA June 4, 2025) (citing Alexander v. Trump).