Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Cristina D. Silva
Judicial Nominee to the U.S. District Court for the District of Nevada

1. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   Response: I am unfamiliar with any case law or legal text that defines "super precedent." It is my understanding that legal scholars discuss cases that have been repeatedly upheld in Supreme Court decisions, such as *Brown v. Board of Education,* as having become "super precedent." I have no opinion on what if any cases have attained this status. If confirmed as a federal district court judge, I would apply all binding Supreme Court and Ninth Circuit precedent.

2. **Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

   Response: I am unfamiliar with Judge Ketanji Brown's statement and therefore I am unable to response to this question. I believe our Constitution is an enduring document and that is adaptable to meet modern issues and controversies.

3. **Should judicial decisions take into consideration principles of social "equity"?**

   Response: The specific factors a federal district court judge should take into account at sentencing are set forth in 18 U.S.C. § 3553(a). If confirmed, I will fully and faithfully follow and apply the law.

4. **What is the legal standard for "threats" in the Ninth Circuit?**

   Response: The Ninth Circuit has held that "speech may be deemed unprotected by the First Amendment as a 'true threat' only upon proof that the speaker subjectively intended the speech as a threat." *United States v. Cassel*, 408 F.3d 622, 633 (2005). In determining whether speech is a true threat, the Ninth Circuit considers "the surrounding events and reaction of the listeners." *Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1075 (9th Cir. 2002), as amended (July 10, 2002) (quoting *United States v. Orozco-Santillan*, 903 F.2d 1262, 1265 (9th Cir. 1990)). In civil cases, the Ninth Circuit employs an "objective test" to make that determination. *See Roy v. United States*, 416 F.2d 874, 878 (9th Cir.1969). Under that test, the Court instructs to consider "whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault." *Planned Parenthood*, 290 F.3d at 1074 (quoting *Orozco-Santillan*, 903 F.2d at 1265). In criminal cases, the Ninth Circuit requires that the defendant subjectively intend to threaten. *United States v. Bagdasarian*, 652 F.3d 1113, 1117 (9th Cir. 2011).

5. **In the Ninth Circuit, when is a fetus considered "viable"?**

   Response: The Ninth Circuit is required to follow Supreme Court precedent. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), held viability tended to be around 23 to 24 weeks but could shift toward an earlier date through advancements in medical technology. *Casey,* 505 U.S. at 872.

6. **How involved were you with the planning and execution of the celebration by Association of Reproductive Health Professionals (ARHP) of its 40-year anniversary in 2003?**

   Response: To the best of my recollection, I played little to no role in that celebration as I left ARHP to join the staff of the National Association of Women Judges (NAWJ) in January of 2003.

7. **In 2005, ARHP's position statement noted: "Health care providers who do not provide abortion services on moral or religious grounds have a professional obligation to provide their patients with a timely referral to another health professional known to provide such services." Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."**

   a. **Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?**

      Response: A plaintiff bears the responsibility of showing that a law infringes or restricts religious exercise. Thereafter, a court must evaluate whether a law infringes upon or restricts practices based on religion. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993); *see also Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719, 1724 (2018). If a law that is not "neutral and generally applicable" in that it treats "any comparable secular activity more favorably than religious exercise" and is therefore subject to strict scrutiny. *Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Church of the Lukumi,* 508 U.S. at 531-32 (1993). A government policy can survive strict scrutiny only if it advances "interests of the highest order" and is narrowly tailored to achieve those interests. *Lukumi*, 508 U.S. at 546, 113 S. Ct. 2217 (internal quotation marks omitted).

   b. **How is a burden deemed to be "substantial[]" under current caselaw?**

      Response: The Religious Land Use and Institutionalized Persons Act (RLUIPA) replaced a void provision of the Religious Freedom Restoration Act (RFRA). The RLUIPA prohibits the government from imposing "substantial burdens" on "religious exercise" unless there exists a compelling governmental interest and the burden is the least restrictive means of satisfying the governmental interest. *See* 42 U.S.C. § 2000cc (a)(1)(A)-(B); *see Burwell v. Hobby Lobby Stores, Inc.*, 573

U.S. 682, 719, 726 (2014) (analyzing and concluding that a government regulation substantially burdened the exercise of religion). The RLUIPA did not define "substantial burden." As a result, Courts evaluate whether something qualifies as a substantial burden" based on the plain language of the words and consideration of Supreme Court and Circuit precedent to make that determination. If confirmed, I will fully and faithfully apply Supreme Court and Circuit Court precedent.

8. **What is the legal basis for a nationwide injunction? What considerations would you note as a district judge (if confirmed) when deciding whether to grant one?**

   Response: My understanding is that the legal basis for such injunctions is a matter of ongoing discourse. I further understand that some federal courts have recently issued nationwide injunctions enjoining the government from carrying out certain actions. *See, e.g., Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599 (2020); *Trump v. Hawaii*, 138 S. Ct. 2392, 201 L. Ed. 2d 775 (2018). If confirmed, and if a party before me sought a nationwide injunction, I would closely examine and apply existing Supreme Court and Ninth Circuit precedent in deciding whether to deny or grant the injunction.

9. **What legal standard would you apply in evaluating whether a redistricting map is racially gerrymandered?**

   Response: I would apply the two-step analysis discussing in *Cooper v. Harris*, 137 S. Ct. 1455, 1459 (2017). First, I would determine if the plaintiff established that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Id.* (citing *Miller v. Johnson,* 515 U.S. 900, 916 (1995)). Second, if racial considerations did predominate the legislature's motivation, the burden would then shift to the State to prove that its race-based sorting of voters serves a "compelling interest" and is "narrowly tailored" to meet that interest.

10. **What is implicit bias?**

    Response: Implicit bias (or implicit association) is the unconscious attribution of particular qualities to a member of a certain social group.

11. **Is the federal judiciary affected by implicit bias?**

    Response: It is my understanding that everyone is affected by implicit bias in some way.

12. **How does implicit bias impact you in your day to day role as a judge, particularly as it pertains to your:**

    a. **Decisions regarding pre-trial detention?**
    b. **Decisions regarding sentencing?**

Response to questions 12a and 12b: As a sitting judge, whether in making pre-trial detention or sentencing determinations, I work diligently to treat every defendant who appears before me fairly, and with dignity and respect. I carefully consider the arguments of counsel, together with a number of other individualized factors, including but not limited to, age, education, prior criminal history, the safety of the community, the risk of non-appearance, and any substance abuse or mental health concerns. I do not "pre-decide" any issue, and as responsive to this question, to include detention and sentencing determinations. Instead I engage in deliberative processing and consider all the information placed in front of me, to include the arguments of counsel, before rendering a decision.

13. **Please discuss the ways in which you have deliberately worked to "[i]ncrease [your] direct contact with diverse populations" to eliminate bias.**

Response: One way I work to increase my direct contact with diverse populations is overseeing the Eighth Judicial District Court's Re-Entry Program. I work with individuals suffering from substance use disorders who are either on parole, or who are supervised inmates that are participate in the program pursuant to Nevada Revised Statutes. As a general matter, the Eighth Judicial District Court's Specialty Court are not open to individuals who have been convicted of violent offenses but are intended to provide treatment to offenders, reduce drug related crimes, and to provide programming for participants to gain life skills and educational advancements. The Re-Entry Court participants come from varied and diverse backgrounds. Some never graduated from high school. Others were once professionals who became addicted to opioids. Others admit that until they participated in the program, they never went a single day in over 30 years without using a controlled substance.

Another way I work to increase my contact with diverse populations is by volunteering to participate in various moot courts or mock trials at the University of Nevada at Las Vegas's William S. Boyd School of Law. I find I always learn something new when discussing various subject matters with law students who come from diverse backgrounds.

14. **How often do you conduct internal reviews of your practices and procedures to eliminate bias?**

Response: I conduct regular reviews of my practices in procedures to limit bias in my courtroom. "Regular" is a fluid term depending on a number of factors, including any specific needs of my docket, the court, and any changes to court procedure. For example, given the COVID-19 pandemic, in-custody defendants are not transported to my courtroom for hearings. Instead, they appear via video-teleconferencing. Video-court is a much different experience than being able to observe and assess an individual in person. Therefore I am mindful that my perception of an individual as an image over a computer screen might be incomplete, or that person might have certain developmental challenges that make video-court particularly challenging for the defendants.

15. **Do parents have a constitutional right to direct the education of their children?**

    Response: The Supreme Court has determined that parents have a right to direct the education of their children. In *Meyer v. Nebraska*, 262 U.S. 390 (1923) the Supreme Court explained that the Due Process Clause of the Fourteenth Amendment protects this liberty, incorporating "the right to marry, establish a home, and bring up children." Two years later in *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925), the Supreme Court determined that a statute requiring children to attend public schools interfered with the right of parents to select private or parochial schools for their children.

16. **Who should respond to a domestic violence call where there is an allegation that the aggressor is armed—the police or a social worker?**

    Response: This is a question best left to policy makers. As a judge, I am duty bound apply the law and precedent to the facts of any case that comes before me.

17. **Do you believe that we should defund police departments? Please explain.**

    Response: This is a question left to policy makers, elected officials, and the public to discuss, debate, and decide. As a judge, I am duty bound apply the law and precedent to the facts of any case that comes before me.

18. **Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.**

    Response: This is a question left to policy makers and local elected officials to discuss and decide. As a judge, I am duty bound to apply the law and precedent to the facts of any case that comes before me.

19. **In what situation(s) does qualified immunity not apply to a law enforcement officer in Nevada?**

    Response: Qualified immunity would not attach to a state official who clearly violates established statutory or constitutional rights. *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 458, 168 P.3d 1055, 1061 (2007) (citing *Harlow v. Fitzgerald,* 457 U.S. 800, 817–18, (1982)).

20. **In a False Claims Act case, what is the standard used by the Ninth Circuit for determining whether a false claim is material?**

    Response: In *United States ex rel. Campie v. Gilead Scis., Inc.*, the Ninth Circuit held that a falsehood is material under the False Claims Act if it has "a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." *United States ex rel. Campie v. Gilead Scis., Inc.*, 862 F.3d 890, 904–05 (9th Cir. 2017) (citing 31 U.S.C. § 3729(b)(4)).

21. **What legal standard and circuit precedents would you apply in evaluating whether a regulation or statute infringes on Second Amendment rights?**

Response: As set forth in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the right to keep and bear arms is a fundamental right. If confirmed, I would fully and faithfully apply the aforementioned precedent, and another other appropriate Supreme Court and Ninth Circuit precedent in rendering my decision.

22. **Please describe your understanding of the Supreme Court and Ninth Circuit precedents concerning the public use requirement of the Fifth Amendment's Takings Clause.**

Response: The Fifth Amendment to the Constitution proscribes the "taking" of private property "for public use without just compensation." U.S. Const., Amend. V. In *Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1023 (9th Cir. 2007), the Ninth Circuit summarized Supreme Court precedent in regards to the public use clause, writing:

> "The Public Use Clause generally holds that "one person's property may not be taken for the benefit of another private person without justifying public purpose, even though compensation be paid." *Thompson v. Consolidated Gas Utilities Corp.*, 300 U.S. 55, 80 (1937). As the Supreme Court made clear in *Kelo v. City of New London, Connecticut*, 545 U.S. 469 (2005), this requirement is not a stringent one. Indeed, Kelo specifically noted that the Fifth Amendment provides "legislatures broad latitude in determining what public needs justify the use of the takings power.'" *Id.* at 483, 125 S. Ct. 2655.

To satisfy the Public Use Clause, a taking need only be "rationally related to a conceivable public purpose." *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 241 (1984).

23. **Please describe your understanding of the Supreme Court and Ninth Circuit precedents concerning limitations on "pretextual" takings under the Fifth Amendment's Takings Clause.**

Response: The Supreme Court has held that a taking is unconstitutional when made to confer a private benefit on a particular private party or under pretext of a public purpose, when the actual purpose is to bestow a private benefit. *Kelo v. City of New London*, 545 U.S. 469, 477-78 (2005). Stated otherwise, if the taking is not rationally related to a conceivable public purpose, it is unlawful.

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

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

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

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

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

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

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

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

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

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

Response to question 24a-i: The Supreme Court decisions listed above are binding precedent. If confirmed, I will fully and faithfully apply Supreme Court precedent to the cases that come before me. With the exception of *Brown v. Board of Education* and *Loving v. Virginia* which involve issues that are highly unlikely to come before me, I refrain from opining on the validity or merits of Supreme Court decisions as my personal opinions play no role in my decision making as a judge.

25. **Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."**

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

Response: No.

b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

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

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

    Response: No.

    b. **Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

    Response: No.

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

    a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund.**

    Response: No.

    b. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the**

Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

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

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

    Response: No.

    b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

    Response: No.

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

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

    Response: No.

    b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

    Response: No.

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

Response: Please see my answer to Question 36.

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

Response: No.

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

Response: No.

33. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

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

Response: No.

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

Response: No.

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

Response: In June 2021, I was contacted by General Counsel for Senators Cortez-Masto and Rosen and was asked if I would be interested in applying to the open U.S. District Court position. I advised I was interested and, as requested, submitted my application. I was then contacted in early July to set up an interview with the Senators' Southern

Nevada judicial selection committee, which occurred on July 21, 2021. I was advised shortly following the interview that the committee unanimously agreed to include my name, along with other names, for potential nomination for the position. On July 22, 2021, I had a phone call with staff for Senators Cortez-Masto and Rosen during which they advised that the Senators were submitting my name, along with others, for potential nomination.

On July 27, 2021, I was contacted by an attorney from the White House Counsel's Office, and interviewed the next day with attorneys from that office. Since August 10, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice.

On November 3, 2021, my nomination was submitted to the Senate. Following my nomination, I was in contact with officials from the Office of Legal Policy at the Department of Justice regarding the finalization of my Senate Judiciary Questionnaire (SJQ) and related documents. Following the submission of my SJQ, I was in contact with officials from the Office of Legal Policy at the Department of Justice and White House Counsel in preparation for my testimony before the Senate Judiciary Committee.

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

Response: On December 22, 2021, I received the questions for the record from members of the Senate Judiciary Committee. I immediately reviewed the questions and began formulating responses to the questions based on my own personal or legal knowledge, based on legal research I conducted to answer the questions submitted to me, and information I gathered in preparation for my nomination hearing. On December 30, 2021 I submitted my draft answers to the Office of Legal Policy for feedback, and after receiving that feedback, I finalized my answers for submission on January 10, 2022.

Senator Marsha Blackburn
Questions for the Record to Judge Cristina Dionne Silva
Nominee for the District of Nevada

1. **Prior to attending law school, you worked as a development associate for the pro-abortion group and Planned Parenthood affiliate, Association of Reproductive Health Professionals. This group opposes any legislation, regulation, or constitutional amendment that weakens Roe. Do you share this view?**

   Response: I have not worked at the Association of Reproductive Professionals since late 2002 or early 2003. My personal opinion on any topic plays no role in my decision making as a judicial officer, which I have been since 2019. If confirmed, I will apply Supreme Court and Ninth Circuit precedent to the cases that come before me.

2. **Can you please explain how you view the scope of the abortion right and where that right is grounded in the text of the Constitution?**

   Response: The Supreme Court held that there are certain "fundamental rights and liberty interests" that are not specifically enumerated in the Constitution. *Washington v. Glucksburg*, 521 U.S. 702 (1997). Those rights have been recognized by the Supreme Court through the due process clauses of the Fifth and Fourteenth Amendments. The right to an abortion has been recognized as one of the rights not specifically enumerated in the Constitution. *See Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833 (1992)). If confirmed, I will follow all Supreme Court precedent regarding this issue, as I would on any issue.

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

Questions for the Record for Cristina Dionne Silva, Nominee for the District Court for the District of Nevada

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **After about two years on the bench, how would you characterize your judicial philosophy thus far? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

   Response: I am unable to select just one of the above listed jurists as most akin to my judicial philosophy. They have all contributed to American jurisprudence in important ways. As for my judicial philosophy, I am a firm believer in fully and faithfully following

the law. I also believe in the importance always being prepared, and steadfastly aim to timely resolve the issues in front of me fairly, impartially, and with as much clarity as possible. Last but not least, I believe it is important to treat every party and litigant who appears before me with dignity and respect.

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

Response: Originalism is a legal theory that the text of the constitution should be given the original meaning at the time it became law. *See Black's Law Dictionary* (Seventh Edition) (defining originalism as the theory that the U.S. Constitution should be interpreted according to the intent of those who drafted and adopted it). I do believe it is important to review the text of the constitutional provision of an issue as part of any determination regarding how to decide a particular issue. In general, if confirmed as a federal district court judge, I would be bound by Supreme Court precedence regarding a particular constitutional provision as well as the interpretative method the Supreme Court has used.

3. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a 'living constitutionalist'?**

Response: It is my understanding that the method referred to as "living constitutionalism" involves a belief that the Constitution of the United States has relevant meaning beyond the original text and is an evolving document. I believe our Constitution is an enduring document and that is adaptable to meet modern issues. For example, air travel, cell phone and internet technology were certainly not contemplated by our founding fathers. However, the right to privacy set forth in the Fourth Amendment can be applied to search and seizure issues related to the aforementioned modern advancements. In general, if confirmed as a federal district court judge, I would be bound by and would fully and faithfully apply Supreme Court precedent regarding a particular constitutional provision as well as the interpretative method the Supreme Court has used.

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

Response: If there was no other binding precedent, no other persuasive authority on such the issue, and no ambiguity, I would be bound by that meaning.

5. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: No. A judge's decision should be not be influenced in any way by public opinion, clamor, or understanding. *See* Code of Conduct for United States Judges, Canon

3.A.(1) ("A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.") A judge should fully and faithfully apply the law to the cases and controversies that come before them.

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

Response: My personal opinion plays no role in my decision making as a judicial officer. If confirmed, I will apply Supreme Court and Ninth Circuit precedent to the cases and controversies that come before me.

7. **Before attending law school, you worked for two years at the Association of Reproductive Health Professionals. Your role was as a Development Associate. Did you share the core beliefs of this organization?**

Response: I worked for the Association of Reproductive Health Professionals for approximately one year, 20 years ago before I attended law school, had a legal career, or became a juge. As a sitting judge, as a nominee to a federal judgeship, I will respectfully decline to discuss any personal beliefs I may have on any topic because I would not want litigants to think I had pre-judged any issue that might come before me. My record as a judge for the past nearly three years demonstrates that I apply the law to the facts of the cases that come before me and I would continue to do so if confirmed as a federal district court judge.

a. **Do you personally oppose any legislation, regulation, or Constitutional amendment that would weaken *Roe v. Wade*?**

Response: My personal opinion plays no role in my decision making as a judicial officer. If confirmed, I will apply Supreme Court and Ninth Circuit precedent to any cases and controversies that come before me.

b. **Do you believe that private insurers should reimburse the cost of abortion services?**

Response: Please see my response to question 7a above.

c. **Do you oppose restrictions on reproductive health services and benefits imposed by faith-based hospitals and institutions?**

Response: Please see my response to question 7a above.

8. **Do religious medical providers have constitutionally protected rights to object to provide or administer medical services that violate their sincerely held religious beliefs?**

Response: It is my understanding that there are conscience protections in place for health care providers who refuse to perform, accommodate, or assist with certain health care services. Those protections are set forth in 42 U.S.C. § 300a-7, et. seq., the Public Service Act § 245, the Weldon Amendment, and Section 1553 of 42 U.S.C. § 18113. If confirmed, and a case came before me involving conscientious protections, I would fully and faithfully apply Supreme Court and Ninth Circuit precedent.

9. **Do you believe that religious educational institutions and churches should be subject to all non-discrimination laws, even those that might violate their sincerely held religious beliefs?**

Response: My personal opinion plays no role in my decision making as a judicial officer. If confirmed, I will apply Supreme Court and Ninth Circuit precedent to the cases and controversies that come before me.

10. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?**

Response: My understanding is that the Supreme Court has repeatedly held that there was limits to what can be required of private institutions. See e.g. *Tandom v. Newsom*, 141 S. Ct. 1294 (2021); *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868 (2021); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719, 1724 (2018); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 690–91 (2014). If confirmed, I would fully and faithfully apply Supreme Court and Ninth Circuit precedent to cases and controversies that come before me.

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

Response: The Religious Freedom Restoration Act (RFRA) prohibits "the federal government from taking any action that substantially burdens the exercise of religion unless that action constitutes the least restrictive means of serving a compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 690–91 (2014).

12. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different**

restrictions in those same zones. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 208 L.Ed.2d 206 (2020). The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.

Response: The Supreme Court held that the applicants were entitled to a preliminary injunction because they have shown a high likelihood of success on the merits of their First Amendment claims, that denial of relief would lead to irreparable injury, and granting relief would not harm the public interest. The Court issued a per curiam opinion, without any oral argument, finding that the applicants had met all of the requirements for a preliminary injunction.

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

Response: The *Tandon v. Newsom* case involved COVID-19 restrictions on private gatherings in California. The Supreme Court court held the Ninth Circuit erroneously denied an injunction to prevent the enforcement of those restrictions because it improperly treated comparable secular activities more favorably than at-home religious exercises. The *Tandon* decision established that "government regulations are not neutral and generally applicable…trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." 141 S. Ct. 1294, 1296 (2021) (citing *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020)).

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

Response: Yes. The Free Exercise Clause of the First Amendment protects an individual's right to act upon one's religious beliefs through every day activities, such as publicly discussing religion, the right to attend religiously affiliated schools, the right to discuss religion publicly, the right to evangelize, and other related rights.

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

Response: *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719, 1724 (2018) held that if application of a neutral law of general applicability is adjudicated by a state or local government body in a way that demonstrates hostility to religion, then the law violates the Constitution's religious neutrality requirement.

16. **Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: A proffered belief must be sincerely held. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719 (2018); *Callahan v. Woods,* 658 F.2d 679, 683 (9th Cir.1981); (quoting *Theriault v. Carlson*, 495 F.2d 390, 395 (5th Cir.), cert. denied, 419 U.S. 1003, 95 S. Ct. 323, 42 L.Ed.2d 279 (1974)). Further, a claimant's belief "must be rooted in religious belief, not in 'purely secular' philosophical concerns." *Callahan,* 658 F.2d at 683 (9th Cir.1981) (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215–16 (1972)); *Johnson v. Moore*, 948 F.2d 517, 520 (9th Cir.1991) (claims must be religious in nature). Determining whether a claim is "rooted in religious beliefs" requires analyzing whether the plaintiff's claim is related to his sincerely held religious belief. *Callahan*, 658 F.2d at 683–84.

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

   Response: Without more information or facts, I am unable to answer this question. Please see response to question 16 regarding how a court should evaluate whether or not an individual's religious beliefs are protected.

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

   Response: Please see response to question 16 regarding how a court should evaluate whether or not an individual's religious beliefs are protected.

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

   Response: To the best of my knowledge, the Catholic Church opposes abortion.

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

Response: The case involved two separate cases arising out of the Ninth Circuit. One case involved a teacher at a Catholic elementary school who brought an action against her employer for alleged age discrimination. In the second case, a teacher at a different Catholic elementary school brought an action alleging a violation of the Americans with Disabilities Act (ADA), arguing she was wrongfully fired for requesting leave to undergo breast cancer treatment. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2056-2060 (2020). The Supreme Court ruled that the Ninth Circuit erred in its application of the factors set forth in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012). Writing for the Court, Justice Alito noted "religious

education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission." *Our Lady of Guadalupe Sch.,* 140 S. Ct. at 2055. The Court held that a person not holding a specific title or having received specialized training of a religious leader can still hold an important religious function thereby satisfying the ministerial exception in employment discrimination. *Id.* at 2067-2069.

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

Response: In a unanimous decision, the Supreme Court reversed and remanded a decision out of the Third Circuit Court of Appeals holding that it was a violation of the Free Exercise Clause of the First Amendment by excluding, and ultimately terminating the contract with, the City of Philadelphia's Catholic Social Services from a foster care program due to the organization's refusal to certify same-sex couples *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868 (2021). The Court found that the City of Philadelphia's policy in question was not neutral and generally applicable, and therefore was subject to strict scrutiny. *Id.* at 1881-1182. The city failed to demonstrate that the policy in question failed to meet a compelling government interest and that it was narrowly tailored to meet that interest. *Id.*

19. **Explain your understanding of Justice Gorsuch's concurrence in the Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.**

Response: In *Mast v. Fillmore Cty., Minnesota*, 141 S. Ct. 2430 (2021), Justice Gorsuch's concurring opinion found the lower courts should reconsider its decisions the Supreme Court's holding in *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868 (2021). The concurrence sets forth his roadmap for free exercise claims following *Fulton.* He wrote that *Fulton* demands the government must establish its interest with specificity and preciseness. *Mast,* 141 S. Ct. at 2432 (citing *Fulton,* 141 S. Ct. at 1881). Further, Justice Gorsuch wrote the Court should consider the sorts of exemptions a state gives other groups and of what other jurisdictions exemptions for people of faith. *Id.* at 2432-2433. Finally, Justice Gorsuch wrote that the state must demonstrate its policy is narrowly tailored "with evidence," not merely with "supposition." *Id.* at 2433.

20. **If you are to join the district court, and supervise along with your colleagues the court's human resources programs, will it be appropriate for the court to provide its employees trainings which include the following**:

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

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

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

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

Response to questions 20a-d: I am not sure what role the district court judges play in supervising human resources programs or administrating human resources training through the Courts. I assume, but I am not sure, that the Administrative Office of the United States Courts is responsible for determining what sort of human resources training should be administrated to court employees. The aforementioned hypotheticals appear contrary to the law and therefore I do not believe it would be appropriate to provide trainings on said subject matter.

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

Response: As noted above, I am not sure what role the district court judges play in supervising the human resources programs or administrating human resources training through the Courts. I assume, but am not sure, that the Administrative Office of the United States Courts is responsible for determining what sort of human resources training should be administrated to Court employees. To the extent I would play a role in any human resources training, I commit to trainings that are consistent with applicable precedent.

22. **Is the criminal justice system systemically racist?**

Response: The subject of race and racism in the United States is one of ongoing debate, discourse, and litigation. This question raises an important policy question that is best to policy makers and citizens to discuss and address accordingly. As a sitting judge, I can state that I work every day to treat every person that appears before me with dignity and respect without regard to race, gender, age, etc.

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

Response: I believe it is important to consider an individual's qualifications, irrespective of race and/or gender, when making a political appointment.

24. **President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: This is a policy question best left for policy makers and citizens to discuss and address accordingly.

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

Response: *District of Columbia v. Heller*, 554 U.S. 570 (2008) held that the Second Amendment protects an individual's right to keep and bear arms.

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

Response: No. The right to bear arms is a fundamental right. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

Response: No. The right to vote is a fundamental right. The Constitution protects the right of all qualified citizens to vote, in state as well as in federal elections. U.S. Const. Amends. 14, 15, 17, 19, 23, 24; *Reynolds v. Sims*, 377 U.S. 533 (1964).

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

Response: I have not had a question along these lines presented to me since taking the bench in 2019. If confirmed, and such a question did come before me, I would apply all Supreme Court and Ninth Circuit precedent in rendering my decision.

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

Response: Case law has discussed a prosecutor's broad, but not unfettered discretion. *Wayte v. United States*, 470 U.S. 598, 608 (1985) (citing *United States v. Batchelder,* 442 U.S. 114, 125 (1979) (footnote omitted) (noting that prosecutorial discretion is broad, but not "unfettered' and that "enforcement of criminal laws is ... subject to constitutional constraints."); *United States v. Fokker Services B.V.*, 818 F.3d 733, 741 (D.C. Cir. 2016) (discussing prosecutorial authority of the executive branch and very limited judicial authority over charging decisions). The Department of Justice sets principles of federal prosecution that includes prosecutorial discretion as including initiating and declining prosecution, selecting charges, entering into plea agreements, making offers to plead nolo

contendere, entering into non-prosecution agreements in return for cooperation, and participating in sentencing. *See* USAM 9-27.110. Substantive changes to administrative rules is an action left to the agency or agencies, or where applicable, policymakers.

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

Response: No. Only Congress can officially end the death penalty with an act of legislation.

31. **Does a federal judge have authority to not apply the death penalty if it appropriately requested by a prosecutor?**

Response: Each federal death penalty case is authorized by Main Justice (DOJ) in Washington, D.C., in consultation with local United States Attorney Offices. If a death penalty is recommended, a federal judge must follow the process set forth in 18 U.S.C. § 3593 to determine whether a sentence of death is justified.

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

Response: In a *per curiam* decision, the Supreme Court held that 42 U.S.C. § 264(a) did not give the Center for Disease Control the authority to impose a nearly nationwide ban on evicting tenants from residential rental properties to slow the spread of COVID-19. *See generally, Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2485 (2021). The decision nullified a nationwide residential eviction moratorium. *Id.*

Senator Josh Hawley
Questions for the Record

Cristina Silva
Nominee, U.S. District Court for the District of Nevada

1. **You used to work for an affiliate of Planned Parenthood, the largest abortion provider in the country. That organization has taken far-left positions, including that abortion training should be a "standard component of medical education in all accredited institutions." That standard would necessarily prohibit pro-life people from undergoing medical training. At the time you worked at that organization, did you share that organization's belief that pro-life Americans should not become doctors?**

   Response: I do not believe that a person's personal views on abortion should preclude them becoming a doctor. Additionally, I would note that I worked for the Association of Reproductive Health Professionals as a development associate from the fall of 2001 to late 2002 or early 2003. Since that time, I have attended law school, had a career as prosecutor, and of most recent, a state court judge.

2. **Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."**

   a. **Do you agree with that philosophy?**

      Response: No.

   b. **If not, do you think it is a violation of the judicial oath to hold that philosophy?**

      Response: A judge, as part of their oath of office and pursuant to the Canons of Judicial Conduct, is required to fully, faithfully, and impartially apply Supreme Court and other controlling precedent, without regard to their own personal views.

3. **What is the standard for each kind of abstention in the court to which you have been nominated?**

   Response: As a sitting state court judge, I have not addressed any abstention doctrines, although I recall studying some of them while in law school. Some abstention doctrines are discussed below:

   (a) The Younger abstention doctrine requires federal courts to refrain from interfering with ongoing state court proceedings that implicate important state interests. The Supreme Court has extended Younger abstention to particular state civil proceedings that are akin to

criminal prosecutions. *See Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975).

(b) The Pullman abstention doctrine "is an extraordinary and narrow exception to the duty of a district court to adjudicate a controversy." *Wolfson v. Brammer*, 616 F.3d 1045, 1066 (9th Cir.2010) (internal alterations and quotation marks omitted). The Ninth Circuit has developed three independently mandated requirements to permit the district court to exercise discretion to abstain under Pullman:

> "(1) the case touches on a sensitive area of social policy upon which the federal courts ought not enter unless no alternative to its adjudication is open, (2) constitutional adjudication plainly can be avoided if a definite ruling on the state issue would terminate the controversy, and (3) the proper resolution of the possible determinative issue of state law is uncertain."

Courthouse News Serv. v. Planet, 750 F.3d 776, 783–84 (9th Cir. 2014) (citing *Porter v. Jones*, 319 F.3d 483, 492 (9th Cir.2003) (internal alteration and quotation marks omitted).

(c) The O'Shea abstention doctrine is an equitable abstention related to the Younger doctrine related to equitable relief. In *E.T. v. George,* the Ninth Circuit held that if "the equitable relief requested requires intrusive follow-up into state court proceedings, it constitutes 'a form of the monitoring of the operation of state court functions that is antipathetic to established principles of comity.'" 681 F.Supp.2d 1151, 1162 (E.D.Cal.2010) aff'd sub nom. *E.T. v. Cantil–Sakauye*, 682 F.3d 1121 (9th Cir.2012) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 500 (1974)).

(d) The Burford abstention doctrine is a narrow doctrine that is similar to the Younger doctrine in that it limits federal interference with state proceedings. Burford abstention is concerned with protecting state administrative processes from excessive federal interference. *Tucker v. First Md. Sav. & Loan, Inc.*, 942 F.2d 1401, 1404 (9th Cir.1991) (internal quotation marks omitted). It is only appropriate where the state has concentrated suits involving the local issue in a particular court; the federal issues are not easily distinguishable from a complicated state law issue or issues where the state courts might have special competence; and where federal review might disrupt state efforts to establish a coherent policy. *Tucker*, 942 F.2d at 1405. If the aforementioned factors exist, Burford abstention normally requires a court to dismiss an action. *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

(e) The Colorado River abstention doctrine requires federal courts to retain jurisdiction over concurrent state and federal litigation except in "exceptional" circumstances. The threshold question when considering the Colorado River doctrine is whether the state and federal actions are "substantially similar," although "exact parallelism" is not required. *Nakash v. Marciano*, 882 F.2d 1411, 1416 (9th Cir. 1989). A court must consider several factors in order to proper to apply Colorado River abstention, including which court first assumed jurisdiction over the property in dispute, the inconvenience of the federal forum, the desirability of avoiding piecemeal litigation, and the order in which jurisdiction was obtained. *Colorado River Water Conversation Dist. v. U.S.*, 424 U.S. 800, 818 (1976).

4. **Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?**

   Response: No.

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

      Response: Not applicable.

5. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

   Response: If confirmed, I would be bound to apply fully and faithfully the method of interpretation, and the interpretation, as established by the Supreme Court and Ninth Circuit precedent. For example, in cases involving the Second Amendment, the Supreme Court has made clear that courts should look to original public meaning to evaluate those questions. *See District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

   Response: When interpreting a statute, I first research whether or not there is any binding precedent from a higher court. If there is precedent, I am bound to apply it accordingly. If there is no precedent interpreting the statute at issue, I turn to the plain language of the statute. If the plain language is clear and unambiguous, then I would apply the plain meaning of the statute. *See Food Mktg. Inst. v. Argus Leader Media,* 139 S. Ct. 2356, 2364 (2019) (citing *Hughes Aircraft Co. v. Jacobson,* 525 U.S. 432, 438 (1999) (stating where an examination yields a clear answer, judges must stop.) If the language is ambiguous, I would turn to Supreme Court or Ninth Circuit cases for guidance. If I was unable to locate any guidance there, I would turn

to sister circuits for any available guidance. If I still found no guidance, I would then turn to accepted cannons of statutory interpretation to guide my decision making. Last, and only if ambiguity still remained, I may cautiously consult legislative history. As the Supreme Court cautioned in *Azar v. Allina Health Servs.*, "legislative history is not the law." *Azar v. Allina Health Servs.*139 S. Ct. 1804, 1814 (2019) (citing *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612, 1631 (2018)).

a. If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?

Response: See response to question 6, supra, as to when I might consider legislative history. Whether some history is more probative than others would likely depend on the particular statute at issue. But, as noted above, I would heed the Supreme Court's caution and consult legislative history cautiously.

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: No.

7. Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?

Response: *Glossip v. Gross,* 135 S. Ct. 824 (2015) affirmed the two-part test to determine if death penalty protocol constitutes cruel and unusual punishment set forth in *Baze v. Rees*, 553 U.S. 35 (2008). Prisoners must establish: (1) that the method presents a risk that is sure or very likely to cause serious illness and needless suffering; and (2) that the method gives rise to sufficiently imminent dangers. *Baze,* 553 U.S. at 52.

8. Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?

Response: Yes.

9. Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?

Response: In *District Attorney's Office for the Third Judicial District v. Osborne*, 557 U.S. 52 (2009), the Supreme Court held that there was no procedural or substantive due process right to access DNA evidence for a post-conviction habeas

petitioner. To the best of my knowledge, the Ninth Circuit has not recognized a constitutional right to DNA analysis.

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

Response: No. I will fully and faithfully carry out the duties of a United States District Court Judge. In my current position as a state court judge, I preside over pending death penalty cases and post-conviction proceedings where the death penalty was imposed.

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), a case from the Ninth Circuit, the Supreme Court held that courts must apply strict scrutiny under the Free Exercise Clause to any law that is not "neutral and generally applicable" in that it treats "any comparable secular activity more favorably than religious exercise." *See also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993). Facial neutrality alone does not alone does not determine if a law is neutral. A Court must evaluate whether a law infringes upon or restrict practices based on religion, and if it does, then it is not neutral. *Lukumi*, 508 U.S. at 533; *see also Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719, 1724 (2018) (holding that if application of a neutral law of general applicability is adjudicated by a state or local government body in a way that demonstrates hostility to religion, then the law violates the Constitution's religious neutrality requirement); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878 (2021) (when a restriction authorizes unrestricted discretionary exemptions to the restriction but the government declines to grant them to those invoking religious liberty, it is not generally applicable).

12. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: See response to question 11 above. If confirmed, I would be bound to apply Supreme Court and Ninth Circuit precedent.

13. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: My understanding is that there is a two-part test to evaluate if a person's religious belief is sincerely held. *See Malik v. Brown,*16 F.3d 330, 333 (9th Cir. 1994), supplemented, 65 F.3d 148 (9th Cir. 1995). First, the proffered belief must be sincerely held. *See Burwell v. Hobby Lobby*, 573 U.S. 682 (2014) ("it is not for [the Court] to say that plaintiffs religious are misstatement or insubstantial, instead the court's narrow function is to determine whether the line drawn reflects an honest conviction." (internal citation omitted)); *see also, Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719 (2018); accord *Callahan v. Woods,* 658 F.2d 679, 683 ((9th Cir.1981) (quoting *Theriault v. Carlson*, 495 F.2d 390, 395 (5th Cir.), cert. denied, 419 U.S. 1003 (1974)). Second a claimant's belief, "must be rooted in religious belief, not in 'purely secular' philosophical concerns." *Callahan,* 658 F.2d at 683 (9th Cir.1981) (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215–16 (1972)).

14. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: In *Heller,* the Supreme Court held that the Second Amendment provides an individual right to keep and bear arms. The decision rejected the argument that the Second Amendment right to keep and bear arms only belonged to a militia.

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: I issued a decision ordering a jury trial in a case involving a charge of misdemeanor battery due to the domestic relationship between the defendant and the victim. I found that the defendant was entitled to a jury trial because, if convicted at trial, he would lose his right to keep and bear arms. A copy of the decision is attached.

15. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: I am unfamiliar with Mr. Herbert Spencer's Social Statics as referenced by Justice Holmes and therefore I cannot offer a sound response to this question.

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

Response: My personal opinion plays no role in my decision making as a judicial officer. If confirmed, I will apply Supreme Court and Ninth Circuit precedent to the cases that come before me. In reviewing cases discussing *Lochner*, I will note that the Supreme Court has held that the "doctrine that prevailed in Lochner…has long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730, 83 S. Ct. 1028, 1031, 10 L. Ed. 2d 93 (1963).

16. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

Response: Which the exception of *Lochner*, I am unfamiliar with any other case that not been formally overruled. I would fully and faithfully follow and apply all binding Supreme Court precedent.

a. If so, what are they?

Response: Please see answer to question 16 above.

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

Response: I noted no exception. Yes, if confirmed as a district court judge, it would be my duty to fully and faithfully apply all Supreme Court precedent.

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

a. Do you agree with Judge Learned Hand?

Response: I am unfamiliar with the facts of this case and have not addressed any cases involving questions of market share since I took the state court bench in 2019. If confirmed as a federal district court judge and a case came before me involving an antitrust claim, I would carefully review the facts of the case before me and then fully and faithfully apply binding Supreme Court and Ninth Circuit precedent. Therefore, I take no position on Judge Hand's opinion.

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

Response: Please see response to question 17a above.

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: As noted above, I have not had a case involving a question of market shares or monopolies, or any alleged violations of the Sherman Act. However, I am familiar that with the Supreme Court's decision in *NCAA v. Bd. of Regents of the Univ. of Oklahoma*, 468 U.S. 85, 109 n.38, (1984) which held that "market power is the ability to raise prices above those that would be charged in a competitive market." The Supreme Court defined monopoly power as "the power to control prices or exclude competition." *United States v. Grinnell Corp.*, 384 U.S. 563, 571 (1966). If confirmed, I will fully and faithfully apply Supreme Court and Ninth Circuit precedent to any cases that come before me.

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

Response: It is my understanding that "federal common law" is a set of binding federal rules adopted by the federal courts to govern issues that are not expressly addressed by the terms of a constitutional or statutory provision. Further, federal common law is valid only to the extent that Congress has not repealed the common law. If a case before me involving a question of federal common law, I would research any applicable precedent and apply it accordingly.

19. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: My decision would depend on the facts and circumstances of the case before me. This is because some state constitutions may provide greater protections than those provided by its federal equivalent. If a case before me involving a question of state civil rights, I would research any applicable precedent and apply it accordingly.

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

Response: Please see response to question 19 above. Also, without more information, I cannot answer this question in the affirmative or in the negative. In some circumstances, identical textual language is given the same meaning but in different contexts.

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

Response: My personal opinion plays no role in my decision making as a judicial officer. If confirmed, I will apply Supreme Court and Ninth Circuit precedent to the cases and controversies that come before me.

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

Response: As a nominee to the District Court, I generally believe that it would be inappropriate for me to express opinions regarding Supreme Court precedent, whether my opinions were in favor of or critical of that precedent. As noted in response to other questions, my personal opinion plays no role in my decision making as a judicial officer. I also believe that it is essential to the integrity of the judiciary that judges refrain from giving the impression that they have prejudged cases that might come before them as the result of political or legal debate. As such, I would fully and faithfully apply all Supreme Court and Ninth Circuit precedent. I am willing to make an exception with respect to *Brown v. Board of Ed. of Topeka*, 347 U.S. 483 (1954) and *Loving v. Virginia*, 388 U.S. 1 (1967), which involve issues that are highly unlikely to come before me, and state that I believe those cases were correctly decided.

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

Response: My understanding is that the legal basis for such injunctions is a matter of ongoing discourse. I further understand that some federal courts have recently issued nationwide injunctions enjoining the government from carrying out certain actions. *See, e.g., Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599 (2020); *Trump v. Hawaii*, 138 S. Ct. 2392, 201 L. Ed. 2d 775 (2018). If confirmed, and if a party before me sought a nationwide injunction, I would closely examine and apply existing Supreme Court and Ninth Circuit precedent.

a. If so, what is the source of that authority?

Response: The authority for a federal court to issue a preliminary injunction is derived from Federal Rule of Civil Procedure 65. To obtain a preliminary injunction, the party must establish that: (1) the party is likely to succeed on the merits; (2) that the party is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the party's favor; and (4) that an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A party requesting a preliminary injunction has a high burden to meet. If confirmed as a federal district court judge, I would apply and follow any applicable precedent.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: Please see answer to question 21a above.

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

Response: As I noted above, if I am confirmed, I would fully and faithfully follow precedent at the time concerning the propriety of such an injunction if such a request came before me.

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

Response: Federalism is a fundamental principle of our democracy, which establishes the divide between the federal and state governments. Like federal courts, the federal government is one of limited power. As set forth in the Constitution, unless specifically delegated to the federal government, the Tenth Amendment reserves powers to the states.

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

Response: Please see response to question 3, discussing abstention doctrines. If confirmed and a case comes before me that raises a question regarding application of an abstention doctrine, I will apply Supreme Court and Ninth Circuit precedent.

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

Response: I take no position and have no opinion on the relative advantages and disadvantages of awarding damages versus injunctive relief. If confirmed as a federal district judge, I would fully and faithfully follow precedent and award the appropriate relief based on the facts and issues of the case before me.

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

Response: In *Washington v. Glucksburg*, 521 U.S. 702 (1997), the Supreme Court held that there are certain "fundamental rights and liberty interests" that are not specifically enumerated in the Constitution. The rights have been recognized by the Supreme Court through the due process clauses of the Fifth and Fourteenth Amendments. The rights include, but are not limited to the right to have children (*Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942)); to marry (*Loving v. Virginia*, 388 U.S. 1 (1967)); right to travel (*Kent v. Dulles*, 357 U.S. 116 (1958)), the right to marital privacy and the use of contraception (*Griswold v. Connecticut*, 381 U.S. 479 (1965)); and the right to an abortion (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)).

27. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: The Free Exercise Clause is an important component of religious liberty protections provided by the First Amendment. If confirmed, I will fully and faithfully apply binding precedent from both the Supreme Court and the Ninth Circuit.

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

Response: Both freedom of worship and the free exercise of religion are protected by the Free Exercise Clause. Freedom of worship is an individual right to certain beliefs, as well as the right to attend religious services. The right to free exercise of religion is more encompassing. It includes the right to act upon one's religious beliefs through every day activities, such as publicly discussing religion, the right to attend religiously affiliated schools, the right to discuss religion publicly, the right to evangelize, and other related rights.

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: This question turns on the particular facts of a case. If confirmed, I will fully and faithfully apply Supreme Court and Ninth Circuit precedent.

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

Response: Please see my response to question 13. above.

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

Response: It is my understanding that Congress enacted the Religious Freedom Restoration Act in response to a 1990 decision from the Supreme Court which held that a facially-neutral and generally applicable law is not subject to strict scrutiny, even if it incidentally affects religious practice. *See Employment Division, Department of Human Resources of Oregon v. Smith*,

494 U.S. 872 (1990), at 878-79. The RFRA prohibits *any* agency, department, or government official of the United States from substantially burdening an individual's free exercise of religion even the burden is the result of a generally applicable law or rule. *See* 42 U.S.C. 2000bb-3.

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

28. Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."

a. What do you understand this statement to mean?

Response: I am unfamiliar with the circumstances under which Justice Scalia made this statement. However, as a sitting judge, I interpret this statement to mean that a judge who always reaches their desired outcome is not fairly and impartially considering the facts and arguments of the cases before them. A judge is duty bound to fairly and impartially decide cases, which inevitably results in one or more parties being dissatisfied with some judicial decisions.

29. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

Response: No.

a. If yes, please provide appropriate citations.

Response: Not applicable.

30. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: No.

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

Response: Systemic racism is a subject of discourse and debate best left to policymakers. As a sitting judge, my role does not involve the evaluation of systems or questions of social policy. Instead, I am responsible for deciding the cases that come before me based on the applicable precedent and the facts in the record. My

personal opinion plays no role in judicial decision making. If confirmed, I will be responsible for evaluating the facts of any case that comes before me involving claims of racial discrimination and applying Supreme Court and Ninth Circuit precedent to those facts.

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

Response: No.

33. How did you handle the situation?

Response: Not applicable.

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

Response: If confirmed, I commit to fully and faithfully applying Supreme Court and Ninth Circuit precedent.

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

Response: My views on the law have been most shaped through my current role as a state court judge, as well as prior experience as a prosecutor.

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

Response: My personal opinion plays no role in my judicial decision making. This is a question of on-going debate and discourse in our country. A case involving this question could come before me if confirmed as a federal district court judge. As a result, I do not believe it would be appropriate for me to opine on this question.

37. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: No.

38. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade,* 410 U.S. 113 (1973)?

Response: No.

b. The Supreme Court's substantive due process precedents?

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

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

a. Apple?

Response: No.

b. Amazon?

Response: Yes. Please see financial disclosure for additional information.

c. Google?

Response: No.

d. Facebook?

Response: No.

e. Twitter?

Response: No.

40. Have you ever authored or edited a brief that was filed in court without your name on the brief?

Response: I have not authored a brief that was filed in court without my name included. As part of my duties as supervisor at the U.S. Attorney's Office for the District of Nevada, I edited numerous documents written by less experienced attorneys.

a. If so, please identify those cases with appropriate citation.

Response: I do not have access to, nor recall, the cases where I edited the work of my supervisees.

41. Have you ever confessed error to a court?

Response: I do not recall confessing error on any significant issue before a court. I do recall in one case admitting error by law enforcement for the omission of certain facts in a search warrant. I litigated hundreds of cases and appeared in court countless times. It is possible that I confessed error on another issue at some point. If I made such a concession during my time as a litigator, it was either unremarkable or so long ago I cannot recall it in response to this question.

a. If so, please describe the circumstances.

Response: Please see response to question 41.

42. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: Testimony given to the Senate Judiciary Committee is given under the penalties of perjury. Nominees have a duty to be truthful and candid in answering the committee's questions while at the same time remaining mindful of their obligations under the Code of Conduct for United States Judges. I also have to be mindful of my ethical obligations as a sitting state court judge.

ORDG

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

WILLIAM BRADY,

Petitioner,

vs.

KAREN BENNETT-HARON and ELANA GRAHAM, JUSTICES OF THE PEACE, LAS VEGAS JUSTICE COURT,

Respondents,

and

STATE OF NEVADA,

Real Party in Interest.

Case No.: A-20-813259-W
Dept. No.: IX

ORDER GRANTING DEFENDANT'S PETITION FOR WRIT OF MANDAMUS

Pending before the Court is Plaintiff's Petition for Writ of Mandamus. For the reasons set forth herein, the Petition is GRANTED.

I. Relevant Background Facts[1]

On or about June 30, 2019, police were called to a residence on Radbourne Avenue in Las Vegas, Nevada in response to a call regarding a domestic disturbance. The police were called after a verbal argument allegedly turned into a physical confrontation between Petitioner, William Brady, and his daughter, Jessica.[2] It is alleged at some point in the argument Petitioner grabbed Jessica's right arm and pushed her up against a wall in an attempt to retrieve a clear vial containing a white substance inside.

[1] These facts are drawn from the information set forth in the State of Nevada's Return.
[2] The parties agree that the Petitioner/Defendant and the victim are father and daughter.

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DEPARTMENT IX
LAS VEGAS, NV 89155

II. Analysis

A writ of mandamus shall issue in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170. A writ of mandamus will not issue, however, if the petitioner has a plain, speedy, and adequate remedy at law. *See NRS 34.170*; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

The decision to consider a writ of mandamus is within the discretion of the Court. *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

"[D]istrict courts are granted exclusive final appellate jurisdiction in cases arising in Justices Courts." *Sandstrom v. Second Judicial Dist. Court*, 121 Nev. 657, 659, 119 P.3d 1250, 1252 (2005) (internal quotation marks omitted). Here, the Petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law, therefore, the Petitioner has met his burden demonstrating that extraordinary relief is warranted.

Petitioner asks this Court to grant a Writ of Mandamus because the Justice Court erred in denying his request for a jury trial. He argues because of the relationship between himself and the alleged victim, if convicted of simple battery, he would lose his Second Amendment right to bear arms pursuant to NRS 202.360. The State's position is inapposite, arguing that the Supreme Court's decision in *Andersen v. Eighth Judicial District Court* applies only to individuals charged with misdemeanor domestic violence under NRS 200.485, and not to persons charged with simple battery under NRS 200.481.

. . .

. . .

The right to a jury trial, as established by the Sixth Amendment of the United States Constitution and Article 1, Section 3 of the Nevada Constitution, does not extend to those offenses categorized as "petty" but attaches only to those crimes that are considered "serious" offenses. *Andersen v. Eighth Judicial Dist. Court*, 135 Nev. 321, 322, 448 P.3d 1120, 1122 (2019). Prior to 2019, the Nevada Supreme Court in *Amezcua v. Eighth Judicial District Court*, 130 Nev. 45, 319 P.3d 602 (2014), had held that Battery Constituting Domestic Violence was considered a petty crime for which an accused was not entitled to a jury trial. Five years later in *Andersen*, the Court overturned *Amezcua* and held that given recent legislative changes, which included the additional consequence of limiting the right to bear arms, the offense of Battery Constituting Domestic Violence is a serious offense that requires a jury trial. *Andersen*, 135 Nev. at 321. In explaining the effects of new legislation on the reclassification of the charge of Battery Constituting Domestic Violence from a petty offense to a serious one, the high Court in *Andersen* made clear that "NRS 202.360—a statute that prohibits the possession or control of firearms by certain persons—was amended to criminalize possession or control of a firearm in this state by a person who '[h]as been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a)(33).'" *Id.* at 323–24. The *Andersen* decision did not limit its ruling to cases where an individual is convicted pursuant to NRS 200.485 (domestic battery), but rather its reasoning was based on the prohibition of firearm possession by individuals whose prior convictions meet certain classifications as set forth in NRS 202.360. That statute, as amended in 2019, provides that "[a] person **shall** not own or have in his or her possession or under his or her custody or control any firearm if the person has been convicted in this State or any other state of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a)(33)." *Emphasis added.*

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LAS VEGAS, NV 89155

Title 18, United States Code, Section 921(a)(33), defines a "misdemeanor crime of domestic violence" as "an offense that...has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim." Thus, the amended statute is not limited to persons convicted under NRS 200.485. Rather, the firearms prohibition is based on this broader federal definition of a misdemeanor crime of domestic violence.

The definition of a misdemeanor crime of domestic violence as set forth in 18 U.S.C. § 921(a)(33) is used to prove violations of Title 18, United States Code, Section 922(g)(33), which makes it a federal crime to possess a firearm if you have been convicted of a misdemeanor crime of domestic violence. The United States Supreme Court addressed what must be established in order to prove a violation of 18 U.S.C. § 922(g)(33) in *United States v. Hayes*. 555 U.S. 415, 129 S.Ct. 1079, 172 L.Ed.2d 816 (2009). The Court in *Hayes* held "... that the domestic relationship, although it must be established beyond a reasonable doubt in a § 922(g)(9) firearms possession prosecution, need not be a defining element of the predicate offense." Justice Ginsburg, in writing for the majority, noted that "[t]he manner in which the offender acts, and the offender's relationship with the victim, are 'conceptually distinct attributes'" and "[h]ad Congress meant to make the latter as well as the former an element of the predicate offense, it likely would have used the plural 'elements,' as it has done in other offense-defining provisions." *Id.* at 421-422. Stated otherwise, the question of "whether a crime is one of 'domestic violence' depends on the identity of the victim rather than the elements of the offense." *U.S. v. Skoien*, 614 F.3d 638, 642 (7th Cir.2010); *see also U.S. v. White*, 593 F.3d 1199,

1204–05 (11th Cir.2010) (holding that a domestic relationship must exist as part of the facts giving rise to the predicate offense, but it need not be an element of the prior offense); *U.S. v. Griffith*, 455 F.3d 1339, 1346 (11th Cir.2006) (same).

A more recent Supreme Court case, *United States v. Castleman*, discussed the reasoning behind Congress's broad definition of a domestic violence crime and the parties thereto. 572 U.S. 157, 134 S. Ct. 1405, 188 L.Ed.2d 426 (2014).The *Castleman* Court noted that because perpetrators of domestic violence are "routinely prosecuted under generally applicable assault or battery laws," it makes sense for Congress to have classified as a "misdemeanor crime of domestic violence" the type of conduct that supports a common law battery conviction. 572 U.S. at 164, 134 S. Ct. at 1411 (2014).

A review of the Nevada legislative history behind the 2019 revisions to NRS 202.360 does not explicitly explain why the legislature relied upon the federal definition of a misdemeanor crime of domestic violence and how it interpreted it. But, it does explain the reasoning behind expanding the statute to include prohibiting possession of firearms by persons convicted of misdemeanor domestic violence offenses. During the legislative session, Senator Settelmeyer stated:

> "Strong feelings arise whenever the subject of guns is broached. You will hear from those today who strongly oppose various portions or all of this bill. I appreciate the debate. My goals in bringing this legislation forward are to keep guns out of the hands of those who have proven their propensity to commit violence against those they supposedly love and should protect and to allow law-abiding gun owners with CCW permits to visit Nevada without fear of breaking the law—and appropriately defend themselves in their vehicles as they can in their homes. I want to ensure our citizens' Second Amendment rights are upheld in a fair and uniform way across the State and provide a means of redress when that is not the case."
>
> Nevada Senate Committee on Judiciary Minutes, 78th Session, February 25, 2015 at 12-13.

With that in mind, it appears the United States Supreme Court's reasoning as to Congress's broad definition of domestic violence is also applicable here. The Nevada legislature did not intend to limit access to firearms by persons convicted of offenses specifically classified as "domestic violence offenses" as set forth in Nevada Revised Statutes. Instead, they adopted the broader federal definition to prohibit firearms possession by individuals convicted of domestic violence offenses under both federal and state law, based on the relationship between the defendant and victim.

Consequently, the State of Nevada's position that because the Petitioner is not charged with a violation of NRS 200.485 (domestic battery), he is not entitled to a jury trial is erroneous. The consequences of NRS 202.360 are not limited to persons convicted pursuant to NRS 200.485; those consequences can be triggered based on the underlying relationship between a defendant and the victim, even in a simple battery case. Stated otherwise, there must be a factual determination as to the relationship between the victim and the accused to determine whether it meets the definition of a domestic relationship as set forth in 18 U.S.C. § 921(a)(33). If it does, then it could trigger the consequences of NRS 202.360, thereby making the underlying offense "serious," and necessitating a jury trial.

The crux of this Court's analysis in this case focuses on the fact that the Petitioner and the victim are father and daughter. The charged crime and the relationship between the parties meet 18 U.S.C. § 921(a)(33)'s definition of a misdemeanor crime of domestic violence. As a result, the Defendant could potentially suffer the same consequences as the defendant in the *Andersen* case. Specifically, pursuant to NRS 202.360(1)(a), Petitioner could be deprived of his Second Amendment right to bear arms. Consequently, Petitioner's battery charge constitutes a serious offense and he is therefore entitled to a jury trial.

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To be clear, this decision does not mean that all persons charged with simple battery automatically are charged with a "serious offense." Nor should it be interpreted as expanding the definition of a "serious offense" to include any and all charges of simple battery. This ruling is limited to misdemeanor cases where the underlying charge or charges would meet the definition of a misdemeanor crime of domestic violence pursuant to Title 18, United States Code, Section 921(a)(33).

III. Conclusion

Accordingly, this Court finds Petitioner met his burden demonstrating that extraordinary relief is warranted. Defendant's Petition for Writ of Mandamus is GRANTED.

Dated this 15th day of June, 2020

DATED this _____ day of June, 2020.

CRISTINA D. SILVA
DISTRICT COURT JUDGE

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Cristina D. Silva

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of the foregoing ORDER GRANTING DEFENDANT'S PETITION FOR WRIT OF MANDAMUS was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program and/or emailed to any proper persons or parties not registered for electronic service.

/s/Jaye L. Beltran
Judicial Executive Assistant

CRISTINA D. SILVA
DISTRICT COURT JUDGE
DEPARTMENT IX
LAS VEGAS, NV 89155

DISTRICT COURT
CLARK COUNTY, NEVADA

William Brady, Plaintiff(s) vs. Karen Bennett-Haron, Defendant(s)	CASE NO: A-20-813259-W DEPT. NO. Department 9

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Envelope ID: 6185120
Service Date: 6/15/2020

Erika Ballou	balloued@clarkcountynv.gov
Brianna Lamanna	Brianna.Lamanna@clarkcountyda.com

Questions for the Record for Cristina Dionne Silva
From Senator Mazie K. Hirono

1. **As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:**

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

      No.

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

      No.

Senator Mike Lee
Questions for the Record
Cristina Silva, Nominee to the District Court for the District of Nevada

1. How would you describe your judicial philosophy?

Response: I have served as a judge on the Eighth Judicial District Court since 2019. Since that time, I believe my record as a judge demonstrates that I am a firm believer in fully and faithfully following the law. I also believe in the importance of always being prepared, and steadfastly aim to timely resolve the issues in front of me fairly, impartially, and with as much clarity as possible. Last but not least, I believe it is important to treat every party and litigant who appears before me with dignity and respect.

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

Response: When interpreting a statute, I first research whether or not there is any binding precedent from a higher court. If there is precedent, I apply it accordingly. If there is no precedent interpreting the statute at issue, I turn to the plain language of the statute. If the plain language is clear and unambiguous, then I would apply the plain meaning of the statute. *See Food Mktg. Inst. v. Argus Leader Media,* 139 S. Ct. 2356, 2364 (2019) (citing *Hughes Aircraft Co. v. Jacobson,* 525 U.S. 432, 438 (1999) (stating where an examination yields a clear answer, judges must stop.) If the language is ambiguous, I turn to other higher court decisions discussing or resolving questions of statutory interpretation for guidance. If I was unable to locate any guidance there, I would turn to sister courts for any available guidance. If I still found no guidance, I would then turn to accepted canons of statutory interpretation to guide my decision making. Last, and only if ambiguity still remained, I may cautiously consult legislative history. But, as the Supreme Court held in *Azar v. Allina Health Servs.*, "legislative history is not the law," which is why I would consult legislative history cautiously. *Azar v. Allina Health Servs.*139 S. Ct. 1804, 1814 (2019) (citing *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612, 1631 (2018)).

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

Response: I would apply a similar process to interpreting constitutional provision as I do statutory interpretation, as set forth in my response to question 2 above. I would first binding Supreme Court and Ninth Circuit precedent, and if available, I would apply it accordingly. If there was no precedent on the issue, I would turn to the plain language of the provision, and if it is clear and unambiguous, I would apply it accordingly. If the language is ambiguous, I would first look to Supreme Court and Ninth Circuit cases for guidance on how the provision should be interpreted. If there is no guidance from the Supreme Court or Ninth Circuit, I would turn to sister circuits for any available guidance.

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

Response: Please see response to question 3 above discussing application of plain language. If confirmed, I would fully and faithfully apply Supreme Court and Ninth Circuit precedent to any cases involving the interpretation of any constitutional provision.

5. How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?

Response: I would follow the process as set forth in response to question 2 above. When interpreting a statute, I first research whether or not there is any binding precedent from a higher court. If there is precedent, I am bound to apply it accordingly. If there is no precedent interpreting the statute at issue, I turn to the plain language of the statute. If the plain language is clear and unambiguous, then I would apply the plain meaning of the statute. *See Schindler Elevator Corp. v. United States ex rel. Kirk*, 563 U.S. 401, 407 (2011) (noting that a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law).

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

Response: As noted above, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law. *See Schindler Elevator Corp. v. United States ex rel. Kirk*, 563 U.S. 401, 407 (2011). Further, the answer to this question depends on the particular facts of a case. For example, if a case involves a Fourth Amendment issue and that issue involves the search of one's home, a judge could look at the plain language of the Fourth Amendment in rendering a decision. However, if the search at issue involved some sort of modern technology, the plain language may not be as easy to apply without an analysis of whether or not the technology at issue is an "effect" protected by the Fourth Amendment.

6. What are the constitutional requirements for standing?

Response: The Constitution limits a federal court's jurisdiction to adjudicate only genuine "Cases" and "Controversies." Art. III, § 2. That power includes the requirement that litigants have standing. To have standing, a plaintiff has to allege an injury fairly traceable to a defendant's allegedly unlawful conduct and that such injury is likely to be redressed by the plaintiff's requested relief. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992).

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

Response: Over 100 years ago, the Supreme Court affirmed that Congress has certain implied powers. *See McCullough v. Maryland*, 17 U.S. 316 (1819) (holding that Congress has the implied power to incorporate a central bank). Implied powers are derived from the Necessary and Proper Clause which permits Congress "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof," the Taxing and Spending Clause, which grants Congress the power to tax, and the Commerce Clause, which allows Congress to regulate commerce.

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

Response: In *Washington v. Glucksburg*, 521 U.S. 702 (1997), the Supreme Court held that there are certain "fundamental rights and liberty interests" that are not specifically enumerated in the Constitution. The rights have been recognized by the Supreme Court through the due process clauses of the Fifth and Fourteenth Amendments. The rights include, but are not limited to, the right to have children (*Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942)); to marry (*Loving v. Virginia*, 388 U.S. 1 (1967)); the right to travel (*Kent v. Dulles*, 357 U.S. 116 (1958)), the right to marital privacy and the use of contraception (*Griswold v. Connecticut*, 381 U.S. 479 (1965)); and the right to an abortion (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)).

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

Response: Please see response to question 8 above.

10. What rights are protected under substantive due process?

Response: Please see response to question 8 above.

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

Response: Any personal belief or opinions I may have play no role in my judicial decision making. If confirmed, I will fully and faithfully apply Supreme Court and Ninth Circuit precedent. I note that the Supreme Court decisions distinguish abortion rights from the economic rights at issue in Lochner. The right to an abortion has been upheld by the Supreme Court under substantive due process. *See generally, Roe v. Wade,* 410 U.S. 113 (1979); *Planned Parenthood v. Casey*, 505 U.S. 833, 878 (1992) (plurality opinion). In comparison, the economic rights at issue in *Lochner v. New York* were not granted protection under substantive due process.

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

Response: The Supreme Court has held that the Commerce Clause allows Congress to regulate three broad categories of interstate commerce: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activity that substantially affects interstate commerce. *See United States v. Lopez*, 514 U.S. 549, 558 (1995).

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

Response: The Supreme Court has designated "suspect classes" or "classifications" and the level of scrutiny to apply to those classifications. Those designations include designated race, alienage, national origin, and religion. *See, e.g., Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 n.4 (1976); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). If confirmed, I will fully and faithfully apply Supreme Court and Ninth Circuit precedent when deciding cases involving designated "suspect class."

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

Response: The framers of our Constitution purposely included a separation of powers and checks and balances to ensure our system of government was one of, and belonged to, the people. Articles I, II, and III are purposely separate to provide important checks on each branch government.

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

Response: I would first look to the text of the Constitution when considering whether or not a branch of government exceeded its authority. If I am unable to find an answer through a plain reading of the Constitution, I would consult Supreme Court precedent on executive and congressional power. In any decision rendered, I would fully and faithfully apply Supreme Court precedent.

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

Response: A judge's decision should never be swayed by personal opinions or sympathies. A judge should always apply the law to the facts of any case before them.

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: I could not choose between the two choices. A judge should fully and faithfully apply the law. In doing so, a judge will resolve questions of constitutionality or unconstitutionality of the law in question.

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

Response: I have not studied the rate at which the Supreme Court has validated or invalidated federal statutes and therefore provide no opinion regarding any trends. If confirmed, I affirm I will fully and faithfully follow and apply Supreme Court and Ninth Circuit precedent.

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

Response: Judicial review was established by the landmark case *Marbury v. Madison*, 5 U.S. 137 (1803) giving the judicial branch the authority to strike down laws that violate the Constitution. I am unfamiliar with judicial supremacy and therefore cannot explain the difference between judicial review and judicial supremacy.

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

Response: My personal opinion plays no role in my decision making as a judicial officer. If confirmed, I will fully and faithfully apply Supreme Court and Ninth Circuit precedent to the cases that come before me.

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

Response: I am unfamiliar with the full text of Federalist 78 and therefore take no position on Hamilton's statement. If confirmed, I will apply Supreme Court and Ninth Circuit precedent to all cases that come before me, including potential cases evaluating the actions of our branches of government.

22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: Please see my responses to questions 2 and 3.

23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: The factors a judge should consider at sentencing are set forth in 18 U.S.C. § 3553(a), which amongst other factors, provides that the Court should consider the nature and circumstances of the defendant. 18 U.S.C. § 3553(a)(1). If confirmed, I would consider the 3553(a) factors in my sentencing analysis.

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

Response: I am unfamiliar with this definition. As I have demonstrated is my practice as a sitting state court judge, my personal opinion plays no role in my judicial decision making. I look to the text of statutes and to binding precedent when applying the law to the cases that come before me. I can affirm that as a sitting state court judge, I consider all cases and the individuals who appear before me fairly and impartially. If confirmed to the federal bench, I will continue that practice.

25. Is there a difference between "equity" and "equality?" If so, what is it?

Response: If confirmed as a federal district court judge, and a case presented a question involving this issue, I would want to understand whether the basis for the legal claim was grounded in equity or equality. Generally, in a civil law context "equity" refers to a set of remedies available where no remedy in law is available. "Equality," in a legal context, could be interpreted a number of ways. For example, the "full faith and credit clause" could be considered providing a sort of equality to

citizens. Likewise, the body of cases discussing equal protection provides a type of equality. I would need to carefully analyze the legal claims and the facts in the record before reaching a decision.

26. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?

Response: The 14th Amendment's Equal Protection Clause provides for "equal protection of the laws." If confirmed, I will fully and faithfully apply Supreme Court and Ninth Circuit precedent to all cases that come before me, to include cases invoking the Equal Protection Clause.

27. How do you define "systemic racism?"

Response: The term "systemic racism" is a subject of ongoing public discourse and debate. I am unfamiliar with any one definition of "systemic racism." If confirmed, I will fully and faithfully apply Supreme Court and Ninth Circuit precedent to all cases that come before me and strive to ensure that all litigants are treated fairly in my courtroom.

28. How do you define "critical race theory?"

Response: Like the subject of "systemic racism," I know the subject of "critical race theory" is one ongoing public discourse and debate. I am unfamiliar with any one definition of "critical race theory." If confirmed, I will fully and faithfully apply Supreme Court and Ninth Circuit precedent to all cases that come before me and strive to ensure that all litigants are treated fairly in my courtroom.

29. Do you distinguish "critical race theory" from "systemic racism," and if so, how?

Response**:** Please see my responses to questions 27 and 28.

Questions from Senator Thom Tillis for Cristina Dionne Silva
Nominee to be United States District Judge for the District of Nevada

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes, a judge's personal opinions are irrelevant when interpreting and applying the law. A judge should decide a case based by applying relevant precedent.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: There are different definitions of judicial activism. I understand judicial activism to be a when a judge goes beyond the application of precedent and exercising the power of judicial review to set aside government acts and law. I do not believe judicial activism is appropriate. A judge is duty bound to apply precedent from the Supreme Court and relevant circuit court law in resolving the cases and controversies that come before them.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is an expectation and a requirement pursuant to the oath a judge takes when accepting the responsibility of becoming a judge, and also pursuant to the Code of Conduct for United States Judges. *See* Canon 3A(3) (A judge has "[t]the duty to hear all proceedings fairly…").

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: When a party or parties appear before a judge, it likely that one or more of the parties is likely going to dislike a decision or decisions you render. If a judge fully and faithfully applies precedent, then the judge has met their duty pursuant to their oath of office and code of judicial conduct, irrespective of a perceived undesirable outcome.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No. A judge's decision should be not be influenced in any way by public opinion or understanding. *See* Code of Conduct for United States Judges, Canon 3.A.(1) ("A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.")

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

Response: As I have demonstrated is my practice as a sitting state court judge, I will fully and faithfully apply the law to the facts of the cases before me. The Supreme Court firmly established in *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008) that the Second Amendment, the right to keep and bear arms is an individual right. If confirmed, I will fully and faithfully apply Supreme Court and Ninth Circuit precedent.

8. **How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?**

Response: As a threshold matter, were I to confront a case involving these issues I would need to know the facts and arguments of the parties in a case before being able to render a cogent decision. If confirmed, I will apply decisions from the Supreme Court and the Ninth Circuit to any similar issues that arise in cases before me. This issue may well implicate Second Amendment precedent such as *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), as well as precedent involving COVID restrictions that have implications on constitutional rights.

9. **What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?**

Response: Under Supreme Court precedent, officers are entitled to qualified immunity under 42 U.S.C § 1983 unless: (1) they violated a federal statutory or constitutional right; and (2) the unlawfulness of their conduct was clearly established at the time. *See Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7 (2021) (citing *White v. Pauly*, 137 S. Ct. 548 (2017) (per curiam) ("Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.")). If confirmed, I would follow Supreme Court and Ninth Circuit precedent when determining whether or not qualified immunity applied in a particular case.

10. **Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split second decisions when protecting public safety?**

Response: My personal opinion on any topic plays no role in my decision making as a judicial officer, which I have been since 2019. If confirmed, I will fully and faithfully apply Supreme Court and Ninth Circuit precedent to any cases that come before me.

11. **What do you believe should be the proper scope of qualified immunity protections for law enforcement?**

Response: My personal opinion on any topic plays no role in my decision making as a judicial officer, which I have been since 2019. If confirmed, I will fully and faithfully apply Supreme Court and Ninth Circuit precedent to any cases that come before me.

12. **Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?**

    Response: Although I never handled any patent cases in my legal or judicial career, I recognize that intellectual property cases are very important and I recognize that patent decisions have a tremendous impact on litigants, whether they are individuals or large corporations. I commit to doing the research necessary to prepare for these sorts of cases and will faithfully apply the law of the Supreme Court, the Ninth Circuit, and the Federal Circuit.

13. **How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.**

    a. ***ABC Pharmaceutical Company*** **develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?**

        Response: As a nominee to a District Court, it would be inappropriate for me to opine about the proper outcome in a hypothetical case as it could be interpreted in the future as pre-judging certain issues. If confirmed, I would apply Supreme Court, Ninth Circuit, and Federal Court precedent to the specific facts of any patent case before me.

    b. ***FinServCo*** **develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?**

        Response: Please see response to question 13a above.

    c. ***HumanGenetics*** **Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by**

humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?

Response: Please see response to question 13a above.

d. ***BetterThanTesla ElectricCo*** **develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla*'s billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?**

Response: Please see response to question 13a above.

e. ***Natural Laws and Substances, Inc.*** **specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?**

Response: Please see response to question 13a above.

f. **A business methods company, *Financial Services Troll,* specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?**

Response: Please see response to question 13a above.

g. ***BioTechCo*** **discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should *BioTechCo* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTechCo* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?**

Response: Please see response to question 13a above.

h. **Assuming *BioTechCo's* diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?**

Response: Please see response to question 13a above.

i. ***Hantson Pharmaceuticals* develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?**

Response: Please response to question 13a above.

j. ***Stoll Laboratories* discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?**

Response: Please see response to question 13a above.

14. **Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?**

Response: Please see response to question 12 above in response to the question regarding the above-listed hypotheticals. If confirmed, I would fully and faithfully apply Supreme Court, Ninth Circuit, and Federal Circuit precedent when deciding patent cases. Section 101 of the Patent Act defines the subject matter that may be patented. It defines four independent categories of inventions or discoveries that are eligible for protection: (1) processes; (2) machines; (3) manufactures; and (4) compositions of matter. Supreme Court precedent has established three specific exceptions to § 101's broad patent-eligibility principles. They are "laws of nature, physical phenomena, and abstract ideas." *Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980).

15. **Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the lawfulness of a use of digital content and technologies.**

a. **What experience do you have with copyright law?**

Response: I have never litigated an intellectual property case. I do not recall presiding over an intellectual property case since taking the bench in 2019. If confirmed, I will fully research the issue or issues before me, considering the arguments of the parties, and faithfully apply Supreme Court, Ninth Circuit, and Federal Circuit precedent.

b. **Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.**

Response: I have not had any experiences with the Digital Millennium Copyright Act. If confirmed, I will fully research the issue or issues before me, considering the arguments of the parties, and faithfully apply Supreme Court, Ninth Circuit, and Federal Circuit precedent.

c. **What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?**

Response: I have not had any experience addressing this subject matter. If confirmed, I will fully research the issue or issues before me, considering the arguments of the parties, and faithfully apply Supreme Court, Ninth Circuit, and Federal Circuit precedent.

d. **What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?**

Response: I have limited experience with First Amendment and free speech issues. In my former capacity as an Assistant United States Attorney, I handled a civil matter related to unsealing search warrants related to the 2017 Route 91 mass shooting in Las Vegas. Several news organizations filed a petition to unseal the warrants, arguing the media had a First Amendment right to access the warrants. *See* 2:17-cv-02775-JAD-PAL (Nev.Dist.Ct.). With one exception, I did not oppose the petition.

As a judge, I was assigned a limited number of cases involving questions of free speech pursuant to the First Amendment. I am no longer assigned a civil docket as I took over a homicide docket in January of 2021.

I am unfamiliar with intellectual property and copyright issues.

If confirmed, I will fully research the issue or issues before me, considering the arguments of the parties, and faithfully apply Supreme Court, Ninth Circuit, and Federal Circuit precedent.

16. **The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office recently reported courts have conflated statutory obligations and**

created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

a. **In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?**

Response: When interpreting a statute, I first apply any binding precedent from a higher court. If confirmed, I would be bound to apply Supreme Court and Ninth Circuit precedent. If there is no precedent interpreting the statute at issue, I turn to the plain language of the statute, which if clear and unambiguous, I apply it accordingly. *See Food Mktg. Inst. v. Argus Leader Media,* 139 S. Ct. 2356, 2364 (2019) (citing *Hughes Aircraft Co. v. Jacobson,* 525 U.S. 432, 438 (1999) (stating where an examination yields a clear answer, judges must stop.) If the language is ambiguous, I would turn to Supreme Court or Ninth Circuit cases for guidance. If I was unable to locate any guidance there, I would turn to sister circuits for any available guidance. If I still found no guidance, I would then turn to accepted cannons of statutory interpretation to guide my decision making. Last, I may cautiously consult legislative history because as the Supreme Court cautioned in *Azar v. Allina Health Servs.*, "legislative history is not the law." *Azar v. Allina Health Servs.*139 S. Ct. 1804, 1814 (2019) (citing *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612, 1631 (2018)).

b. **Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?**

Response: The Supreme Court has issued decisions discussing the weight that a reviewing court should give to an agency's determination over a particular issue. If confirmed, I would fully and faithfully apply precedent.

c. **Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?**

Response: As a nominee to a District Court, it would be inappropriate for me to opine about the proper outcome in a hypothetical case as it could be interpreted in the future as pre-judging certain issues. If confirmed, I would apply Supreme Court and other applicable precedent to the specific case before me.

17. **The scale of online copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and there was a lot less infringing material online.**

    a. **How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the ascension of dominant platforms, and the proliferation of automation and algorithms?**

    Response: If confirmed, I would fully and faithfully apply applicable law to the cases and controversies in front of me. This could include applying older statutory provisions or constitutional provisions to new types of technology. Where applicable, I would look to how the Supreme Court and Ninth Circuit have applied the DMCA to new technologies. Application of precedent would be required of me until new laws specifically addressing technological advancements are passed.

    b. **How can judges best interpret and apply prior judicial opinions that relied upon the then current state of technology once that technological landscape has changed?**

    Response: See response to Question 17a.

18. **In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about the fact that nearly one quarter of all patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.**

    a. **Do you see "judge shopping" and "forum shopping" as a problem in litigation?**

    Response: Judge or forum shopping could be a problem as it could call into question the independence and integrity of the judiciary. It is my understanding that cases in the District of Nevada are randomly assigned which helps alleviate some of the concern raised in this question.

    b. **If so, do you believe that district court judges have a responsibility not to encourage such conduct?**

    Response: United States Judges have an obligation to maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. *See* Canon 1, Code of Conduct for United States Judges. As a result, I believe judges do have an obligation to discourage such conduct.

c. **Do you think it is *ever* appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?**

Response: See response to Question 18b above.

d. **If so, please explain your reasoning. If not, do you commit not to engage in such conduct?**

Response: I commit to following my oath of office and the Code of Conduct for United States Judges.

19. **In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.**

a. **What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?**

Response: As a nominee to the District Court bench, I do not believe it would be appropriate for me to opine on what should be done in response to hypothetical scenarios as it could be interpreted as pre-judging certain issues that may come before me as a judge. I can however commit that I will fully and faithfully apply Supreme Court and Ninth Circuit precedent.

b. **Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?**

Response: See response to question 19a above.

20. **When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation's 94 judicial districts, does this undermine the perception of fairness and of the judiciary's evenhanded administration of justice?**

a. **If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?**

Response: As a nominee to the District Court bench, I do not believe it would be appropriate for me to opine on what should be done in response to hypothetical scenarios.

b. **To prevent the possibility of judge-shopping by allowing patent litigants to select a single judge division in which their case will be heard, would you**

support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?

Response: As a nominee to the District Court bench, I do not believe it would be appropriate for me to opine on what should be done in response to hypothetical scenarios. I can however commit that I support an independent judiciary and, if confirmed, I will work with my District Court colleagues to address any issues with case assignments or other issues of Court administration.

21. **Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.**

    a. **If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is behaving in a lawless manner?**

    Response: As a nominee to the District Court bench, I do not believe it would be appropriate for me to opine on what should be done in response to hypothetical scenarios. I can however commit that I will fully and faithfully apply Supreme Court and Ninth Circuit precedent.

    b. **Would five mandamus reversals be sufficient? Ten? Twenty?**

    Response: See response to Question 21a above.