

Senator Dick Durbin
Ranking Member, Senate Judiciary Committee
Written Questions for Daniel Desmond Domenico
Nominee to be U.S. Circuit Judge for the Tenth Circuit
July 1, 2026

1. While you served as Colorado’s Solicitor General, you were deeply involved in the state’s efforts to continue to prohibit same-sex marriage. For example, in 2014, you argued against same-sex marriage, claiming that although the state has an interest in “seeking to encourage social institutions that help avoid the social problems of children being born and raised without both parents around to raise them,” the right to marry does not “encompass a right to marry anyone one chooses.”

a. Do you believe that children raised by same-sex couples will have social problems?

Response: As I explained to this Committee during my district court confirmation process, in the marriage litigation referenced in this question, our office presented arguments as advocates defending the State of Colorado and its then-extant laws. Those arguments should not be read as necessarily reflecting my own personal beliefs. The law in this area is settled by Supreme Court and Tenth Circuit precedent, which I have applied and would continue to faithfully apply if confirmed.

b. Do you hold the same beliefs that you defended in 2014?

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

c. Why should LGBTQ Americans believe that you will treat them fairly in your courtroom?

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

2. In 2008, you donated money to the late-Senator John McCain’s presidential campaign. Senator McCain was one of President Trump’s first targets early in his 2016 presidential run. Then-candidate Trump said: “He’s not a war hero...because he was captured. I like people who weren’t captured.” Even after Senator McCain’s death, Trump continued to attack him, saying: “I never was a fan of John McCain, and I never will be.”

Do you agree with President Trump’s attacks on Senator McCain?

Response: As a sitting judge and a pending judicial nominee, it would be inappropriate for me to comment on political statements such as these or on any subject of political controversy. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

3. While in private practice, you represented the respondent school district in *Andrew F. v. Douglas County School District* during the Supreme Court phase of the litigation. You argued that since the petitioner, an autistic child, received “some educational benefit” and was provided with a free appropriate public education, his school did not violate the Individuals with Disabilities Education Act, no matter how poor the services he received. On a 9-0 vote, the Supreme Court unanimously rejected your argument, holding the law, “requires an educational program [to be] reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

Why did you choose to argue that a school could legally fail to meet the needs of an autistic child, an argument so baseless and frivolous that the Supreme Court unanimously rejected it?

Response: The school district’s counsel of record in that case was the former acting Solicitor General of the United States under President Obama, Neal Katyal. The rationale for the district’s position is explained in the briefs and Mr. Katyal’s arguments. Those arguments, again, were made as advocates on behalf of a client and should not be read as reflecting my own or Mr. Katyal’s personal beliefs. The law in this area is now settled by Supreme Court and Tenth Circuit precedent, which I would continue to faithfully apply if confirmed.

4. In 2015, you were highly critical of the Iran Nuclear Deal that was negotiated by the Obama Administration, writing:

The deal has been reached because our leaders have concluded that they can no longer lead the world toward fewer nuclear weapons—we cannot even hope to prevent the world’s most dangerous regime from obtaining them. We can merely buy a few years.

Do you hold the same view about the memorandum of understanding signed by Iran and the Trump Administration, which includes far fewer safeguards against Iran pursuing nuclear weapons?

Response: As a sitting judge and a pending judicial nominee, it would be inappropriate for me to comment on a subject of political controversy. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

5. Public reporting mandated by the Civil Justice Reform Act of 1990 showed that in 2023, you had a larger backlog of cases than all other Colorado district court judges. According to coverage of the disclosures, “[f]or multiple reporting periods, Domenico has remained an outlier as the only judge in Colorado to hit a triple-digit backlog—and one of the few

federal judges nationally whose numbers are that high.”¹ In two instances, U.S. Circuit Judge Timothy Tymkovich “stepped in to resolve motions languishing on [your] docket for more than 1,300 days.” According to reporting, it was not until 2024 that you largely eliminated this backlog.²

a. To what do you attribute your backlog in 2023?

Response: The backlog has been eliminated since 2024. The disruptions of the COVID-19 pandemic and its aftermath striking within a year of my taking the bench along with multiple vacancies on our court, among other unique circumstances led to the numbers in the chart you provided. Those circumstances have all passed, as shown by the fact that I have eliminated the backlog and had no motions on the list for several years. I still maintain a very low reversal rate, so I believe I have managed to remain thorough and careful while increasing the speed at which decisions are made.

b. What were the circumstances that led to Judge Tymkovich stepping in to resolve motions that had been pending on your docket for at least 3.5 years?

Response: My recollection is that Judge Tymkovich suggested that his clerks might benefit from seeing a bit of what district courts encounter, and I responded that we had plenty of motions to share. He agreed to take a handful of them, as circuit judges are authorized to handle district court matters. I plan to do the same when possible if I am confirmed as a circuit judge.

6. The Article III Project is an organization which claims that, “The left is weaponizing the power of the judiciary against ordinary citizens.” Mike Davis is the founder and president of the Article III Project, and has long called you a friend.

a. Please provide details of your discussions with Davis regarding your district and circuit nominations.

Response: I discussed my nomination with Mr. Davis, whom I have known for some time, on a handful of occasions via text or phone, and I believe we spoke in person one time earlier this year. My recollection is that these conversations were generally about my qualifications and the nominations process, based on his prior experience working on nominations, including for the Senate Judiciary Committee. I do not recall specifically discussing my potential district court nomination with Mr. Davis, but it is possible we did so.

¹ Michael Karlik, *Data show persistent delays among handful of Colorado’s federal judges*, COL. POLITICS (Jan. 23, 2024), <https://www.coloradopolitics.com/2024/01/23/data-show-persistent-delays-among-handful-of-colorados-federal-judges-59edb6e4-b978-11ee-9b93-f3ec57a44aea/>.

² Michael Karlik, *Trump presidency raises possibility of 10th Circuit vacancy, with eyes on Domenico*, COL. POLITICS (Nov. 12, 2024), <https://www.coloradopolitics.com/2024/11/12/trump-presidency-raises-possibility-of-10th-circuit-vacancy-with-eyes-on-domenico-bd555bb8-a07e-11ef-b4c5-b7de8f36112e/>.

- b. During your selection processes, have you spoken to or corresponded with any other individuals associated with the Article III Project, including Will Chamberlain or Josh Hammer? If so, please provide details of those discussions.**

Response: I don't believe so.

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

Response: No.

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

Response: No.

Mr. Davis has a history of making offensive statements about women. For example, in January 2024, he referred to Anita Hill, Christine Blasey Ford, and Jean Carroll as “three Democrat women who let Democrat operatives use them like cheap whores. (And liked it).”³

- e. Do you condemn this statement?**

Response: I was not aware of that statement, and as a sitting judge and a pending judicial nominee, it would be inappropriate for me to comment on the public statements of any political figure or on any subject of political controversy. *See* Code of Conduct for United States Judges, Canon 5.

Davis has also made offensive statements about immigrants. For example, in September 2023, he said: “We’re gonna put kids in cages. It’s gonna be glorious.”⁴

- f. Do you condemn this statement?**

Response: Please see my response to Question 6.e.

7. Did President Trump lose 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. Beyond that, I agree with Justice Ketanji Brown Jackson, who, in her responses to this Committee’s questions for the record pertaining to the 2016 and 2020 elections, explained that under the Code of

³ Mike Davis (@mrddmia), X (Jan. 17, 2024, 8:22 PM), <https://x.com/mrddmia/status/1747791643057565944>.

⁴ *Dems RAGE As Republicans EXPOSE Biden Crimes, DNC in PANIC to REPLACE Joe | Sen. Feinstein DEAD*, THE BENNY SHOW (Sept. 29, 2023), <https://www.youtube.com/watch?v=-s9-SotiUkI>.

Conduct for United States Judges it is inappropriate for a sitting federal judge to publicly comment on such matters of political dispute. *See* Canons 3(A)(6), 5.

8. Where were you on January 6, 2021?

Response: In the Alfred Arraj United States Courthouse in Denver.

9. Do you denounce the January 6 insurrection?

Response: I denounce the violence and vandalism that occurred at the Capitol that day. Beyond that, the events at the Capitol on January 6, 2021, and how they should be characterized, remain subjects of significant political debate. As a sitting judge and a pending judicial nominee, I therefore should not offer comments that could bear on issues or parties that may come before me, as Justice Jackson also explained. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

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

Response: Whether those pardons were appropriate is a matter of political debate, which as a federal judge I cannot publicly weigh in on. Please see my response to Question 9.

11. 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. Alarming, 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?

Response: As a general rule, a party must comply with a court order directed to it, and when I issue an order as a judge I expect it to be followed. The proper recourse for a party that disagrees with an order—including the executive branch—is to seek reconsideration, appeal, or a stay. The Supreme Court has held that even an order later determined to be erroneous must generally be obeyed until it is reversed, stayed, or dissolved. *See, e.g., Walker v. City of Birmingham*, 388 U.S. 307 (1967); *United States v. United Mine Workers*, 330 U.S. 258 (1947).

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

Response: As noted in my response to Question 11.a, even an order later determined to be erroneous must generally be obeyed until it is reversed, stayed, or dissolved. Courts have recognized only narrow exceptions—for example,

where an order is void for lack of jurisdiction, *see Ex parte Fisk*, 113 U.S. 713 (1885), where compliance is factually impossible, *see United States v. Rylander*, 460 U.S. 752, 757 (1983), or where a party deliberately incurs contempt sanctions as the established avenue for obtaining appellate review of an otherwise unappealable interlocutory order, *see Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009). Because cases presenting these issues are being actively litigated in federal courts and could come before me, it would be inappropriate for me to opine beyond describing these established principles.

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

Response: Under the established principles described in my responses to Questions 11.a and 11.b, the lawfulness of a federal court order is determined by the courts themselves through the judicial process—reconsideration, appellate review, and, ultimately, review by the Supreme Court.

12. District judges have occasionally issued non-party injunctions, which may include “nationwide injunctions” and “universal injunctions.”

a. Are non-party injunctions constitutional?

Response: The Supreme Court addressed the permissible scope of universal injunctions in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). I have applied, and if confirmed would continue to faithfully apply, that decision and all other binding precedents. Because related questions remain the subject of pending and impending litigation and could come before me, it would be inappropriate for me to opine further. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

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

Response: Please see my response to Question 12.a.

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

Response: Please see my response to Question 12.a.

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.

Response: I don’t recall doing so.

- 13. 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.**

Response: During this process, no one from the Department of Justice or the White House, including President Trump in our brief conversation, ever suggested loyalty to the president was a relevant consideration. I have and always will maintain that a judge's loyalty is to the Constitution and the rule of law.

- 14. Does the U.S. Constitution permit a president to serve three terms?**

Response: The Twenty-Second Amendment provides that “[n]o person shall be elected to the office of the President more than twice,” and it is the law of the land. *See* U.S. Const. amend. XXII; art. VI, cl. 2. Under its text, a person who has twice been elected to the office of the President may not be elected to that office again.

- 15. On May 26, 2025, 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...”⁵**

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

Response: As a sitting judge and a pending judicial nominee, it would be inappropriate for me to comment on the statements of any political figure or on a subject of political controversy. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5. I note as a general matter that judges enjoy the unique protection of lifetime tenure in large part to assure we will do our duties despite political criticism.

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

Response: Please see my response to Question 15.a.

- 16. In addition to the President’s own attacks on judges, his adviser Stephen Miller took to social media to call a federal trade court’s ruling against President Trump’s tariffs a “judicial coup”⁶ and later reposted the images of the three judges who decided the case and wrote, “we are living under a judicial tyranny.”⁷**

⁵ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (May 26, 2025, 7:22 AM), <https://truthsocial.com/@realDonaldTrump/posts/114573871728757682>.

⁶ Stephen Miller (@StephenM), X, (May 28, 2025, 7:48 PM), <https://x.com/StephenM/status/1927874604531409314>.

⁷ Stephen Miller (@StephenM), X, (May 29, 2025, 8:25 AM), <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”?**

Response: Please see my response to Question 15.a.

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

Response: Please see my response to Question 15.a.

- 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?**

Response: In more than seven years on the district court, I have decided every case based on the facts and the governing law, without regard to criticism from any quarter, and I would continue to do so if confirmed. Public criticism of a ruling—from any source—would not affect my decision-making. Beyond that, please see my response to Question 15.a.

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

Response: A lower court always must follow binding Supreme Court precedent. *See, e.g., Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989). That is the approach I have taken in more than seven years as a district judge, and I would continue to faithfully apply all binding Supreme Court precedent if confirmed.

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

Response: The Tenth Circuit has held that it generally will overturn its own precedent only when the entire court is sitting en banc. *In re Smith*, 10 F.3d 723, 724 (10th Cir. 1993). If confirmed, I would adhere to the court’s en banc procedures.

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

Response: The Supreme Court has stated that it has “the prerogative of overruling its own decisions.” *Rodriguez de Quijas*, 490 U.S. at 484. The circumstances in which the Court exercises that prerogative are governed by its stare decisis precedents, and it would not be appropriate for me, as a lower court judge and pending judicial nominee, to opine on when the Court should do so. As a lower court judge, I am bound to follow the Court’s precedents in any event.

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

a. *Brown v. Board of Education*

Response: Yes. I have for years been on the record as believing that Justice Harlan's dissent in *Plessy v. Ferguson* is the greatest Supreme Court opinion in our history, which necessarily means that *Brown* is rightly decided. Although it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court, prior nominees have long treated *Brown* as an exception to that practice, and I join them.

b. *Plyler v. Doe*

Response: As noted in my response to Question 20.a, it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. *Plyler v. Doe* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed.

c. *Loving v. Virginia*

Response: As noted in my response to Question 20.a, although it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court, prior nominees have long treated *Loving v. Virginia* as an exception to that practice, and I join them.

d. *Griswold v. Connecticut*

Response: As noted in my response to Question 20.a, it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. *Griswold v. Connecticut* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed.

e. *Trump v. United States*

Response: As noted in my response to Question 20.a, it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. *Trump v. United States* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed.

f. *Dobbs v. Jackson Women's Health Organization*

Response: As noted in my response to Question 20.a, it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. *Dobbs v. Jackson Women's Health Organization* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed.

g. *New York State Rifle & Pistol Association, Inc. v. Bruen*

Response: As noted in my response to Question 20.a, it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. *New York State Rifle & Pistol Association, Inc. v. Bruen* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed.

h. *Obergefell v. Hodges*

Response: As noted in my response to Question 20.a, it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. As I explained during my prior confirmation process, *Obergefell* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed.

i. *Bostock v. Clayton County*

Response: As noted in my response to Question 20.a, it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. *Bostock v. Clayton County* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed.

j. *Masterpiece Cakeshop v. Colorado*

Response: As noted in my response to Question 20.a, it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. *Masterpiece Cakeshop v. Colorado Civil Rights Commission* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed.

k. *303 Creative LLC v. Elenis*

Response: As noted in my response to Question 20.a, it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. *303 Creative LLC v. Elenis* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed.

l. *United States v. Rahimi*

Response: As noted in my response to Question 20.a, it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. *United States v. Rahimi* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed.

m. *Loper Bright Enterprises v. Raimondo*

Response: As noted in my response to Question 20.a, it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. *Loper Bright Enterprises v. Raimondo* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed.

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

Response: I understand originalism to refer to a method of constitutional interpretation under which the meaning of a constitutional provision is the original public meaning its words had at the time of adoption. In my experience on the bench, most constitutional questions are controlled by binding precedent of the Supreme Court or the Tenth Circuit, which I follow. Where a genuinely open question of constitutional interpretation arises, the text and original public meaning of the provision are among the first places I look, consistent with the Supreme Court’s guidance, and I consider the parties’ arguments with an open mind.

22. How do you decide when the Constitution’s “original meaning” should be controlling?

Response: Please see my response to Question 21. Most constitutional questions that come before a lower federal court are controlled by binding precedent of the Supreme Court or the Tenth Circuit, which I follow. Where a genuinely open question arises, the text and original public meaning of the provision are among the first places I look, consistent with the Supreme Court’s guidance.

23. Does the “original meaning” of the Constitution support a constitutional right to same-sex marriage?

Response: In *Obergefell v. Hodges*, the Supreme Court held that the Fourteenth Amendment requires states 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, and to recognize such marriages lawfully performed in other states. *Obergefell* is a binding precedent of the Supreme Court, and I have applied and would continue to apply it if confirmed. As a sitting judge and a pending judicial nominee, it would not be appropriate for me to grade particular precedents of the Supreme Court or to critique the interpretive methods underlying them.

24. Does the “original meaning” of the Constitution support the constitutional right to marry persons of a different race?

Response: In *Loving v. Virginia*, the Supreme Court held that laws prohibiting interracial marriage violate the Equal Protection and Due Process Clauses of the Fourteenth

Amendment. *Loving* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed. Beyond that, please see my response to Question 23.

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

Response: Under the Supreme Court's precedents, the Equal Protection Clause forbids government classifications that lack a rational basis, *see, e.g., Armour v. City of Indianapolis*, 566 U.S. 673 (2012), and subjects classifications that burden fundamental rights or that draw suspect or quasi-suspect lines to heightened scrutiny, *see, e.g., United States v. Virginia*, 518 U.S. 515 (1996). The Supreme Court has construed the Due Process Clause to contain both a procedural component, *see, e.g., Jones v. Flowers*, 547 U.S. 220 (2006), and in some circumstances a substantive component protecting certain rights, *see, e.g., Washington v. Glucksberg*, 521 U.S. 702 (1997). I have applied, and if confirmed would continue to faithfully apply, the Supreme Court's and Tenth Circuit's precedents in this area.

26. 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?

Response: The Supreme Court has made clear that the Equal Protection Clause applies to discrimination based on sex, *see United States v. Virginia*, 518 U.S. 515 (1996), and has applied the Fourteenth Amendment's protections to sexual orientation, *see, e.g., Romer v. Evans*, 517 U.S. 620 (1996); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Obergefell v. Hodges*, 576 U.S. 644 (2015). I have applied these precedents as a district judge and would continue to faithfully apply them if confirmed.

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

Response: Please see my response to Question 21.

28. 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?

Response: Please see my response to Question 21.

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

Response: Under relevant Supreme Court precedent, the First Amendment's protections have been extended to individuals, to associations, and to corporations, though what the Amendment requires can differ with the setting. *See, e.g., First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969); *Pickering v. Board of Education*, 391 U.S. 563 (1968). I have applied, and if confirmed would continue to faithfully apply, the Supreme Court's precedents in this area.

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

Response: I would apply the precedents of the Supreme Court and the Tenth Circuit, including *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), and *City of Austin v. Reagan National Advertising of Austin, LLC*, 596 U.S. 61 (2022). Under those decisions, the threshold question is whether the law “target[s] speech based on its communicative content—that is, if it applies to particular speech because of the topic discussed or the idea or message expressed,” in which case it is content based. *City of Austin*, 596 U.S. at 69 (quoting *Reed*, 576 U.S. at 163). A law that requires examining speech “only in service of drawing neutral, location-based lines,” by contrast, is content neutral. *Id.* I would resolve any question implicating these issues through the judicial process, based on the parties’ arguments and the governing law and precedents.

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

Response: In *Counterman v. Colorado*, 600 U.S. 66, 74 (2023), the Supreme Court reaffirmed that “true threats” of violence fall within a historically unprotected category of communications, describing true threats as serious expressions conveying that a speaker means to commit an act of unlawful violence. The Court also held that, in this context, the First Amendment requires proof that the defendant was at least reckless as to the threatening nature of his statements. I have applied, and if confirmed would continue to faithfully apply, these and all other binding precedents in this area.

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

Response: The Supreme Court has held that some constitutional provisions apply to citizens and non-citizens alike. For example, the Court has stated that the Fifth Amendment’s Due Process Clause “applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). I have applied, and if confirmed would continue to faithfully apply, the Supreme Court’s precedents in this area.

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

Response: Questions concerning the detention or transfer of individuals, including U.S. citizens, to other countries are the subject of pending and impending litigation in the federal courts. As a sitting judge and a pending judicial nominee, it would be inappropriate for me to opine on questions that may come before me. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

34. 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?

Response: The Citizenship Clause provides that persons “born or naturalized in the United States, and subject to the jurisdiction thereof,” are citizens of the United States. In *Trump v. Barbara*, 609 U.S. ____ (2026), the Supreme Court held that children born in the United States to parents unlawfully or temporarily present are “subject to the jurisdiction” of the United States and are citizens at birth. The Court’s precedents recognize narrow, historically established exceptions, such as children born to foreign diplomats. I will apply these binding precedents.

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?

Response: Please see my response to Question 34.a. To the extent related questions remain the subject of litigation, it would be inappropriate for me to comment further. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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

Response: Yes—as I responded when asked a similar question during my nomination to the district court. No one should be excluded from the opportunity to serve in the judiciary based on race, ethnicity, sex, religion, or any other such characteristic.

36. 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*?

Response: The First Step Act, like any other statute, must be applied as Congress wrote it, in accordance with its text and the precedents interpreting it. That has been my approach in matters arising under the First Step Act during my service as a district judge, and it would remain my approach if confirmed to the Circuit Court.

- b. Will you commit to fully and fairly considering appeals that come before you when reviewing sentencing law and its application to ensure that criminal sentences are properly tailored to promote the goals of sentencing and avoid terms of imprisonment in excess of what is necessary?**

Response: Yes. I have striven to do so as a district judge, and if confirmed, I commit to fully and fairly considering every appeal that comes before me, including appeals presenting sentencing issues, and to faithfully applying the governing sentencing statutes and binding precedents.

37. 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 are currently or were previously a member of the Federalist Society. What is your understanding of “traditional values”?**

Response: As I explained during my district court confirmation process, I did not author that statement and cannot say what the Federalist Society means by it. As a member of the Federalist Society, I have never been asked to adopt a particular position on any issue, and in fact I have encountered a wide range of opinions at Federalist Society events.

- 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.⁸**

- 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?**

Response: As a sitting judge and a pending judicial nominee, it would be inappropriate for me to comment on the statements of any political figure or on any subject of political controversy. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

⁸ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (May 29, 2025, 8:10 PM), <https://truthsocial.com/@realDonaldTrump/posts/114593880455063168>.

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

Response: Please see my response to Question 37.b.i.

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

Response: 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.**

Response: I have not spoken to Mr. Leo or Professor Calabresi during this process, and I do not recall speaking to other national Federalist Society officials, but it is possible I spoke with others associated with the Federalist Society in some way.

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

Response: As disclosed in my Senate Judiciary Questionnaire, I have on occasion spoken at Federalist Society events, including a September 23, 2022 “Supreme Court Roundup” panel in Denver reviewing the Supreme Court’s October 2021 Term, and a July 18, 2014 panel reviewing the October 2013 Term, which I moderated. I have not otherwise provided services to the Federalist Society.

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

Response: No.

38. 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.**

Response: I have not spoken with Leonard Leo in many years, and am not aware of any correspondence with any others associate with the Teneo Network.

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

Response: No.

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

Response: No.

39. 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.**

Response: Not that I am aware of.

- 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?**

Response: Not that I am aware of.

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

Response: 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?**

Response: No.

40. 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.**

Response: One of my former bosses, David Bernhardt, is associated with AFPI. I spoke with him over the last few months about my potential nomination.

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

Response: No.

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

Response: No.

- 41. 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.**

Response: Not that I am aware of.

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

Response: No.

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

Response: No.

- 42. 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.**

Response: I exchanged emails with a former state solicitor colleague who now works with ADF but has not appeared before me. Other people I corresponded with may have some association with ADF that I am not aware of.

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

Response: I do not believe so.

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

Response: No.

43. 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.**

Response: Not that I am aware of.

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

Response: Not that I am aware of.

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

Response: 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.**

Response: I do not know what activities, if any, private groups or individuals may be undertaking for or against my confirmation. Whatever those activities may be, they would have no bearing on my decision-making as a judge and are irrelevant as far as I am concerned.

- 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?**

Response: I am committed to maintaining my impartiality and to reinforcing public confidence in the courts. As a sitting judge, I resolve every actual or potential conflict of interest under 28 U.S.C. § 455, the Code of Conduct for United States Judges, and the other rules and practices governing such questions,

and I would continue to do so if confirmed. As to whether such donations should be made public, that is a matter of political debate that as a federal judge I cannot comment on.

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

Response: Please see my responses to Questions 43.d and 43.e.

Senate Judiciary Committee
Hearing on
Nominations
June 24, 2026
Questions for the Record
Senator Amy Klobuchar

For Daniel Domenico, to be U.S. Circuit Judge for the Tenth Circuit

You denied petitions for writs of habeas corpus filed by two noncitizens who challenged their continued detention by ICE without an individualized bond hearing.

- Why did your decision to deny the habeas petitions deviate from the legal reasoning in the overwhelming majority of decisions made by federal district cases on this issue?

Response: The reasoning for my decision was explained in the written orders in those cases, which adopted the position of the Fifth and Eighth Circuit Courts of Appeals. I note that on June 30, the Tenth Circuit issued an opinion disagreeing with those sister circuits. In response, I immediately ordered the government to show cause in any pending cases why the petitioners should not be released or given a bond hearing.

**Nomination of Daniel Domenico
to be United States Circuit Judge for the Tenth Circuit
Questions for the Record
Submitted July 1, 2026**

QUESTIONS FROM SENATOR COONS

1. **Do you believe that the Senate Judiciary Committee has a responsibility to evaluate judicial nominees to the best of its ability, including by asking questions on the record to make each nominee's unique background and viewpoint clear to the American people?**

Response: The Constitution provides that federal judges are appointed by the President "by and with the Advice and Consent of the Senate." U.S. Const. art. II, § 2. How the Senate carries out that important function is a matter the Constitution leaves to the Senate, and it would not be my place as a judge or a nominee to opine on the Committee's processes. I appreciate the opportunity to respond to the Committee's questions.

2. **Do you believe that you, as a judicial nominee, have a responsibility to the American people to give full and complete answers to the Committee's questions to the best of your ability and in good faith?**

Response: Yes. I have worked to answer the Committee's questions truthfully, completely, and in good faith, consistent with the limits that the Code of Conduct for United States Judges places on a sitting judge and judicial nominee.

3. **Do you believe you fulfilled this responsibility with the answers you have provided to my questions for the record?**

Response: Yes. I have done my best to fulfill that responsibility.

- a. **Did you receive assistance from staff in the White House, the Department of Justice, or any other organization in writing your responses to these questions? If so, from whom did you receive assistance and what was the nature of the assistance you received?**

Response: I reviewed each question and prepared responses after consulting my records, the governing law and precedents, and responses from past nominees. I then shared my drafts with attorneys at the Office of Legal Policy and received feedback. After receiving that feedback, I finalized my answers based on my own independent judgment and authorized their submission to the Committee.

- b. **Do you believe it is appropriate for a nominee to answer my questions for the record with the verbatim answers of previous nominees who answered the same questions?**

Response: A nominee has an obligation to review the question and answer it truthfully. If the answer to a question that has been asked before is true and correct, providing the same answer may be appropriate.

- c. **Did you review the answers to my questions for the record submitted by previous judicial nominees before answering these questions?**

Response: Some of them, yes.

- d. **To your knowledge, are any of your answers to these questions for the record exact duplicates of answers provided by previous nominees?**

Response: To the best of my knowledge, apart from very brief answers, my answers are not exact duplicates of answers provided by previous nominees.

4. **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 or matter if confirmed? If so, explain fully.**

Response: 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?**

Response: Other than questions asked during my confirmation hearing or in these questions for the record, not that I recall.

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

Response: Among those I view as a role model in this regard are Judge Tim Tymkovich of the Tenth Circuit, Senior Judge John Kane of the District of Colorado, and former Colorado Attorney General and United States Attorney John Suthers.

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

Response: I have now served as a United States district judge for more than seven years, and my approach in every case has been the same: to decide the matter based on the record before me and the governing law (the text of the applicable constitutional provisions, statutes, and rules, and the binding precedents of the Supreme Court and the

Tenth Circuit) fairly and impartially, without regard to the identity of the parties or my own preferences.

7. **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?**

Response: As a sitting district judge, I follow the Supreme Court's and Tenth Circuit's precedents governing substantive due process, and I would continue to do so if confirmed. The Supreme Court has explained that, in this context, the rights protected are those that are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997); see *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 237–40 (2022).

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

Response: Yes.

- 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?**

Response: Yes. I would follow the Supreme Court's decisions in *Glucksberg* and *Dobbs*. I would be open to argument from the parties regarding what types of sources would be helpful in that consideration; *Glucksberg* itself turned to the common law, treatises, and statutory law, and *Dobbs* canvassed similar historical sources.

- 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?**

Response: If confirmed, I would be bound by and would follow Supreme Court and Tenth Circuit precedent. Precedent from other courts of appeals may be persuasive, but it is not binding.

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

Response: Yes. See, e.g., *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 66–67 (1996) (collecting decisions).

- e. **What other factors would you consider?**

Response: Please see my response to Question 7.

8. **When, if ever, is it permissible for a circuit court to overturn its own precedent? Please explain.**

Response: The Tenth Circuit has held that it will overturn its own precedent only when the entire court is sitting en banc. *In re Smith*, 10 F.3d 723, 724 (10th Cir. 1993). If confirmed, I would faithfully adhere to that rule and to the court's en banc procedures.

9. **Under 28 U.S.C. § 455, “[a]ny justice, judge, or magistrate judge of the United States shall disqualify [themselves] in any proceeding in which [their] impartiality might reasonably be questioned.” As a general matter, what criteria would you use when deciding whether to recuse yourself from a case?**

Response: As a sitting district judge, I evaluate all recusal and disqualification questions under 28 U.S.C. §§ 144 and 455, Canon 3C of the Code of Conduct for United States Judges, and the advisory opinions of the Judicial Conference Committee on Codes of Conduct, and if confirmed I would continue to do so.

10. **If you concluded that the President had violated his constitutional duty to faithfully execute the laws and then had to determine the remedy, what process would you use to perform that analysis? I assume you would faithfully follow binding precedent, but what specific precedents and/or other sources of law would you look to?**

Response: Courts have addressed claims that Executive Branch officials acted contrary to law in many contexts throughout our history, and the appropriate analysis and remedy would depend on the nature of the case, the claims presented, and the relief sought. Without a concrete case, it is not possible to identify in advance the specific precedents that would supply the rule of decision. If such a case came before me, I would follow all binding precedent of the Supreme Court and the Tenth Circuit and would decide the matter based on the record, the parties' arguments, and the governing law. Because related questions are the subject of pending and impending litigation, it would be inappropriate for me to opine further. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

11. **The 22nd Amendment states: “No person shall be elected to the office of the President more than twice.”**

- a. **Was President Trump elected to the office of the President twice?**

Response: President Trump was certified as the winner of the 2016 and 2024 presidential elections, and thus has twice been elected to the office of the President.

- b. **If President Trump were elected again in 2028, how many times in total would he have been elected to the office of the President?**

Response: If President Trump were certified as the winner of the 2028 presidential election, he would have been elected to the office of the President three times.

c. Is President Trump eligible to be elected President for a third term in 2028?

Response: Because President Trump has twice been “elected to the office of the President,” the text of the Twenty-Second Amendment prevents him from being elected to that office again. *See* U.S. Const. amend. XXII; art. VI, cl. 2.

12. If Congress certifies a candidate as being the winner of a presidential election, does that mean that the candidate won the election? If not, what does it mean?

Response: Under the Twelfth Amendment and the Electoral Count Act, the counting and certification of the electoral votes by Congress is the constitutionally prescribed means of determining the winner of a presidential election. My understanding is that a candidate whom Congress certifies as the winner has been elected President.

13. At your Senate Judiciary Committee nomination hearing, Senator Blumenthal asked you who won the 2020 election. You began to respond, “As Justice Jackson explained when she was asked essentially that question about both 2020 and 2016, it would be inappropriate for me as a” A few minutes later, Senator Kennedy asked you who was president before President Trump, and you responded, “Joe Biden.”

a. In advance of the hearing, did you prepare a potential answer or set of answers to question(s) you might receive related to who won the 2020 election? If so, what information or sources did you use to develop your answer(s)?

Response: I reviewed many recent hearings, and similar questions were asked of nearly all nominees. I reviewed those answers, and looked at Justice Jackson’s QFR responses. Since, like her at the time, I am a sitting federal judge, I found her response to those questions applicable and correct.

b. Prior to the hearing, did anyone instruct, suggest, imply, or otherwise represent that you should avoid directly answering questions about who won the 2020 election?

Response: I was not instructed how to answer any questions. A number of people I spoke to agreed with me that Justice Jackson was correct that a sitting federal judge could not publicly weigh in on a matter of political debate under the judicial canons.

c. Do you believe that you would face any adverse professional consequences if you directly stated, during your hearing or otherwise on the record, that

President Trump lost the 2020 election, or that President Biden won the 2020 election? Please explain.

Response: Like Justice Jackson, I believe it would violate the canons of conduct to publicly discuss matters of political debate, including the results of the 2020 election. *See* Canons 3(A)(6), 5.

14. The *New York Times* reported that on March 25, 2026, President Trump stated the following at a National Republican Congressional Committee event: “The time has also come for Republicans to pass a tough new crime bill that imposes harsh penalties for dangerous repeat offenders, cracks down on rogue judges. We got rogue judges that are criminals. They are criminals, what they do to our country. The decisions that they hand down and hurt our country.”

a. Is it a crime for a judge to rule against President Trump’s desired outcome in a particular case?

Response: I certainly am not aware of any such law. To the extent this question asks me to comment on the President’s statements, as a sitting judge and a pending judicial nominee it would be inappropriate for me to comment on the statements of any political figure or on any subject of political controversy. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

b. Do you think that judges ruling against President Trump’s desired outcome should be “crack[ed] down on”?

Response: Please see my response to Question 14.a.

c. Is it possible for a judge’s decision to be correct, as a matter of fact and law, even if it differs from President Trump’s desired outcome?

Response: Yes. Whether a judicial decision is correct is a question of fact and law, not of any particular person’s preferences. A decision can be correct even if a party (including the President) disagrees with it.

d. Do you agree with President Trump that we need a “tough new crime bill” that “cracks down on rogue judges”?

Response: Please see my response to Question 14.a.

e. Do you think that rhetoric like the example quoted above could discourage a judge from ruling against President Trump’s desired outcome?

Response: Primary among the reasons federal judges are provided with the unique privilege of lifetime tenure is so that they will not be swayed by political criticism and rhetoric. Beyond that, please see my response to Question 14.a.

- f. **If you were confirmed and you ruled against President Trump’s desired outcome in a case, would you consider yourself a “rogue judge[]” and a “criminal[]”?**

Response: Please see my responses to Questions 14.a and 14.e.

- g. **Do you think statements like those made by President Trump quoted above make federal judges more or less safe?**

Response: Please see my response to Question 14.a, c., and e.

15. **Do you agree with me that the attack at the U.S. Capitol on January 6, 2021, was an insurrection? Why or why not?**

Response: The events at the Capitol on January 6, 2021, and how they should be characterized, remain subjects of significant political debate. Litigation arising from those events—including litigation over the legal effect of the pardons granted to persons prosecuted for their involvement—also remains ongoing in the federal courts, and individuals who were present at the Capitol that day could appear as parties in cases before me. As Justice Jackson also explained, as a sitting judge and a pending judicial nominee, I should not offer comments that could bear on issues or parties that may come before me. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

- a. **If you think this question would require you to express an opinion on “political” matters, as some judicial nominees have responded when asked this question, please explain why labeling the events of January 6, 2021, as either “an insurrection” or “not an insurrection” requires you to opine on a “political” matter.**

Response: The term “insurrection” is not merely descriptive; it carries legal meaning and legal consequences. *See, e.g.,* U.S. Const. amend. XIV, § 3; 18 U.S.C. § 2383. Whether particular events constitute an “insurrection” has been, and may again be, a contested issue in litigation. For that reason, characterizing the events of January 6, 2021, one way or the other would require me to opine on a question that is both legally consequential and politically disputed, which the Code of Conduct counsels against my doing as a sitting judge and a pending judicial nominee. Please see my response to Question 15.

16. **At your nomination hearing, Senator Kennedy asked you, “Are you happy about what happened on January [6th]?” You responded, “No. I mean, obviously, that is a dark day. As I said, there was violence and vandalism that I think every American would condemn.”**

- a. **Please expand on your answer. What did you mean when you said January 6, 2021, was a “dark day”?**

Response: As I noted, individuals engaged in violence towards law enforcement and security officers and in vandalism at the nation's Capitol. I condemn that violence and vandalism.

- b. **When you referenced “violence and vandalism” on January 6, 2021, what specifically were you describing?**

Response: I was not present, but I have seen videos and read reports about that day that describe individuals engaged in violence, including violence towards law enforcement officers, and damaging property on the Capitol grounds.

- c. **As you know, the President has the power under the Constitution to grant executive clemency relief. Even so, given your statement to Senator Kennedy, do you think the individuals convicted of assaulting law enforcement officers at the Capitol on January 6, 2021, deserved to be pardoned? I am asking for your opinion about whether the pardons were prudent, not whether the President has the authority to issue them.**

Response: The propriety of the pardons in general, and those granted to persons prosecuted for their involvement in the events of January 6, 2021, specifically is a matter of significant political debate, and I believe litigation over the legal effect of some of those pardons remains ongoing in the federal courts. As a sitting judge and a pending judicial nominee, it would be inappropriate for me to offer my opinion on the matter. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

- d. **Given your statement to Senator Kennedy, if you were the President on January 20, 2025, would you have pardoned the individuals convicted of assaulting law enforcement officers at the Capitol on January 6, 2021? Again, I know that the President has the power under the Constitution to grant executive clemency relief. I want to know whether you—if serving as President on January 20, 2025—would have chosen to issue pardons to those convicted of assaulting law enforcement officers at the Capitol on January 6, 2021.**

Response: Please see my response to Question 16.c.

17. **If you had to determine whether it is appropriate for the President of the United States to punish a law firm for taking on a client that the President did not like, what process would you use to perform that analysis? I assume you would faithfully follow binding precedent, but what specific precedents and/or other sources of law would you look to?**

Response: If such a case came before me, I would decide it through the normal judicial process, based on the record, the parties' arguments, and the governing law. Depending on the claims presented, the parties might invoke, among other things, the First

Amendment, the Due Process Clause of the Fifth Amendment, and separation-of-powers principles, along with the precedents construing them. Because cases presenting related issues are currently being litigated in the federal courts and could come before me, it would be inappropriate for me to say anything further. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

18. Do you agree that the constitutional right to travel across state lines is fundamental and well established?

Response: The Supreme Court has stated that “the ‘constitutional right to travel from one State to another’ is firmly embedded in our jurisprudence.” *Saenz v. Roe*, 526 U.S. 489, 498 (1999). I have applied, and if confirmed would continue to faithfully apply, the Supreme Court’s precedents in this area.

- a. **If you had to determine whether it is constitutional for a state to restrict the interstate travel of its citizens, what process would you use to perform that analysis? I assume you would faithfully follow binding precedent, but what specific precedents and/or other sources of law would you look to?**

Response: If such a case came before me, I would decide it through the normal judicial process, based on the record, the parties’ arguments, and the governing law, including *Saenz*.

19. Do you believe that the Constitution protects a fundamental right to privacy?

Response: The Supreme Court has recognized a constitutional right to privacy in a number of contexts. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965); *Lawrence v. Texas*, 539 U.S. 558 (2003). I have applied, and if confirmed, would continue to faithfully apply those precedents.

- a. **Do you agree that that right 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.**

Response: The Supreme Court recognized this right in *Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Eisenstadt v. Baird*, 405 U.S. 438 (1972). Those decisions are binding precedents of the Supreme Court, which I would apply if confirmed.

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

Response: The Supreme Court has stated that the Fifth Amendment’s Due Process Clause “applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The judicial oath likewise requires judges to administer justice “without

respect to persons.” 28 U.S.C. § 453. I have applied, and if confirmed, would continue to faithfully apply the Supreme Court’s precedents in this area, and every litigant who appears before me receives fair and impartial adjudication of his or her claims.

21. Does the public’s original understanding of the meaning of a constitutional provision constrain its application decades or centuries later?

Response: I understand originalism to refer to a method of constitutional interpretation under which the meaning of a constitutional provision is the original public meaning its words had at the time of adoption. In my experience on the bench, most constitutional questions are controlled by binding precedent of the Supreme Court or the Tenth Circuit, which I follow. Where a genuinely open question of constitutional interpretation arises, the text and original public meaning of the provision are among the first places I look, consistent with the Supreme Court’s guidance, and I consider the parties’ arguments with an open mind.

- a. **What specific sources would you employ to discern the public’s original understanding of the meaning of a constitutional provision? Please provide three examples of sources you consider reliable in this regard.**

Response: The sources would depend on the provision at issue and the parties’ arguments. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), for example, the Supreme Court consulted, among other materials, founding-era dictionaries; records of the ratification debates and contemporaneous commentary, such as the Federalist Papers; and early statutes, state constitutions, and judicial decisions. Those three categories are examples of sources I would consider reliable, as the Supreme Court’s precedents direct.

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

Response: In some settings, the governing legal standard itself directs courts to weigh the practical consequences of a ruling. For example, in evaluating the balance of equities and the public interest when a party seeks injunctive relief. *See, e.g., Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). Where the law does not make such consequences relevant, however, a judge must apply the governing standards faithfully and impartially, whatever the judge may think of the results as a policy matter.

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

Response: Every litigant is entitled to a judge who will hear his or her case with attention, respect, and an open mind. But the judicial oath requires judges to administer justice “without respect to persons,” 28 U.S.C. § 453, and a judge’s rulings must rest on the record and the governing law rather than on sympathy for one side. In more than seven years on the bench, I have endeavored to treat every person in my courtroom with dignity while deciding every matter impartially, and I would continue to do so if confirmed.

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

Response: A judge's life experience will, one hopes, have prepared the judge to perform the duties of the office with diligence, humility, courtesy, and integrity. It should not, however, supply the rule of decision in any case; judgments must rest on the record and the governing law, applied impartially.

25. Should you be confirmed, what would you do if a party refuses to comply with one of your orders?

Response: When I issue an order as a judge, I expect it to be followed. The proper recourse for a party that disagrees with an order is to seek reconsideration, appeal, or a stay. If a party nonetheless refused to comply, the appropriate response would depend on the circumstances, and the law provides established tools, including civil and criminal contempt. In the Tenth Circuit, a movant seeking civil contempt must prove by clear and convincing evidence that a valid court order existed, that the alleged contemnor had knowledge of the order, and that the alleged contemnor disobeyed it. *See ClearOne Communications, Inc. v. Bowers*, 651 F.3d 1200, 1210 (10th Cir. 2011). I would resolve any such matter through the judicial process, based on the parties' arguments and the governing law.

26. When is it appropriate for an en banc federal appellate court to reconsider a panel decision?

Response: The Tenth Circuit generally overturns its own precedent only when the entire court is sitting en banc. *In re Smith*, 10 F.3d 723, 724 (10th Cir. 1993). The Federal Rules of Appellate Procedure provide guideposts for when en banc consideration is appropriate, including where a panel decision conflicts with a decision of the Supreme Court or of the court itself, and where the proceeding involves a question of exceptional importance. *See* Fed. R. App. P. 40(b)(2). If confirmed, I would faithfully adhere to those standards and to the court's en banc procedures.

27. What case or legal matter are you most proud of having worked on during your career?

Response: I have been blessed to have worked on a wide range of matters over my career, and I am proud of quite a few of them. As solicitor general, I led the defense of Colorado's Taxpayer Bill of Rights through complex litigation up to and including at the United States Supreme Court, where our cert petition was awarded the Best Brief award by the National Association of Attorneys General. In private practice, I was co-counsel in a successful Free Speech civil rights challenge to an election-related state law, and successfully persuaded the Tenth Circuit to overturn prior circuit precedent in an important Sherman Act case. Those are among the cases I am most proud of.

28. Discuss your proposed hiring process for law clerks.

Response: I have typically hired clerks with some prior experience, or who come to me with strong recommendations from professors or other judges. I am committed to hiring the best possible candidates without regard to race, color, religion, sex or national origin.

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

Response: Whether to extend Title VII of the Civil Rights Act to law clerks is a question of legislative policy on which it would be inappropriate for me to opine as a sitting judge and a pending judicial nominee. *See* Code of Conduct for United States Judges, Canon 5. I can say that everyone who works in my chambers is treated with respect, and I do not and will not tolerate discrimination or harassment of the kind Title VII prohibits.

29. **Recently, 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?**

Response: In addition to the training provided by the judiciary and the circuit, I try to speak individually with every employee, make sure they are respected, and know that they can speak to me if there is an issue that arises. I will also ensure that they know of the circuit's other resources for reporting potential misconduct or other related issue.

- 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?**

Response: Please see my answer to Question 29.a. The Tenth Circuit has been particularly proactive in providing resources for employees. Although Jill Langley left the circuit to do similar work for the nationwide Administrative Office of the Courts, the Circuit's Director of Workplace Relations remains an important resource, and I would ensure that assistants and clerks are aware of that office, as well as that they have my support.

- 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?**

Response: Among the options are approaching that judge, reporting the issue to the Chief Judge, or to the Director of Workplace Relations. The particular steps would depend on the specific situation.

30. During your nomination process to serve as a district judge in 2018, you answered written questions from members of the Senate Judiciary Committee about diversity.

- a. **Senator Booker asked you, “Do you believe it is an important goal for there to be demographic diversity in the judicial branch?” You replied, “Yes.” Do you still feel that way?**

Response: Yes—as I told this Committee when asked the same question during my nomination to the district court. No one should be excluded from the opportunity to serve in the judiciary based on race, ethnicity, sex, religion, or any other such characteristic.

- b. **Then-Senator Kamala Harris asked you, “Do you believe that it is important to have a diverse staff and law clerks?” You replied, “Yes.” Do you still feel that way?**

Response: Yes. Please see my response to Question 30.a.

31. In a 2011 article in the *Denver Law Review Online* titled “Deference and Legislative Intent,” you wrote: “Scholars have recognized that many, if not most, difficult questions of statutory interpretation can best be answered by executive branch agencies. Executive agencies have a number of institutional advantages that make them the proper entity to resolve most questions of interpretation. Agencies have highly-specific subject-matter expertise that in most cases will exceed that of the Office of the Attorney General (and in nearly all cases will exceed that of the courts). Agencies can quickly and relatively easily update their interpretations of general or ambiguous statutes to meet changing circumstances. Agency rulemakings also can provide opportunities for the public and even interested members of the legislature to testify and influence the agency’s interpretation. Even from the intentionalist perspective, agencies’ role gives them an advantage over other institutions such as the courts or this Office in accurately ascertaining and implementing the intent of the policy-making branches that create and control them (and appoint their personnel). . . . For all these reasons, the courts should replace their intention-based method of interpretation and instead defer to executive interpretations in most cases.”

- a. **Do you still think that “[e]xecutive agencies have a number of institutional advantages that make them the proper entity to resolve most questions of interpretation”?**

Response: This article was written while I was state Solicitor General and was largely focused on the Colorado state courts’ approach. In the 15 years since that

article was written, both state and federal courts' approaches to such questions have evolved. In any event, as a judge, my role is to apply binding precedents, and my personal views are irrelevant.

- b. **Do you still think that “the courts should replace their intention-based method of interpretation and instead defer to executive interpretations in most cases”?**

Response: Please see my response to Question 31.a.

- c. **Given your previous statements, do you agree with the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*? Why or why not?**

Response: Please see my response to Question 31.a. As prior nominees have confirmed, it would be improper to opine on the correctness of a recent decision like *Loper Bright*. It is binding precedent that I am and will be obligated to follow and apply.

32. **On July 29, 2013, you introduced Senator Cruz at the Western Conservative Summit. You discussed his tenure as the Solicitor General of Texas and said, “Of course, I must admit to some jealousy that they got to defend the work of Governor Perry and the Texas legislature, while others of us get to defend other things.”**

- a. **What did you mean by that?**

Response: I do not recall exactly what I might have had in mind at that time. I can say that as Solicitor General I frequently defended laws and policies that I would not have supported as a matter of policy. (In fact, I sometimes did end up defending laws that I voted against in the referendum and citizen initiative process.) That job taught me well that my own policy preferences are not the law. As a judge I have and will continue to keep that lesson in mind.

- b. **Were there Colorado policies that you were unhappy to have to defend? If so, which ones?**

Response: Please see my response to Question 32.a.

Questions for the Record for Judge Daniel Domenico
Submitted by Senator Richard Blumenthal
July 1, 2026

- 1. 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?**

Response: As a sitting United States district judge, I evaluate all recusal and disqualification questions under 28 U.S.C. §§ 144 and 455, Canon 3C of the Code of Conduct for United States Judges, and the advisory opinions of the Judicial Conference Committee on Codes of Conduct, and if confirmed I would continue to do so. Section 455(a) requires a judge to disqualify himself in any proceeding in which his “impartiality might reasonably be questioned.” This is an objective standard and I have applied it throughout my service on the bench. I would continue to apply it if confirmed, and where a close question arose, I try to err on the side of disclosure to the parties.

- 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 response to Question 1.

- 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 response to Question 1.

- 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 response to Question 1.

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

Response: If confirmed, I will continue to adhere to all rules, laws, and responsibilities governing my service as a judge—including those governing *ex parte* communications. I have abided by those rules for more than seven years on the bench and will continue to do so.

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

Response: Please see my response to Question 2.

- 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: Please see my response to Question 2.

- 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: Please see my response to Question 2.

- 3. 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. As a sitting judge, I have filed the required financial disclosure and periodic transaction reports throughout my service, and I commit to continuing to do so on time if confirmed. I also currently serve as a member of the Judicial Conference's Committee on Financial Disclosure.

- 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: If confirmed, I will continue to adhere to all rules, laws, and responsibilities governing my service as a judge—including those relating to receipt of gifts and other potential conflicts of interest.

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

Response: Please see my response to Question 3.g.

- 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: Please see my response to Question 3.g.

4. **The House Republican-authored budget reconciliation bill for Fiscal Year 2026 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: The language quoted in this question comes from *Ex parte Robinson*, in which the Supreme Court stated that “[t]he power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice.” 86 U.S. (19 Wall.) 505, 510 (1873). That decision remains binding precedent, and I have applied, and if confirmed would continue to faithfully apply, it and all other precedent governing the contempt power. As a sitting judge and a pending judicial nominee, however, it would not be appropriate for me to comment on proposed legislation. *See* Code of Conduct for United States Judges, Canon 5.

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

Response: Whether and how Congress should legislate regarding the courts’ contempt power is a matter of ongoing political debate, and any such legislation could be the subject of litigation that comes before me. As a sitting judge and a pending judicial nominee, it would therefore be inappropriate for me to weigh in on the question. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5. Please also see my response to Question 4.a.

5. **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. As a United States district judge, I have issued orders regularly for more than seven years. If confirmed, I would continue to have the authority to issue orders as a member of the court of appeals, although court of appeals judges rarely have the authority to issue an order individually.

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

Response: Yes, the court has the ability to require that its orders be enforced.

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

Response: Courts have a range of established tools for enforcing their orders, including sanctions and civil and criminal contempt. If confirmed to the court of appeals, my role would primarily be to review contempt-related orders entered by district courts. In the Tenth Circuit, a movant seeking civil contempt must prove by clear and convincing evidence that a valid court order existed, that the alleged contemnor had knowledge of the order, and that the alleged contemnor disobeyed it. *See ClearOne Communications, Inc. v. Bowers*, 651 F.3d 1200, 1210 (10th Cir. 2011). Criminal contempt under 18 U.S.C. § 401(3) requires willful disobedience of a reasonably specific court order, and constitutional protections applicable to criminal defendants apply in nonsummary criminal contempt prosecutions. *See Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994).

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: As a general rule, a party must comply with a court order directed to it, and when I issue an order as a judge, I expect it to be followed. The proper recourse for a party that disagrees with an order is to seek reconsideration, appeal, or a stay. The Supreme Court has held that even an order later determined to be erroneous must generally be obeyed until it is reversed, stayed, or dissolved. *See, e.g., Walker v. City of Birmingham*, 388 U.S. 307 (1967); *United States v. United Mine Workers*, 330 U.S. 258 (1947). Courts have recognized only narrow exceptions—for example, where an order is void for lack of jurisdiction, *see Ex parte Fisk*, 113 U.S. 713 (1885), where compliance is factually impossible, *see United States v. Rylander*, 460 U.S. 752, 757 (1983), or where a party deliberately incurs contempt sanctions as the established avenue for obtaining appellate review of an otherwise unappealable interlocutory order, *see Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009). Because cases presenting these issues are being actively litigated in federal courts and could come before me, it would be inappropriate for me to opine beyond describing these established principles. If such issues came before me, I would resolve them through the judicial process, based on the parties' arguments and the governing law and precedents.

- 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 response to Question 5.b. The same established principles govern compliance with federal court orders by state officials.

- d. What would make a court order unlawful?**

Response: A court order might be described as “unlawful” in different senses. For example, because it rests on an erroneous view of the governing law, because it was entered through a procedurally defective process, or because the issuing court lacked jurisdiction.

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

Response: The proper recourse for a party that believes a court order to be unlawful is to seek reconsideration, appeal, or a stay. Please see my response to Question 5.b.

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

Response: As explained in my response to Question 5.b, even an order later determined to be erroneous must generally be obeyed until it is reversed, stayed, or dissolved, and courts have recognized only the narrow exceptions described there.

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

Response: No.

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

Response: No.

- 7. As Colorado’s Solicitor General, you were closely involved in the state’s efforts to oppose same-sex marriage. You defended Colorado’s ban on same-sex marriage. When the Tenth Circuit struck down Utah’s ban on same-sex marriage and the Clerk of Boulder County, Colorado began to issue same-sex marriage licenses, you took a lead role in arguing against the authority of clerks to do so. If confirmed, how can future litigants in same-sex marriages trust that you will remain unbiased?**

Response: As Colorado’s Solicitor General, I represented the State of Colorado, and my duty was to defend the State’s laws and the legal positions of my client. The positions I advanced in that role were those of the State, not expressions of my personal views. For

more than seven years as a United States district judge, I have decided every case based on the facts in the record and the governing law, without regard to the identity of the parties or to any position I advanced on behalf of a client in practice. As I explained during my prior confirmation process, *Obergefell v. Hodges*, 576 U.S. 644 (2015), is a binding precedent of the Supreme Court, and I have applied it and would continue to apply it if confirmed. Every litigant who comes before me is entitled to, and will receive, a fair and impartial application of the law.

8. In *National Association of Industrial Bankers v. Weiser*, trade associations challenged Colorado's rate opt-out law, which sought to limit the interest rates that could be charged to Colorado residents by out-of-state banks. In granting the trade associations' request for a preliminary injunction, you held that Colorado could not provide its lower interest-rate caps to loans issued to Colorado residents by out-of-state banks.

The Tenth Circuit reversed you, pointing out that the Supreme Court has held that when "Congress has legislated in a field which the States have traditionally occupied, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." Your ruling would have resulted in the preemption of Colorado's interest rate limits.

Do you agree the historic police powers of the States should not be found preempted by federal law unless that was the clear and manifest purpose of Congress?

Response: The Tenth Circuit has agreed to rehear that case *en banc*. My reasoning is explained in my written order, and because the case remains pending it would be inappropriate to comment further.

**Senator Mazie K. Hirono
Senate Judiciary Committee**

**Nomination Hearing
Questions for the Record for Daniel Domenico**

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?**

Response: No.

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

Response: No.

2. At your district court nomination hearing eight years ago, you declined to identify yourself as having any particular judicial philosophy because it would be presumptuous for someone who is not yet a judge to do so. **Now that you have been a judge for 7 years, how would you describe your judicial philosophy?**

Response: I continue to believe that the labels used to describe such things often obscure more than they clarify. As Justice Kagan famously said, we're all originalists now, at least in some sense. In general, however, my experience has led me to agree that the judicial role in interpreting statutes and constitutional provisions is to seek the original public meaning.

3. In June of 2015, you gave a speech at the Lincoln Club of Colorado titled "Obamacare at the Supreme Court."

- a. **Do you recall this speech?**

Response: Only vaguely.

- b. In notes that you prepared for that speech, you explained that the overall theme was, "we can't rely on the courts and on litigation to defend our principles . . . these can't be only legal battles – they have to be battles we fight in our culture and in our political system and our neighborhoods and our schools."

- i. **Do you recall these notes?**

Response: I reviewed those notes in preparing my SJQ, but my independent recollection of that speech is frankly limited.

- ii. **What battles did you think needed to be fought in our culture, political system, neighborhoods, and our schools?**

Response: As I explained to this Committee during my district court confirmation process, in those notes I was attempting to emphasize that citizens should not look to judges and courts to resolve policy disagreements that should be resolved democratically. I believe the basic point I was trying to make was that expecting courts or litigation to solve all of society's ills was a mistake, and that concerned citizens should begin by focusing on improving their own families, neighborhoods, and communities. As a sitting judge and a pending judicial nominee, of course, my policy preferences are irrelevant and I cannot and should not comment on political or policy matters. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

- iii. **Why did you suggest that these battles needed to be fought?** Please provide the context and reasoning that justified this suggestion.

Response: Please see my response to Question 3.b.ii.

4. During your time as Colorado's Solicitor General, you were involved in several cases dealing with legislative bans on same sex marriage before the Supreme Court's decision in *Obergefell v. Hodges*.

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

Response: It is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. As I explained during my prior confirmation process, *Obergefell v. Hodges* is a binding precedent of the Supreme Court, and I have applied and would continue to apply it if confirmed.

- b. **Was *Brown v. Board of Education* correctly decided?**

Response: Yes. I have for years been on the record as believing that Justice Harlan's dissent in *Plessy v. Ferguson* is the greatest Supreme Court opinion in our history, which necessarily means that *Brown* is rightly decided. Although it is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court, prior nominees have long treated *Brown* as an exception to that practice, and I join them.

- c. **If you answered subpart b with the word "Yes" but did not answer subpart a with the words "Yes" or "No," please explain that inconsistency.**

Response: Judicial nominees of presidents of both parties have long declined to say whether particular precedents of the Supreme Court were correctly decided, because grading precedents could be taken as signaling how a nominee might rule in cases presenting related issues. Prior nominees have, however, long treated *Brown* as a limited exception to that practice, and my views on Justice Harlan's dissent in *Plessy v. Ferguson* have been consistent for years. My answer to subpart b. reflects that longstanding exception; my answer to subpart a. reflects the general practice, and not any view about the correctness of *Obergefell*, which I have applied and would continue to faithfully apply if confirmed.

- d. **To the extent your answer to subpart c refers to live issues, pending issues, or issues of controversy, please explain why you feel that discrimination on the basis of sexual orientation is more of an open question than discrimination on the basis of race.**

Response: Please see my response to Question 4.c. My answers to this series of questions reflect the conventions governing what a sitting judge and pending judicial nominee may appropriately say about particular precedents of the Supreme Court; they do not reflect a view that discrimination on the basis of sexual orientation is more of an open question than discrimination on the basis of race. The Supreme Court has applied the Fourteenth Amendment's protections to sexual orientation, *see, e.g., Romer v. Evans*, 517 U.S. 620 (1996); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Obergefell v. Hodges*, 576 U.S. 644 (2015), and I have and will apply binding precedents if confirmed.

5. At your nomination hearing, you refused to confirm who won the 2020 election.

- a. **Legally, who won 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. Beyond that, I agree with Justice Ketanji Brown Jackson, who, in her responses to this Committee's questions for the record pertaining to the 2016 and 2020 elections, explained that under the Code of Conduct for United States Judges it is inappropriate for a sitting federal judge to publicly comment on such matters of political dispute. *See* Canons 3(A)(6), 5.

- b. **Who won the popular vote in the 2020 election?**

Response: According to the certified results, President Biden received the most popular votes nationwide in the 2020 presidential election. To the extent this question asks about anything beyond the official results, please see my response to Question 5.a.

**Nomination of Daniel D. Domenico
United States Court of Appeals for the Tenth Circuit
Questions for the Record
Submitted July 1, 2026**

QUESTIONS FROM SENATOR BOOKER

1. Canon 3(A)(5) of the Code of Conduct for United States Judges states “[a] judge should dispose promptly of the business of the court.”

a. Do you agree that judges should handle their cases expediently?

Response: Yes. I agree that judges should resolve the matters before them as promptly as they reasonably can, consistent with their equally important obligations to decide each matter correctly, impartially, and with due regard for the rights of the parties.

b. Describe the importance and purpose of this canon.

Response: While federal courts often have very heavy caseloads (our court had an estimated 720 new case filings per active judge in 2025), resolution of those cases as expeditiously as possible while still arriving at correct results is important to the judicial role. Canon 3(A)(5) reflects the principle that unnecessary delay imposes costs and uncertainty on litigants and can diminish public confidence in the courts. The commentary to the Canon explains that prompt disposition of the court’s business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end. The Canon’s purpose is disposition of the court’s business that is both prompt and just: promptness must be pursued consistent with the judge’s obligation to decide each matter carefully and correctly.

2. The Civil Justice Reform Act (CJRA) requires judges to report twice a year how many undecided motions they have not resolved that have been pending for more than six months. In October 2023, ColoradoPolitics.com reported that you had a significantly heavy backlog of pending motions. Your reported backlog of 151 motions was the fourth highest in the country among the 1,200 district and magistrate judges in the nation. Relative to your other colleagues on the U.S. District Court for the District of Colorado, you contributed to more than half of the court’s backlog and were the only judge with a triple-digit backlog.

Further review of the CJRA reports you have submitted during your time on the bench demonstrate this was not an isolated incident. The following table illustrates how significant your backlog was over six reported periods from March 2021 to September 2023.

Table of U.S. District Judge Daniel D. Domenico’s Motions Pending Over Six Months

Source: <https://www.uscourts.gov/statistics-reports/analysis-reports/civil-justice-reform-act-report>

Year	Domenico March CJRA Report	Total Motions Pending District Court of Colorado	Domenico's Share of Total Pending Motions for District Court of Colorado	Domenico September CJRA Report	Total Motions Pending District Court of Colorado	Domenico's Share of Total Pending Motions for District Court of Colorado
2021	88	188	46.8%	121	299	40.5%
2022	185	303	61.1%	189	299	63.2%
2023	151	272	55.5%	103	235	43.8%

a. Confirm the accuracy of the information in the table above.

Response: The table does not include data from 2024, 2025, and 2026, when the number of listed motions declined to zero. For the time periods listed, however, the figures in the table appear to accurately reflect the semiannual reports published by the Administrative Office of the United States.

b. Provide an explanation for this concerning 3-year backlog.

Response: The backlog has been eliminated since 2024. The disruptions of the COVID-19 pandemic and its aftermath striking within a year of my taking the bench along with multiple vacancies on our court, among other unique circumstances led to the numbers in the chart you provided. Those circumstances have all passed, as shown by the fact that I have eliminated the backlog and had no motions on the list for several years. I still maintain a very low reversal rate, so I believe I have managed to remain thorough and careful while increasing the speed at which decisions are made.

c. Have you ever received any verbal or written complaints or statements from parties, counsel, or anyone else relating to your delay in ruling on a pending motion in a case before you? If so, identify the complaining individual, the date and content of that communication, and how the matter was resolved.

Response: None that I am aware of.

d. Have counsel or parties filed a writ for mandamus or a request for a ruling or other relief relating to your delay in ruling on a pending motion in a case before you? If so, identify the date of the filing, the matter in which the request was made, and how the matter was resolved.

Response: I am not aware of any motion for a writ of mandamus. Parties in various cases seek expedited rulings.

e. Under the Rules for Judicial Conduct, a judge's delay in ruling is not typically misconduct unless there is an "improper motive" for the delay, or "habitual delay in a significant number of unrelated cases." Have you ever faced discipline or sanction, whether oral or written, formal or informal, relating to your delay in ruling on matters before you? If so, identify the date and describe the circumstances, including any remedial punishment.

Response: I am not aware of any complaints on this basis or any discipline or sanction.

f. Is this multi-year failure to efficiently manage your caseload a violation of judicial obligations laid out in the Code of Conduct for United States Judges to decide cases efficiently?

Response: The backlog was eliminated in 2024. Please see my response to question 2.g.

g. Why should the Senate Judiciary Committee have confidence that, if confirmed, you will not repeat these problems on the Tenth Circuit?

Response: As noted, I have completely eliminated any backlog and not had any cases on the six-month list for the last several years. I have issued over 22,000 orders as a judge, including over 1,000 that could be considered reasoned opinions. I have also in recent years taken on additional obligations, including service on the Tenth Circuit Judicial Council, the Judicial Conference's Committee on Financial Disclosure, and as Chief Judge of the District of Colorado. There is no reason to think the issues that led to the list's growth in my early years as a judge, including COVID and its immediate aftermath, will recur on the Tenth Circuit.

3. On May 13, 2026, ColoradoPolitics.com reported on your delays in ruling on immigration habeas petitions, causing petitioners to needlessly remain in custody. Among your peers on the U.S. District Court for the District of Colorado, you took on average the longest time to rule on such petitions.

a. Provide an explanation for this delay.

Response: The District of Colorado is home not only to a large immigration detention center, but to dozens of state and local jails and prisons as well as the full range of federal prisons, including ADX Florence, also known as Supermax. So, judges on our court get scores of habeas petitions each year. Every one of those petitions alleges that the petitioner is being illegally detained. I take them all seriously. I do not give any particular class of habeas petitions greater or lesser priority. None of these petitions has appeared on a CJRA list. I also note that on June 30, the Tenth Circuit issued a decision that makes the result of many of these cases much simpler, and in response I issued an order that I expect will expedite the resolution in those cases.

b. Do you acknowledge that, for the petitioners you granted release after delaying a ruling on their petition, they experienced additional needless hardship because they were in custody longer than was necessary?

Response: I recognize that every habeas petition places a person's liberty at issue and that custody imposes real hardship on petitioners and their families. That is precisely why such matters warrant priority, and why I have endeavored to resolve them as promptly as the circumstances of each case allowed. Because this question asks me to characterize my rulings in specific cases—and because similar issues may come before me again, whether as a district judge or, if confirmed, as a circuit judge—it would not be appropriate for me to comment on the merits or timing of particular rulings beyond what appears in the public record. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

4. Have you ever discussed with President Trump, or any person associated with him or his Administration, pursuing a nomination to the U.S. Supreme Court? Describe the nature of the discussion, the name of the individual(s) involved, and the date of the discussion.

Response: No.

5. Explain the factors you would consider, if you are confirmed, to determine whether to recuse yourself in matters involving former clients, recent legal work and advocacy, and parties with whom you have had substantial financial relationships.

Response: As a sitting district judge, I evaluate all recusal and disqualification questions under 28 U.S.C. §§ 144 and 455, Canon 3C of the Code of Conduct for United States Judges, and the advisory opinions of the Judicial Conference Committee on Codes of Conduct, and if confirmed I would continue to do so.

6. If you are confirmed, how would you handle a request from President Trump, or anyone affiliated with him acting on his behalf, to decide a matter in a way that would benefit the President personally, financially, or politically?

Response: Any such request would be an improper *ex parte* communication, and I would not entertain it. I would decide the matter—as I have endeavored to decide every matter in more than seven years on the bench—based solely on the facts in the record and the governing law, without regard to the identity of the parties or any other person's wishes. *See* 28 U.S.C. § 453 (judicial oath); Code of Conduct for United States Judges, Canon 3(A)(4). I would also take whatever steps applicable law, rules, and policies require in response to such a communication, including disclosure to the parties and any required reporting, in accordance with applicable policies and procedures.

a. What ethical obligations govern your response to such a request?

Response: As noted above, the judicial oath, 28 U.S.C. § 453, requires judges to administer justice “without respect to persons.” Canon 1 requires a judge to uphold the integrity and independence of the judiciary; Canon 2 requires a judge to avoid impropriety and the appearance of impropriety; and Canon 3(A)(4) prohibits a judge from initiating, permitting, or considering *ex parte* communications concerning a pending or impending matter, subject to narrow exceptions, and requires prompt notice to the parties of the substance of any such communication received. In addition, 28 U.S.C. § 455 would require disqualification in any proceeding in which my impartiality might reasonably be questioned.

b. Do you believe existing recusal and conduct rules are sufficient to address this scenario?

Response: As a sitting judge and a pending judicial nominee, it would not be appropriate for me to opine on the adequacy of existing recusal and conduct rules, which is a matter of ongoing public and political debate. *See* Code of Conduct for United States Judges, Canon 5. I can commit that, if confirmed, I will fully comply with all applicable recusal statutes, conduct rules, and ethical obligations.

7. President Trump has repeatedly responded to adverse judicial rulings by threatening sitting judges, including calling for their impeachment and publicly disparaging them by name.

a. Do you believe those statements are consistent with the rule of law?

Response: As a sitting judge and a pending judicial nominee, it would be inappropriate for me to comment on the statements of any political figure or on any subject of political controversy. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5. I note as a general matter that judges enjoy the unique protection of lifetime tenure in large part to assure we will do our duties despite political criticism.

b. If you were to rule against the Administration and face similar attacks, would you take any action in response?

Response: In more than seven years on the district court, I have decided every case based on the facts and the governing law, without regard to criticism from any quarter, and I would continue to do so if confirmed. Public criticism of a ruling—from any source—would not affect my decision-making. Beyond that, please see my response to Question 7.a.

c. Do you believe a President’s public attacks on the judiciary constitute an attempt to interfere with the independence of the federal courts?

Response: Please see my response to Question 7.a.

d. Are you aware of any ethical obligation on the part of judges to speak out when the independence of the judiciary is threatened by the political branches?

Response: I am not aware of any statute, provision of the Code of Conduct for United States Judges, or other rule that obligates a judge to speak out publicly in those circumstances. Canon 4 permits judges to speak, write, lecture, and teach on matters concerning the law, the legal system, and the administration of justice, subject to the limitations set out in the Code. If confirmed, I will continue to adhere to all of my ethical duties and responsibilities.

8. If this Committee were to establish that a sitting federal judge knowingly provided false testimony to this Committee, what do you believe the appropriate process and consequences should be?

Response: The Constitution and applicable statutes and rules—including the impeachment provisions of Article I, the Judicial Conduct and Disability Act, 28 U.S.C. § 351 *et seq.*, and the criminal laws addressing false statements—establish the processes available to address such a situation, and I would defer to Congress and the appropriate authorities to apply them. Beyond that, as a sitting judge and a pending judicial nominee, it would be inappropriate for me to opine on a hypothetical political and legal dispute. *See* Code of Conduct for United States Judges, Canons 3, 5.

9. If this Committee were to establish that a political appointee knowingly provided false testimony to this Committee, what do you believe the appropriate process and consequences should be?

Response: Please see my response to Question 8.

10. How would you characterize your judicial philosophy?

Response: I have now served as a United States district judge for more than seven years, and my approach in every case has been the same: to decide the matter based on the record before me and the governing law (the text of the applicable constitutional provisions, statutes, and rules, and the binding precedents of the Supreme Court and the Tenth Circuit) fairly and impartially, without regard to the identity of the parties or my own preferences.

11. What do you understand originalism to mean?

Response: I understand originalism to refer to a method of constitutional interpretation under which the meaning of a constitutional provision is the original public meaning its words had at the time of adoption.

12. Do you consider yourself an originalist?

Response: I continue to believe that the labels used to describe such things often obscure more than they clarify. As Justice Kagan famously said, however, we're all originalists now, at least in

some sense. In my experience on the bench, most constitutional questions are controlled by binding precedent of the Supreme Court or the Tenth Circuit, which I follow. Where a genuinely open question of constitutional interpretation arises, the text and original public meaning of the provision are among the first places I look, consistent with the Supreme Court's guidance, and I consider the parties' arguments with an open mind.

13. What do you understand textualism to mean?

Response: I understand textualism to refer to a method of statutory interpretation similar to originalism, under which a statute's words are given the ordinary meaning they had at the time of enactment, read in context and with a view to the structure of the statute as a whole.

14. Do you consider yourself a textualist?

Response: Please see my response to Question 12. In statutory cases, I begin with the text of the statute, as Supreme Court and Tenth Circuit precedent instruct. I then apply all binding precedent governing its interpretation.

15. 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: Under Tenth Circuit precedent, legislative history may be consulted where the text of a statute is ambiguous. *See, e.g., Diallo v. Gonzales*, 447 F.3d 1274, 1282 (10th Cir. 2006). When no guiding precedent exists, legislative history also has potential to be useful as evidence of original public meaning when the meaning of the text of a statute is unclear.

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

Response: Only the statutory text itself survived the legislative process and became law, so it would not be proper to supersede its meaning with notions of what a legislator or group of them may have intended. For my views on the proper use of legislative history, see my response to question 15.a.

16. 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. What do you attribute this to?

Response: While I am unfamiliar with this study, I must also note that disparities such as these, and the best means of addressing them, are the subject of ongoing academic and policy debate. As a sitting judge and pending judicial nominee, it would be inappropriate for me to opine on

that debate. *See* Code of Conduct for United States Judges, Canon 5. As a judge, I have a duty to make decisions objectively and independent of any bias that comes before me—a responsibility I have taken seriously throughout my service on the bench.

17. 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. What do you attribute this to?

Response: Please see my response to Question 16.

18. 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: Federal judges must apply the law to all parties without regard to race. *See* 28 U.S.C. § 453 (oath to administer justice “without respect to persons”). When a defendant contends that race played a role in a charging decision or another exercise of official discretion. For example, through a selective-prosecution claim under *United States v. Armstrong*, 517 U.S. 456 (1996), a claim under *Batson v. Kentucky*, 476 U.S. 79 (1986), or an equal-protection challenge, the court’s role is to adjudicate that claim fairly, based on the evidence presented and the governing law. That is the approach I have taken as a district judge and would continue to take if confirmed.

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

Response: Yes—as I told this Committee when asked the same question during my nomination to the district court. No one should be excluded from the opportunity to serve in the judiciary based on race, ethnicity, sex, religion, or any other such characteristic.

20. 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. Mere reference to the list of publications and statements provided in your Senate Judiciary Questionnaire is insufficient; provide specific responses. If you have not disclosed a copy of the publication or a transcript of the statement to the Judiciary Committee, attach a copy or link to the materials and explain why you have not previously disclosed them.

Response: As disclosed in my Senate Judiciary Questionnaire, I have spoken or written about the law on numerous occasions over the past three decades. On rare occasion, those discussions and writings may have touched on the issues listed above.

Please refer to my Senate Judiciary Questionnaire, where I have provided exhaustive records and accounts of all those writings and speaking engagements to the best of my knowledge and recollection.

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

Response: As a general rule, a party must comply with a court order directed to it, and when I issue an order as a judge I expect it to be followed. The proper recourse for a party that disagrees with an order is to seek reconsideration, appeal, or a stay.

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: If confirmed to the court of appeals, my role would primarily be to review contempt-related orders entered by district courts. In the Tenth Circuit, a movant seeking civil contempt must prove by clear and convincing evidence that a valid court order existed, that the alleged contemnor had knowledge of the order, and that the alleged contemnor disobeyed it. *See ClearOne Communications, Inc. v. Bowers*, 651 F.3d 1200, 1210 (10th Cir. 2011). Criminal contempt under 18 U.S.C. § 401(3) requires willful disobedience of a reasonably specific court order, and constitutional protections applicable to criminal defendants apply in criminal contempt prosecutions. *See Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994). If confirmed, I would faithfully apply these and all other governing precedents, along with any recognized defenses the parties raise.

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? Provide each one and the justification.

Response: Please see my response to Question 21.

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

Response: The Constitution gives the President the power to veto legislation, subject to congressional override. U.S. Const. art. I, § 7. The Take Care Clause directs that the President “shall take Care that the Laws be faithfully executed.” U.S. Const. art. II, § 3. Questions concerning how the Take Care Clause interacts with other executive powers, including the Executive Branch’s enforcement discretion, *see United States v. Texas*, 599 U.S. 670, 678–79 (2023), are often complex and have been and are currently the subject of litigation. As a sitting judge and a pending judicial nominee, it would be inappropriate for me to opine on questions that may come before me. *See Code of Conduct for United States Judges*, Canon 3(A)(6).

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

Response: The Supreme Court addressed a question concerning the withholding of appropriated funds in *Train v. City of New York*, 420 U.S. 35 (1975), and that the Impoundment Control Act of 1974, 2 U.S.C. § 681 *et seq.*, establishes procedures governing the deferral and rescission of

appropriated funds. Because these questions are the subject of pending and impending litigation, it would be inappropriate for me to opine further. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

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

Response: Please see my response to Question 23. Because this question, too, implicates issues that are or may be the subject of litigation, it would be inappropriate for me to opine further.

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

Response: The Supremacy Clause provides that the Constitution, federal laws made in pursuance of it, and treaties are “the supreme Law of the Land.” U.S. Const. art. VI, cl. 2. The Supreme Court has explained that the Clause “creates a rule of decision” under which courts “must not give effect to state laws that conflict with federal laws.” *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324 (2015). I have applied, and if confirmed would continue to faithfully apply, this and all other binding precedent governing preemption.

26. Does the U.S. Constitution apply to non-citizens present in the United States?

Response: The Supreme Court has held that some constitutional provisions apply to citizens and non-citizens alike. For example, the Court has stated that the Fifth Amendment’s Due Process Clause “applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Other provisions, by their terms, apply only to citizens—for example, the constitutional provisions protecting the right of citizens to vote. I have applied, and if confirmed would continue to faithfully apply, the Supreme Court’s precedents in this area.

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

Response: The Supreme Court has long held that Congress may authorize agencies to implement statutes through rulemaking so long as Congress “lay[s] down by legislative act an intelligible principle to which the person or body authorized to act is directed to conform.” *Whitman v. American Trucking Associations*, 531 U.S. 457, 472 (2001) (brackets and quotation marks omitted); *see Gundy v. United States*, 588 U.S. 128 (2019). If confirmed, I would faithfully apply these and all other binding precedents.

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

Response: Yes. I have for years been on the record as believing that Justice Harlan’s dissent in *Plessy v. Ferguson* is the greatest Supreme Court opinion in our history, which necessarily means that *Brown* is rightly decided. Although it is generally inappropriate for a sitting judge

and judicial nominee to grade particular precedents of the Supreme Court, prior nominees have long treated *Brown* as an exception to that practice, and I join them.

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

Response: Yes, *Griswold* is binding precedent, and I would apply it if confirmed. In *Griswold*, the executive director of the Planned Parenthood League of Connecticut and a physician were convicted under a Connecticut statute that criminalized the use of contraceptives and the giving of advice concerning their use. The Supreme Court held that the statute was unconstitutional as applied to married couples, recognizing a constitutional right of marital privacy protecting the use of contraceptives.

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

Response: Yes, *Lawrence* is binding precedent, and I would apply it if confirmed. In *Lawrence*, two men were convicted under a Texas statute criminalizing certain intimate conduct between persons of the same sex. The Supreme Court held that the statute violated the Due Process Clause of the Fourteenth Amendment, which protects the liberty of consenting adults to engage in private intimate conduct, and overruled *Bowers v. Hardwick*, 478 U.S. 186 (1986).

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

Response: Yes. As I explained during my prior confirmation process, *Obergefell* is a binding precedent of the Supreme Court, and I have applied and would continue to apply it. In *Obergefell*, same-sex couples challenged state laws that denied them marriage licenses or refused to recognize their lawful out-of-state marriages. The Supreme Court held that the Fourteenth Amendment requires states 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, and to recognize such marriages lawfully performed in other states.

32. 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. A response that references only certification will be treated as a refusal to answer.

Response: President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. Beyond that, I agree with Justice Ketanji Brown Jackson, who, in her responses to this Committee's questions for the record pertaining to the 2016 and 2020 elections, explained that under the Code of Conduct for United States Judges it is inappropriate for a sitting federal judge to publicly comment on such matters of political dispute. See Canons 3(A)(6), 5.

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

Response: Please see my response to Question 32.

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

Response: Please see my response to Question 32.

33. The 22nd Amendment says that “no person shall be elected to the office of the President more than twice.”

a. Do you acknowledge that this is the law of the land?

Response: Yes. *See* U.S. Const. amend. XXII; art. VI, cl. 2.

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

Response: President Trump was certified as the winner of the 2016 election, and thus was elected President as that word is used in the Twenty-Second Amendment.

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

Response: Congress counted a majority of the electoral college votes for President Trump and certified him as the winner of the 2016 election. To the extent this question asks for my opinion about matters pertaining to the fairness or integrity of the election, please see my response to Question 32.

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

Response: President Trump was certified as the winner of the 2024 election, and thus was elected President as that word is used in the Twenty-Second Amendment.

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

Response: Congress counted a majority of the electoral votes for President Trump and certified him as the winner of the 2024 election. To the extent this question asks for my opinion about matters pertaining to the fairness or integrity of the election, please see my response to Question 33.

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

Response: Because President Trump has twice been “elected to the office of the President,” the text of the Twenty-Second Amendment prevents him from being elected to that office again.

34. 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: I discussed with employees of the Department of Justice how prior nominees of various presidents have responded to similar questions. No one has instructed me how to answer any questions.

35. 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.

36. 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: Not that I am aware of.

37. 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.

38. 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: No.

39. 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: No.

40. 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.

41. 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: I met Judge Bove for the first time at a conference in April 2026. I congratulated him on his confirmation and we engaged in small talk.

42. 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.

43. 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.

44. 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: Not that I am aware of.

45. 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: Not that I am aware of.

46. 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. As a sitting judge, I have filed the required financial disclosure and periodic transaction reports throughout my service, and I commit to continuing to do so if confirmed.

47. 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.”

a. Do you agree with the above statement?

Response: As a sitting judge and a pending judicial nominee, it would be inappropriate for me to comment on the public statements of any political figure or on any subject of political controversy. *See* Code of Conduct for United States Judges, 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 discussed my nomination with Mr. Davis, whom I have known for some time, on a handful of occasions via text or phone, and I believe we spoke in person one time earlier this year. My recollection is that these conversations were generally about my qualifications and the nominations process, based on his prior experience working on nominations, including for the Senate Judiciary Committee.

48. 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)?

a. If so, who? What advice did they give?

Response: Employees of the Office of Legal Policy advised me to ensure that the cases and any other information provided were accurate and complete.

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

Response: I was advised to include the most relevant responsive cases.

49. Explain, with particularity, the process whereby you answered these written questions, including whether you personally drafted initial responses and whether anyone helped draft, review, or edit the answers.

Response: I reviewed each question and prepared responses after consulting my records, the governing law and precedents, and responses from past nominees and speaking with friends and associates. I then shared my drafts with attorneys at the Office of Legal Policy and received feedback. After receiving that feedback, I finalized my answers based on my own independent judgment and authorized their submission to the Committee.

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

June 24, 2026

Questions for Daniel Domenico (Nominee to the 10th Circuit Court of Appeals):

1. The following are yes or no questions related to the 2020 election:

- a. According to Wisconsin's certified 2020 General Election results, did Joe Biden receive more than 19,000 votes more than Donald Trump?

Response: I am not personally familiar with any particular state's certified election results. Based on public reporting, Joe Biden received more popular votes in this state.

- b. According to Pennsylvania's certified 2020 General Election results, did Joe Biden receive more than 80,000 votes more than Donald Trump?

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

- c. According to Georgia's certified 2020 General Election results, did Joe Biden receive more than 11,000 votes more than Donald Trump?

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

- d. According to Arizona's certified 2020 General Election results, did Joe Biden receive more than 10,000 votes more than Donald Trump?

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

- e. According to Nevada's certified 2020 General Election results, did Joe Biden receive more than 20,000 votes more than Donald Trump?

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

- f. According to Michigan's certified 2020 General Election results, did Joe Biden receive more than 154,000 votes more than Donald Trump?

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

- g. Setting aside the precise vote totals, do you accept that, according to each state's certified results, Joe Biden received more votes than Donald Trump in Wisconsin, Pennsylvania, Georgia, Arizona, Nevada, and Michigan in the 2020 General

Election?

Response: Congress certified the electoral college vote in favor of Joe Biden in the 2020 election, and he thus served as president from 2021-2025. Beyond that, I agree with Justice Ketanji Brown Jackson, who, in her responses to this Committee's questions for the record pertaining to the 2016 and 2020 elections, explained that under the Code of Conduct for United States Judges it is inappropriate for a sitting federal judge to publicly comment on such matters of political dispute. *See* Canons 3(A)(6), 5.

- h. Are you aware of any evidence that Joe Biden did not win more votes than Donald Trump in each of the states listed above? If so, please explain.

Response: Please see my response to Question 1.a and 1.g.

2. Some judicial nominees have stated that Joe Biden "legally" won the 2020 election or won the election "as a matter of law." Setting aside any legal characterization: as a matter of fact, did Joe Biden win the 2020 presidential election?

Response: President Biden was certified as the winner of the 2020 presidential election and served as the 46th President of the United States. Beyond that, please see my response to Question 1.g.

3. Do you have any reason to believe that the outcome of any state's presidential vote was impacted by irregularities or fraud? If so, please explain.

Response: Please see my response to Question 1.a and 1.g.

4. On January 7, 2021, a joint session of Congress certified 306 electoral votes for Joseph Biden and 232 electoral votes for Donald Trump. Joe Biden received more votes than Donald Trump across 25 states, DC, and NE-02 in the 2020 election.

- a. Do you have any reason to believe that Congress was wrong to certify each state's electoral votes?

Response: Please see my response to Question 1.a and 1.g.

5. More than 60 federal and state courts, including courts presided over by judges appointed by Republican presidents, dismissed legal challenges to the 2020 presidential election results for lack of evidence, lack of standing, or lack of merit.

- a. Do you have any reason to believe that any of those courts reached the wrong conclusion?

Response: I have not examined the particulars of those cases and it would be improper for me to comment on this question.

- b. Do you have any reason to believe that any one of those judges -- many of whom were appointed by Republican presidents, including President Trump -- acted improperly or in bad faith in dismissing those challenges?

Response: Please see my response to Question 5.a.

6. Have you ever, publicly or in an official capacity, questioned or disparaged: (i) the legitimacy of the 2020 presidential election results; (ii) Congress's certification of those results; or (iii) any federal or state court ruling rejecting legal challenges to those results? If so, please explain.

Response: No.

7. To the extent you would decline to answer any election-related question on the ground that the 2020 result is a "subject of political debate," please identify what you believe remains genuinely debatable about whether Joe Biden received more votes than Donald Trump in the states at issue, given that those results were certified by the responsible state officials and upheld in more than sixty state and federal proceedings.

Response: As Justice Jackson recognized when asked similar questions about both the 2016 and 2020 elections, this is a matter of political debate and weighing in on it would be improper for a sitting federal judge.

8. Do you believe in a constitutional right to privacy? If so, please explain the constitutional basis for that right.

Response: The Supreme Court has recognized a constitutional right to privacy in a number of contexts. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965); *Lawrence v. Texas*, 539 U.S. 558 (2003). The Court's decisions have located those protections in several constitutional provisions, including the Due Process Clause of the Fourteenth Amendment. I have applied, and if confirmed would continue to faithfully apply, those precedents.

- a. Do you believe that *Griswold v. Connecticut* was correctly decided?

Response: It is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. *Griswold v. Connecticut* is a binding precedent of the Supreme Court, and I would faithfully apply it if confirmed.

9. At a recent speaking event at Catholic University, Justice Kavanaugh stated that he considers himself "in many ways a Bork-Scalia-Rehnquist guy" when discussing his judicial role models. What judges or justices would you consider foundational to your judicial philosophy, and why?

Response: I admire the work of many judges and justices, but Judge Tymkovich is the one who is truly foundational to how I try to approach the role of a judge.

10. If confirmed, cases involving reproductive rights -- including access to abortion, contraception, and assisted reproductive technology -- may come before you. Do you believe that individuals have any constitutionally protected right to make reproductive healthcare decisions? Please explain.

Response: Under the Supreme Court's precedents, some reproductive healthcare decisions receive constitutional protection, while others present questions that belong to the people and their elected representatives. In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the Supreme Court held that the Constitution does not confer a right to abortion and returned the regulation of abortion to the democratic process. The Court's precedents recognize constitutional protection for decisions concerning contraception. See *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972). Because cases presenting these issues are being litigated in the federal courts and could come before me, it would be inappropriate for me to say more. See Code of Conduct for United States Judges, Canon 3(A)(6). I have applied, and if confirmed would continue to faithfully apply, binding Supreme Court's precedents in this area.

11. Judicial clerkships serve several important professional roles. They are a meaningful opportunity for recent law graduates to learn from an experienced mentor, and they serve as an important -- and often necessary -- step toward the highest levels of our legal profession. Too often, students from diverse backgrounds are overlooked for these opportunities despite equivalent qualifications.

- a. Do you believe that diversity at all levels of the federal judiciary is important? Please explain your view.

Response: Yes—as I told this Committee when asked a similar question during my nomination to the district court. No one should be excluded from the opportunity to serve in the judiciary based on race, ethnicity, sex, religion, or any other such characteristic.

- b. When selecting your law clerks, will you commit to considering qualified applicants from a broad range of backgrounds, including candidates from a variety of law schools, from varying socioeconomic circumstances, and of differing races, ethnicities, religions, gender identities, sexual orientations, and abilities?

Response: Yes. Please see my answer to Question 11.a.

- c. Will you make your clerkship hiring criteria and application process transparent and accessible to applicants who lack the networks or institutional connections

that often drive clerkship hiring?

Response: I am committed to hiring the best candidates for clerkships, based on their merit and the content of their character. Please see my answer to Question 11.a.

- d. If confirmed, how will you personally ensure diversity among your law clerk classes?

Response: Please see my response to Question 11.c.

12. I want to give you an opportunity to discuss your views on the 22nd Amendment.

- a. What does the 22nd Amendment state?

Response: The Twenty-Second Amendment provides in relevant part: “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.” U.S. Const. amend. XXII, § 1.

- b. Under the text of that amendment, is there any basis on which an individual who has already been elected President twice could lawfully be elected to a third term?

Response: No. Because the Twenty-Second Amendment provides that “[n]o person shall be elected to the office of the President more than twice,” its text does not permit a person who has twice been elected to that office to be elected to it again.

- c. Donald Trump was elected President in 2016 and again in 2024. How many times has Donald Trump been elected President?

Response: President Trump was certified as the winner of the 2016 and 2024 presidential elections, and thus has twice been elected to the office of the President as that word is used in the Twenty-Second Amendment.

- d. Are you aware of any provision of the Constitution, federal statute, or judicial precedent that would permit Donald Trump to be elected to a third term?

Response: No, I am not aware of any such provision. *See* U.S. Const. amend. XXII.

- e. If a case came before you challenging the eligibility of any individual to appear on a presidential ballot in violation of the 22nd Amendment and you concluded a candidate was ineligible to run for under that amendment, would you have any hesitation in ruling against them regardless of that individual’s political standing

or the political consequences of your decision?

Response: If such a case came before me, I would decide it based on the record, the parties' arguments, and the governing law, without regard to any party's political standing or the political consequences of the decision. That is what the judicial oath requires, *see* 28 U.S.C. § 453, and it has been my practice in every case for more than seven years as a district judge.

13. If confirmed, cases involving discrimination claims brought by LGBTQ+ individuals under Title VII or other federal civil rights statutes may come before you. Will you commit to treating these individuals with dignity by ensuring that your courtroom is a forum where all LGBTQ+ litigants, witnesses, and counsel are addressed respectfully -- including by use of their correct name and gender identity -- and where their claims receive the same full and fair consideration afforded to all parties?

Response: Every litigant, witness, and attorney who appears in my courtroom is entitled to be treated with dignity and respect, and that has been my practice for more than seven years on the bench. If confirmed, claims brought by any individuals under Title VII or any other federal statute would receive the same full, fair, and impartial consideration afforded to all parties, in accordance with the binding precedents of the Supreme Court and Tenth Circuit.

14. Do you believe that individuals in immigration removal proceedings, including those who entered the United States without authorization, are entitled to the due process protections guaranteed under the US Constitution? Please explain.

Response: The Supreme Court has stated that the Fifth Amendment's Due Process Clause "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The Court has likewise long recognized that due process protections apply in removal proceedings. *See Reno v. Flores*, 507 U.S. 292, 306 (1993). I have applied, and if confirmed would continue to faithfully apply, the Supreme Court's precedents in this area.

15. If confirmed, will you commit to ensuring that every person who appears before you is treated with dignity and afforded the full protection of the Constitution and federal law regardless of their immigration status, national origin, or language?

Response: Yes. Every litigant is entitled to a judge who will hear his or her case with attention, respect, and an open mind, and the judicial oath requires judges to administer justice "without respect to persons." 28 U.S.C. § 453. In more than seven years on the bench, I have endeavored to treat every person in my courtroom with dignity while deciding every matter impartially, and I would continue to do so if confirmed.

16. What recourse do you believe is available to a federal judge whose orders are not followed?

Response: When I issue an order as a judge, I expect it to be followed. The proper recourse for a party that disagrees with an order is to seek reconsideration, appeal, or a stay. If a party nonetheless refused to comply, the appropriate response would depend on the circumstances, and the law provides established tools, including civil and criminal contempt. In the Tenth Circuit, a movant seeking civil contempt must prove by clear and convincing evidence that a valid court order existed, that the alleged contemnor had knowledge of the order, and that the alleged contemnor disobeyed it. *See ClearOne Communications, Inc. v. Bowers*, 651 F.3d 1200, 1210 (10th Cir. 2011). I would resolve any such matter through the judicial process, based on the parties' arguments and the governing law.

17. Please identify any publicly accessible social media, blog, forum, or other online account that you have created, maintained, controlled, contributed to, or posted under, on any platform since your initial appointment in 2019, if any. Please include any non-private (or any previously non-private) accounts on Twitter/X, Facebook, Instagram, LinkedIn, YouTube, TikTok, Truth Social, Substack, Reddit, any personal blogs or websites, or any comparable platforms. For each account, please state:

- a. the platform or service;
- b. the username, handle, screen name, and any display name associated with the account;
- c. the approximate dates the account was active;
- d. whether the account was maintained in your own name, under a pseudonym, or anonymously; and
- e. the account's current status (active, deactivated, deleted, or set to private).

Response: I have maintained social media accounts to keep in touch with friends and family. I have disclosed all responsive materials through my Senate Judiciary Questionnaire.

18. Since you were first under consideration for this nomination, have you deleted, deactivated, archived, restricted the visibility of, or removed content from any online account, or directed or requested that anyone do so on your behalf? If so, please identify the account and describe what was changed or removed and when.

Response: No.

19. In *Singh and Valle-Rodriguez*, you interpreted 8 U.S.C. § 1225 to permit mandatory detention without a bond hearing for individuals already present in the United States

whom the government classified as applicants for admission.

- a. How do you respond to the view of the majority of federal judges across the country that this interpretation is inconsistent with the statute's text and structure?

Response: The reasoning for my decision was explained in the written orders in these cases, which adopted the position of the Fifth and Eighth Circuit Courts of Appeals. I note that on June 30, the Tenth Circuit issued an opinion disagreeing with those sister circuits. In response, I immediately ordered the government to show cause in any pending cases why the petitioners should not be released or given a bond hearing.

- b. Does your reading of this statute have any limiting principle? If so, please explain.

Response: Please see my response to Question 19.a

Senator Peter Welch
Senate Judiciary Committee
Written Questions for Daniel Domenico
Hearing on “Nominations”
June 24, 2026

1. In January 2017, during an episode of the Craig Silverman show, you predicted that all Trump nominees will be painted as ‘anti-woman’, ‘anti-civil rights’ and ‘anti-free speech’ by Democratic members. Please explain what you meant by this statement.

Response: To the extent I recall, I do not believe I meant anything more than that such allegations were likely to be made towards any nominees at that time.

2. In 2016, you published an opinion piece in the Denver Post titled, “Senate has the right to delay Supreme Court nomination process.” You wrote in that piece, “If the [Supreme Court] is political, it is because liberal politicians, lawyers, judges and academics have successfully urged it to make itself a super-legislature.”
 - a. Please explain what you meant by this statement.

Response: As a private citizen, I made a statement about a matter of political debate. Now as a federal judge and pending nominee, I am not able to comment on such topics.

- b. The last time a majority of the court was appointed by a Democratic president was in 1970. Please explain how liberal politicians, lawyers, and judges have controlled the direction of the Supreme Court.

Response: Please see my response to Question 2.a.

3. In *Singh v. Blanche* and *Valle-Rodriguez v. Hagan*, you ruled that two undocumented immigrants apprehended in the interior of the United States were not entitled to a hearing before an immigration judge and had to remain in mandatory detention without bond. You acknowledged in your rulings that more 700 judges, including 23 appointed by President Trump, had ruled that the Department of Homeland Security’s (DHS) new policy expanding mandatory detention to any noncitizen present in the United States is unlawful. Please explain how you reached your determination.

Response: The reasoning for my decision was explained in the written orders in those cases, which adopted the position of the Fifth and Eighth Circuit Courts of Appeals. I note that on June 30, the Tenth Circuit issued an opinion disagreeing with those sister circuits. In response, I immediately ordered the government to show cause in any pending cases why the petitioners should not be released or given a bond hearing.

Questions for the Record

**Daniel D. Domenico – Nominee to be United States Circuit Judge for the Tenth Circuit
Sen. Adam Schiff (CA)**

1) How would you define public corruption as a matter of federal law?

Response: I am not familiar with a single, uniform definition of public corruption supplied by federal law. Conduct commonly understood as public corruption (such as bribery, extortion, fraud, and embezzlement by or involving public officials) may be addressed by a number of federal statutes. If a case presenting the question came before me, I would apply the definition supplied by the relevant statute as interpreted by binding precedent.

a) If one of your law clerks used their position to give or steer money to their friends, would you consider that public corruption?

Response: Yes.

2) Which of the two general election candidates lost 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. Beyond that, I agree with Justice Ketanji Brown Jackson, who, in her responses to this Committee's questions for the record pertaining to the 2016 and 2020 elections, explained that under the Code of Conduct for United States Judges it is inappropriate for a sitting federal judge to publicly comment on such matters of political dispute. *See* Canons 3(A)(6), 5.

3) Do you agree that Article III Courts are courts of limited subject-matter jurisdiction?

Response: Yes.

a) Describe the Article III cases and controversies requirement.

Response: Article III limits the federal judicial power to the resolution of "Cases" and "Controversies." From that limitation, the Supreme Court has derived a number of justiciability doctrines, including standing, ripeness, mootness, and the political-question doctrine. *See, e.g., DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). To establish standing, a plaintiff "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

b) Are federal courts limited to cases and controversies where the parties have adverse legal interests?

Response: The Supreme Court has stated that Article III generally requires a concrete dispute between parties with adverse legal interests. *See United States v. Windsor*, 570 U.S. 744 (2013).

c) Would a lawsuit where the plaintiff and defendant are the same individual be frivolous?

Response: Whether a particular lawsuit is frivolous or presents a justiciable case or controversy is a question that could come before me, and I cannot prejudge it in the abstract. If such a suit arose in a case assigned to me, I would consider the parties' arguments along with any jurisdictional defects and apply the governing precedent.

d) How does the legal profession typically respond to frivolous lawsuits?

Response: Courts and litigants have a variety of tools for responding to frivolous litigation. These include sanctions under Rule 11 of the Federal Rules of Civil Procedure, fees and costs for frivolous appeals under Rule 38 of the Federal Rules of Appellate Procedure, the courts' inherent authority, and, where warranted, referral of counsel to disciplinary authorities.

4) How would you describe your judicial philosophy?

Response: I have now served as a United States district judge for more than seven years, and my approach in every case has been the same: to decide the matter based on the record before me and the governing law (the text of the applicable constitutional provisions, statutes, and rules, and the binding precedents of the Supreme Court and the Tenth Circuit) fairly and impartially, without regard to the identity of the parties or my own preferences.

5) How would you describe your philosophy regarding statutory interpretation?

Response: In statutory cases, I begin with the text of the statute, giving its words the ordinary meaning they had at the time of enactment, read in context and with a view to the structure of the statute as a whole, as Supreme Court and Tenth Circuit precedent instruct. I then apply all binding precedent governing the statute's interpretation.

a) What methodology do you use to ensure your rulings are predictable and properly constrained within the bounds of the law?

Response: In every case, I am bound by the record the parties present, the text of the governing constitutional provisions, statutes, and rules, and the binding precedents of the Supreme Court and the Tenth Circuit. I explain the reasons for my rulings in written orders or on the record, and those rulings are subject to appellate review.

- 6) When confronted with an ambiguous statute, how do you consider legislative history in your decision-making process?**

Response: Under Tenth Circuit precedent, legislative history may be consulted where the text of a statute is ambiguous. *See, e.g., Diallo v. Gonzales*, 447 F.3d 1274, 1282 (10th Cir. 2006). When no guiding precedent exists, legislative history also has potential to be useful as evidence of original public meaning when the meaning of the text of a statute is unclear.

- 7) You recently broke from your district court colleagues and agreed with the government’s argument in a case regarding immigrant detentions. Acknowledging your position was an outlier among your peers, you wrote that “The majority of district courts, including all of the judges in this District who have addressed the issue, have found that detention of noncitizens similar to the petitioner under (the mandatory detention provision) is improper.”**

- a) What specific canons of statutory interpretation did you rely on to reach your decision in this case?**

Response: The reasoning for my decision was explained in the written orders in those cases, which adopted the position of the Fifth and Eighth Circuit Courts of Appeals. I note that on June 30, the Tenth Circuit issued an opinion disagreeing with those sister circuits. In response, I immediately ordered the government to show cause in any pending cases why the petitioners should not be released or given a bond hearing. Beyond that, litigation on these topics is ongoing and further comment would be improper.

- b) To what extent did you defer to executive interpretations when making this decision?**

Response: Please see my response to Question 7(a).

- 8) You have previously stated that “[T]he courts should replace their intention-based method of interpretation and instead defer to executive interpretations in most cases.”**

- a) Please explain this statement.**

Response: This statement was in an article written in 2011 while I was state Solicitor General and was largely focused on the Colorado state courts’ approach. In the 15 years since that article was written, both state and federal courts’ approaches to such questions have evolved. In any event, as a judge my role is to apply binding precedents, and my personal views are irrelevant.

- b) How do you evaluate circumstances where the executive’s interpretation seemingly goes against the legislature’s intent?**

Response: Generally, the text of a statute is what governs, not the executive's interpretation or the legislature's intent. *See Loper Bright*. If this issue were to arise, I would follow all binding precedent of the Supreme Court and the Tenth Circuit and would decide the matter based on the record, the parties' arguments, and the governing law.

9) How do you define judicial activism?

Response: The term "judicial activism" has no settled legal definition and is not a phrase I use. To the extent the term has a useful meaning, I understand it to describe a judge exceeding his or her legitimate power or substituting his or her own policy preferences for the requirements of the governing law. My approach in every case, described in response to Question 4, is to do the opposite: to decide the matter based on the record and the governing law, fairly and impartially, without regard to my own preferences.

10) Supreme Court Justice Clarence Thomas has argued that a judge has a constitutional duty to overrule past Supreme Court precedent if it is "demonstrably erroneous," regardless of *stare decisis*.

a) Do you agree with this argument? Why or why not?

Response: As a lower court judge, I am bound to follow the Supreme Court's precedents regardless of any view about their correctness, and I have done so throughout my service and would continue to do so if confirmed.

b) What is your approach to considering *stare decisis*?

Response: Please see my response to Question 10(a).

11) Is it ever appropriate for a federal prosecutor or other party before a federal judge to disobey or otherwise fail to comply with a court order?

Response: A party must generally comply with a court order directed to it, and when I issue an order as a judge, I expect it to be followed. The proper recourse for a party that disagrees with an order is to seek reconsideration, appeal, or a stay. The Supreme Court has held that even an order later determined to be erroneous must generally be obeyed until it is reversed, stayed, or dissolved. *See, e.g., Walker v. City of Birmingham*, 388 U.S. 307 (1967); *United States v. United Mine Workers*, 330 U.S. 258 (1947). Courts have recognized only narrow exceptions—for example, where an order is void for lack of jurisdiction, *see Ex parte Fisk*, 113 U.S. 713 (1885), where compliance is factually impossible, *see United States v. Rylander*, 460 U.S. 752, 757 (1983), or where a party deliberately incurs contempt sanctions as the established avenue for obtaining appellate review of an otherwise unappealable interlocutory order, *see Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 111 (2009). Because cases presenting these issues are being actively litigated in federal courts and could come before me, it would be inappropriate for me to opine beyond describing these established principles. If such issues came

before me, I would resolve them through the judicial process, based on the parties' arguments and the governing law and precedents.

- a) As a district court judge, how have you responded when a party disobeyed or otherwise failed to comply with your court order?**

Response: I have issued orders to show cause, begun contempt proceedings, and imposed sanctions.

- b) Have you ever entered an oral order in a federal case, whether or not you subsequently entered a written order? Please list any orders you have entered orally.**

Response: Orders are issued orally quite frequently and it would be impossible to list them all. For example, in nearly every change of plea hearing, I issue perhaps a dozen orders, all orally: accepting the guilty plea, adjudging the defendant guilty of the charges, setting a sentencing date, requiring the probation office to perform a presentence investigation and file a presentence report, setting dates for objections and motions related to sentencing, and so on. Likewise, during any trial, I issue scores of orders orally from the bench. If the question is focused on more substantive orders that are typically done via written opinion, I can think of one, which is listed on my Questionnaire: In *Denver Public Schools v. Noem, et al.*, Case No. 1:25-cv-00474-DDD-KAS, I denied the motion for a preliminary injunction from the bench. The plaintiffs subsequently voluntarily dismissed the case.

- c) Did you expect the litigant and/or their counsel to comply with the oral order?**

Response: Yes.

- d) If confirmed, how would you respond if a party before you disobeyed or otherwise failed to comply with an order of the Tenth Circuit?**

Response: Individual judges on the circuit court generally do not have the authority to take action unilaterally, but I would work with the Court to seek appropriate remedial action, which might include orders to show cause, contempt proceedings, or sanctions, depending on the circumstances.

12) What is the legal standard for determining a “threat” under federal criminal law?

Response: In *Counterman v. Colorado*, 600 U.S. 66, 74 (2023), the Supreme Court reaffirmed that “true threats” of violence fall within a historically unprotected category of communications, describing true threats as serious expressions conveying that a speaker means to commit an act of unlawful violence. The Court also held that, in this context, the First Amendment requires proof that the defendant was at least reckless as to the

threatening nature of his statements. I have applied, and if confirmed would continue to faithfully apply, these and all other binding precedents in this area.

- 13) You served as counsel of record in *McDaniel-Miccio v. Colorado* and *Brinkman v. Colorado*. In urging the state trial court to uphold Colorado’s ban on same-sex marriage, you stated “[t]he right to marry does not encompass a right to marry anyone one chooses.”**

- a) Please explain your statement.**

Response: As Colorado’s Solicitor General, I represented the State of Colorado, and my duty was to defend the State’s laws and the legal positions of my client. The statement quoted was an argument advanced on the State’s behalf in defense of its then-existing marriage laws, under the legal landscape as it stood before the Supreme Court’s decision in *Obergefell v. Hodges*, 576 U.S. 644 (2015). The positions I advanced in that role were those of the State, not expressions of my personal views. For more than seven years as a United States district judge, I have decided every case based on the facts in the record and the governing law, without regard to any position I advanced on behalf of a client in practice.

- b) In *Obergefell v. Hodges*, the Supreme Court recognized that the right to marriage extends to same-sex couples. Do you believe this case was properly decided?**

Response: It is generally inappropriate for a sitting judge and judicial nominee to grade particular precedents of the Supreme Court. As noted, *Obergefell v. Hodges* is a binding precedent of the Supreme Court, and I have applied and would continue to apply it if confirmed.

- c) If confirmed, will you faithfully enforce the precedent established in *Obergefell*?**

Response: Yes. *Obergefell* is a binding precedent of the Supreme Court. I have applied it and would continue to do so if confirmed.