Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge David Augustin Ruiz
Judicial Nominee to the U.S. District Court for the Northern District of Ohio

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

   Response: I am not aware of any United States Supreme Court decision that has defined the phrase "super precedent." As a sitting magistrate judge for the past five years, I have fully and faithfully applied all binding Supreme Court precedent to the cases and controversies before me. If confirmed as a district judge, I would continue to do the same.

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

   Response: The phrase "living constitution" has many different meanings for different people, and I am not familiar with the context in which the above-referenced statement was made. I believe the United States Constitution is a fixed and enduring document.

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

   Response: I am not sure what is meant by the phrase "social equity." As a sitting magistrate judge for the past five years, I have worked hard to treat all parties in a fair and impartial manner while rendering dispassionate decisions that fully and faithfully apply Supreme Court and Sixth Circuit precedent. If confirmed, I would continue to preside over cases and controversies in the same manner.

4. **Is it ever appropriate for a judge to publicly profess political positions on campaigns and/or candidates?**

   Response: Canon 5 of the Judicial Code of Conduct instructs that a judge should refrain from political activity, and in particular "should not: (2) make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for public office." During my five years as a sitting judge, I have complied with the Code of Conduct. If confirmed as a district judge, I would continue to do the same.

5. **What is the legal standard for "threats" in the Sixth Circuit?**

   Response: The Sixth Circuit addressed this issue in *United States v. Houston*, 792 F.3d 663 (6th Cir. 2015) in which it followed the Supreme Court decision in *Elonis v. United States,* 575 U.S. 723 (2015) and concluded that a reasonable person or negligence standard was erroneous to support a criminal conviction for making threats in violation of 18 U.S.C. section 875(c). The Sixth Circuit reversed the underlying conviction and remanded the case to the lower court without setting forth a specific standard for the

defendant's requisite state of mind, such as recklessness, to support a conviction under the statute, thereby following the *Elonis* Court's jurisprudence that "We may be capable of deciding the recklessness issue, but following our usual practice of awaiting a decision below and hearing from the parties would help ensure that we decide it correctly." *Houston*, 792 F.3d at 669 (*quoting Elonis*, 575 U.S. at 742). Following remand, Houston was convicted by a jury and appealed his conviction. The Sixth Circuit affirmed the conviction and stated that "A statement rises to the level of a 'true threat' when it amounts to a serious expression of an intention to inflict bodily harm and is conveyed for the purpose of furthering some goal through the use of intimidation." *United States v. Houston*, 683 F.3d 434, 438 (2017) (internal citation omitted).

6. **In *Chilgren v. Commissioner of Social Security*, you recommended affirming the Commissioner's decision to deny social security benefits, finding that the ALJ's failure to consider a medical record—specifically, evidence of a lumbar spine MRI—constituted harmless error. You found that "substantial evidence" supported the ALJ's decision. The district court judge disagreed with your report, finding that the ALJ failed to consider the MRI in his decision and also incorrectly claimed that the Plaintiff never had an MRI. You also noted in your report that there was other evidence that showed the ALJ may have considered the MRI because it was specifically discussed at the hearing. Under Sixth Circuit precedent, what is the legal standard for determining whether a ruling constitutes harmless error?**

   Response: The Sixth Circuit has recognized limited circumstances in social security disability appeals "where [an administrative law judge's (ALJ)] failure to give good reasons could constitute harmless error—namely, where 'a treating source's opinion is so patently deficient that the Commissioner could not possibly credit it' or where the Commissioner made 'findings consistent with the [treating-source] opinion' or where the purposes of notice and ability for meaningful review have been satisfied." *Hargett v. Comm'r of Soc. Sec.*, 964 F.3d 546, 554 (2020) (*quoting Wilson v. Comm'r of Soc. Sec.*, 378 F.3d 541, 547 (6th Cir. 2004)). Violation of a regulatory requirement constitutes harmless error if the ALJ has "met the goals of the procedural requirement—to ensure adequacy of review and to permit the claimant to understand the disposition of his case—even though he failed to comply with the regulation's terms." *Karger v. Comm'r of Soc. Sec.*, 414 Fed. Appx. 739, 753 (2011) (*quoting Wilson*, 378 F.3d at 547).

7. **Should a defendant's personal characteristics influence the punishment he or she receives?**

   Response: A federal judge's sentencing determination is governed by 18 U.S.C. section 3553(a), which sets forth pertinent factors to consider when imposing a "sentence sufficient, but not greater than necessary, to comply with the purposes set forth in" section 3553(a)(2) regarding "the need for the sentence imposed -- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the

public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner....” One of those factors that a court should consider, as set forth in section 3553(a)(1), is the “the nature and circumstances of the offense and history and characteristics of the defendant[.]” If confirmed as a district judge, I would impose sentences based upon the factors in section 3553, the Advisory Sentencing Guidelines, and other laws applicable to the specific case before me in order to adjudicate the matter in a fair, impartial, and dispassionate manner.

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: No case that I have presided over to date has presented an issue involving nationwide injunctive relief. Should I be so fortunate enough to be confirmed as a district judge and thereafter preside over a case moving for a nationwide injunction, I would thoroughly research the present status of the law in this area and follow Supreme Court and Sixth Circuit guidance, which instructs that “[a] preliminary injunction is an extraordinary and drastic remedy[.]” *S.Glazer Distributors of Ohio LLC v. Great Lakes Brewing Co.*, 860 F.3d 844, 849 (6th Cir. 2017) (*quoting Munaf v. Green*, 553 U.S. 674, 688-89 (2008). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council, Inc*., 555 U.S. 7, 20 (2008) (citing *Munaf*, 553 U.S. at 689-90).

9. **What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?**

   Response: If confirmed, I would fully and faithfully apply the Supreme Court precedent from *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and their progeny, as well as governing precedent from the Sixth Circuit Court of Appeals.

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

    Response: Should I be so fortunate enough to be confirmed as a district judge, I would fully and faithfully apply Supreme Court and Sixth Circuit precedent in adjudicating a case involving these issues.

11. **What is implicit bias?**

    Response: Implicit bias refers to the view that persons may render decisions based in part upon an unconscious attitude toward or stereotype about a group of persons.

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

    Response: My role is not to judge an entire system. As a sitting judge for the past five years, I have worked hard to consider each party's position with an open mind, to fully and faithfully apply governing precedent to render a fair, impartial, and dispassionate determination free from any bias. If confirmed, I would continue to do the same.

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

    Response: The Supreme Court, in *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), found that the liberty interest of the due process clause provides parents with the right to direct the education and upbringing of one's children.

14. **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 an important policy consideration best addressed by policymakers. My role as a sitting judge is to consider each case and controversy before me with an open mind, based upon the governing law in rendering fair and impartial determinations. If confirmed as a district judge, I would preside in the same manner.

15. **How will Cleveland's recently passed Amendment 24 impact the relationship between police, social workers and victims?**

    Response: As a sitting judge and judicial nominee, it would not be appropriate for me to offer an opinion on this matter because it calls for my personal views on an issue of public policy.

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

    Response: As a lower court judge, in my current position and if confirmed as a district judge, I must follow Supreme Court and Sixth Circuit precedent. The Sixth Circuit Court of Appeals, following Supreme Court precedent, has stated that "Qualified immunity shields officers from civil liability unless they violate a plaintiff's clearly established constitutional or statutory rights." *Abdur-Rahim v. City of Columbus*, 825 Fed. Appx. 284, 286 (6th Cir. 2020) (*citing Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). According to the Sixth Circuit, "This affords officers breathing room to make reasonable but mistaken judgments, and protects all but the plainly incompetent or those who knowingly violate the law." *Abdur-Rahim*, 825 Fed. Appx. at 286 (internal citation omitted). If confirmed as a district judge, I would fully and faithfully apply Supreme Court and Sixth Circuit precedent to render correct, fair, impartial, and dispassionate determinations in each case before me.

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

Response: The Sixth Circuit Court of Appeals has stated "[A] misrepresentation about compliance with a statutory, regulatory, or contractual requirement must be material to the Government's payment decision in order to be actionable under the False Claims Act." *United States ex rel. Prather v. Brookdale Senior Living Communities, Inc.*, 892 F.3d 822, 831 (2018) (*citing Universal Health Services, Inc. v. United States ex rel. Escobar*, 136 S. Ct. 1989, 2002 (2016)). The Act defines "material" as "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." *Prather*, 892 F.3d at 831 (citing 31 U.S.C. § 3729(b)(4)). Noting that the Supreme Court has emphasized that the materiality "standard is demanding," the Sixth Circuit stated "[M]ateriality 'look[s] to the effect on the likely or actual behavior of the recipient of the alleged misrepresentation.'" *Prather*, 892 F.3d 831 (*quoting Escobar*, 136 S. Ct. at 2002).

"Something is material if a reasonable person 'would attach importance to [it] in determining his choice of action in the transaction' or 'if the defendant knew or had reason to know that the recipient of the representation attaches importance to the specific matter 'in determining his choice of action,' even though a reasonable person would not.'" *Prather*, 892 F.3d 831 (*quoting Escobar*, 136 S. Ct. at 2002-03). According to the Sixth Circuit, the analysis of materiality is "holistic" and, although none of the following considerations is dispositive alone, nor is the list exclusive, "Relevant factors include: (1) 'the Government's decision to expressly identify a provision as a condition of payment'; (2) whether 'the Government consistently refuses to pay claims in the mine run of cases based on noncompliance with the particular statutory, regulatory, or contractual requirement' or if, with actual knowledge of the non-compliance, it consistently pays such claims and there is no indication that its practice will change; and (3) whether the 'noncompliance is minor or insubstantial' or if it goes 'to the very essence of the bargain.'" *Prather*, 892 F.3d at 831 (*quoting Escobar*, 136 S. Ct. at 2003 & n.5).

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

Response: If confirmed, I would fully and faithfully apply the Supreme Court precedent from *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and their progeny, as well as governing precedent from the Sixth Circuit Court of Appeals. The Sixth Circuit has found that the intermediate level of scrutiny applies when considering statutory restrictions on possession of firearms by persons convicted of domestic violence misdemeanors and persons involuntarily committed to a mental institution. *Simmel v. Sessions*, 879 F.3d 198, 206 (6th Cir. 2018); *Tyler v. Hillsdale County Sheriff's Department*, 837 F.3d 678, 692 (6th Cir. 2016).

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

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

Response: As a sitting judge, and if confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me. The Judicial Code of Conduct instructs that, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as "correctly" decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. There, however, is Supreme Court precedent that adjudicated constitutional issues that are beyond further debate due to the passage of time and subsequent legal decisions, rendering it highly improbable to be the subject of future litigation before me and thereby enabling me—within my ethical obligations—to state a public opinion. Within that framework, I am comfortable stating that *Brown v. Board of Education* was correctly decided.

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

Response: As a sitting judge, and if confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me. The Judicial Code of Conduct instructs that, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as "correctly" decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. There, however, is Supreme Court precedent that adjudicated constitutional issues that are beyond further debate due to the passage of time and subsequent legal decisions, rendering it highly improbable to be the subject of future litigation before me and thereby enabling me—within my ethical obligations—to state a public opinion. Within that framework, I am comfortable stating that *Loving v. Virginia* was correctly decided.

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

Response: The Judicial Code of Conduct instructs that, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as "correctly" decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. As a sitting judge, and if

confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

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

Response: The Judicial Code of Conduct instructs that, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as "correctly" decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. As a sitting judge, and if confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

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

Response: The Judicial Code of Conduct instructs that, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as "correctly" decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. As a sitting judge, and if confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

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

Response: The Judicial Code of Conduct instructs that, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as "correctly" decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. As a sitting judge, and if confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

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

Response: The Judicial Code of Conduct instructs that, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as "correctly" decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. As a sitting judge, and if confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

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

Response: The Judicial Code of Conduct instructs that, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as "correctly" decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. As a sitting judge, and if confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

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

Response: The Judicial Code of Conduct instructs that, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as "correctly" decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. As a sitting judge, and if confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

20. **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.

21. **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.

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

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

    Response: No.

    b. **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.**

    Response: See my response to Question No. 22a.

    c. **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, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No.

    d. **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, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

23. **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.

24. **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.

25. **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: I submitted an application in March 2021 to the United States Senate Judicial Nominations Commission for the Ohio Federal Courts established jointly by Senator Sherrod Brown and Senator Rob Portman. I then interviewed with the Commission members on May 22, 2021. The Commission recommended me for further consideration to fill one of the district court vacancies in the Northern District of Ohio. Thereafter, I interviewed with Senator Brown's staff on June 4, 2021. I interviewed with Senator Portman and his staff on June 14, 2021. I also interviewed with Senator Brown and his staff on June 26, 2021. I received an email communication from attorneys from the White House Counsel's Office on July 9, 2021, regarding my potential candidacy. I spoke with attorneys from the White House Counsel's Office on July 13, 2021, and was advised that I was being considered for one of the district court vacancies in my district. Since that date I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 30, 2021, my nomination was submitted to the Senate and I appeared for a hearing before the Senate Judiciary Committee on November 17, 2021.

26. **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, I did not. I am not aware of anyone doing so on my behalf.

27. **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, I did not. I am not aware of anyone doing so on my behalf.

28. **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, I did not. I am not aware of anyone doing so on my behalf.

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

    Response: No, I did not. I am not aware of anyone doing so on my behalf.

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

Response: Please see my response to Question No. 25. In addition, I was in contact with White House staff and Justice Department staff during the judicial vetting process and in preparation for my hearing before the Senate Judiciary Committee, but I do not recall the dates of such contacts.

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

    Response: I received these questions for the record on November 24, 2021, and began to work on my responses. I provided draft responses to the Office of Legal Policy for comment and feedback before finalizing my responses for submission.

Senator Mike Lee
Questions for the Record
David Ruiz, Nominee to the District Court for the Northern District of Ohio

1. How would you describe your judicial philosophy?

Response: My role as a judge is to treat all persons with respect and dignity, to consider each party's position with an open mind, to work hard to be well prepared for every proceeding by thoroughly analyzing the specific facts and pertinent issues in the case, and to render clear, legally correct decisions that fully and faithfully apply Supreme Court and Sixth Circuit precedent in a fair, impartial, and dispassionate manner.

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

Response: The starting point in construing a statute is the plain language of the text, taking into consideration pertinent Supreme Court and Sixth Circuit precedent to render a fair, impartial, and dispassionate decision. If the statute remains unclear or ambiguous after considering those sources, then it would be appropriate to consider canons of statutory construction and other case law considering the same or analogous statutory provisions. The Supreme Court has instructed if the aforementioned does not resolve the issue, then it is appropriate to consider legislative history.

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

Response: The starting point in construing a constitutional provision is the plain language of the text, taking into consideration pertinent Supreme Court and Sixth Circuit precedent setting forth the test and analytical framework for lower courts to follow when analyzing a constitutional provision.

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

Response: The starting point in construing a constitutional provision is the plain language of the text, taking into consideration pertinent Supreme Court and Sixth Circuit precedent setting forth the test and analytical framework for lower courts to follow when analyzing a constitutional provision. In addition, the Supreme Court in *District of Columbia v. Heller* considered the original public meaning of text in the Second Amendment. If confirmed as a district judge, I would fully and faithfully apply Supreme Court precedent to each case and controversy before me.

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

Response: The starting point in construing a statute is the plain language of the text, taking into consideration pertinent Supreme Court and Sixth Circuit precedent to render a fair, impartial, and dispassionate decision. If the statute's plain meaning is clear and unambiguous after considering those sources, and it squarely resolves the issue before me, then the analysis would end by applying the statute according to its plain meaning.

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: The plain meaning of a statute or constitutional provision does not change as social norms and linguistic conventions evolve, unless it is lawfully changed. Parties, however, may raise new theories under such a provision, even though not contemplated at the time of the provision's passage. For example, the Supreme Court has extended the scope of the Fourth Amendment, which protects "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," to apply to technologies not envisioned at the time of its adoption, such as electronic devices.

6. What are the constitutional requirements for standing?

Response: The Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) set forth the following three elements necessary for Article III standing: 1) Injury in fact, defined as an invasion of a legally protected interest which is (a) concrete and particularized such that it affects plaintiff in a personal and individual way and (b) actual or imminent, not conjectural or hypothetical; 2) Causation, there must be a causal connection between the injury and the conduct complained of such that the injury is fairly traceable to the defendant's challenged action; and 3) Redressability, it must be likely, not speculative, that the injury will be redressed by a favorable decision.

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

Response: The Supreme Court in *McCulloch v. Maryland*, 17 U.S. 316 (1819) held that Congress has implied powers under the United States Constitution's Necessary and Proper Clause, Art. I, Section 8, to, in that case, establish a national bank.

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

Response: Should I be fortunate enough to be confirmed as a district judge, my analysis of this issue would start with the presumption that a statute passed by Congress and signed into law by the President is constitutional. I would consider the parties' positions with an open mind, analyze the plain language of the statute,

thoroughly research Supreme Court and Sixth Circuit precedent considering the same statute and analogous issues such as the express and implied powers of Congress, and analyze the matter under the lens that there are very limited circumstances in which a federal court should declare a statute unconstitutional.

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

Response: The United States Supreme Court has recognized certain unenumerated rights such as the right to direct the education and upbringing of one's children, *see Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); the right to have children, *see Skinner v. Oklahoma*, 316 U.S. 535 (1942); freedom of association, *see National Association for the Advancement of Colored People v. Alabama*, 357 U.S. 449 (1958); the right to interstate travel, *see United States v. Guest*, 383 U.S. 745 (1965); the right to marital privacy, *see Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to marry, *see Loving v. Virginia*, 388 U.S. 1 (1967); and the individual right to reproductive and sexual privacy, *see Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), *Lawrence v. Texas*, 539 U.S. 558 (2003).

10. What rights are protected under substantive due process?

Response: The Supreme Court has stated "the Due Process Clause specifically protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 702 (1997). In addition, see my response to Question 9 for rights the Supreme Court has identified under the liberty interest of the Due Process Clause.

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: The Supreme Court, in *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937), overruled *Lochner v. New York*, 198 U.S. 45 (1905), and found "that freedom to contract is qualified, and not an absolute, right. There is no absolute freedom to do as one wills or to contract as one chooses." 300 U.S. at 392. Should I be fortunate enough to be confirmed as a district judge, I would faithfully follow Supreme Court and Sixth Circuit precedent including those regarding personal rights under the Due Process Clause.

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

Response: The Supreme Court has "identified three broad categories of activity that Congress may regulate under its commerce power." *U.S. v. Lopez*, 514 U.S. 549, 558 (1995). "Congress may regulate the use of the channels of interstate commerce."

"Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." "Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce...i.e., those activities that substantially affect interstate commerce...." 514 U.S. at 558-59.

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 identified race, national origin, religion, and alienage as suspect classifications. *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (stating "unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest."). In considering whether a group constitutes a "suspect class," the Supreme Court has analyzed whether the class is a "discrete and insular minority," *Graham*, 403 U.S. at 373 (*citing United States v. Carolene Products Co.*, 304 U.S. 144, 152-53, n.4 (1938) and "observed that a suspect class is one 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.'" *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 313 (1976) (*quoting San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Additional factors include whether such persons have experienced a "history of purposeful unequal treatment or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities." *Murgia*, 427 U.S. at 313.

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

Response: The framers designed a constitutional structure that divided the responsibilities and powers of the federal government into three separate but equal branches—the legislative, executive, and judicial—with each branch having its own authority while also dependent on the other two branches' authority, along with a system of checks and balances between the branches to further the balance of power and ensure that no one branch would became too powerful.

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 consider the parties' positions with an open mind, thoroughly research Supreme Court and Sixth Circuit precedent regarding the branch's authority, and faithfully apply such precedent to the case.

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

Response: I do not believe that a judge's rulings should be based on empathy in a case, although it may be helpful to understanding the parties' positions.

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

Response: The role of a judge includes invalidating unconstitutional laws and upholding constitutional laws, but I cannot offer a general statement regarding whether a decision failing to do so in one context would be worse than doing so in another context.

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 this issue as a legal scholar and do not have a theory that accounts for this change. The downside to an exceedingly aggressive exercise of judicial review and to judicial passivity is to impact the Constitution's balance of powers between the three branches of government that form the foundation of our democracy.

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

Response: Judicial review is defined as "A court's power to review the actions of other branches or levels of government; esp., the courts' power to invalidate legislative and executive actions as being unconstitutional." Black's Law Dictionary (11th ed. 2019). Judicial supremacy is defined as "The doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." *Id*.

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: As a sitting judge and judicial nominee, it is inappropriate for me to opine on a matter of public policy.

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: The United States Constitution established a federal judiciary with limited jurisdiction to preside over the cases and controversies that litigants bring before the court. Judges are tasked with considering the parties positions with an open mind, to render fair, impartial, dispassionate determinations limited to the record and specific issues before the court. By affording the parties an opportunity to be heard and rendering fair and impartial determinations rooted in governing precedent, the judge enhances the parties' and public's confidence in the integrity and independence of the judiciary, and furthers their confidence in our democratic values such as the rule of law.

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?**

Response: The duty of a district judge is to faithfully apply Supreme Court and relevant circuit court precedent, even when it may not seem to be rooted in constitutional text, history, or tradition. If fortunate enough to be confirmed, I would faithfully apply Supreme Court and relevant Sixth Circuit precedent. When the precedent in question does not speak directly to the issue at hand, then it may not be binding precedent.

23. 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: As a sitting judge and as a judicial nominee, it is not appropriate for me to opine on abstract legal issues or hypothetical questions. Such questions are proper for adjudication through judicial proceedings.

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

Response: A federal judge's sentencing determination is governed by 18 U.S.C. section 3553(a), which sets forth pertinent factors to consider when imposing a "sentence sufficient, but not greater than necessary, to comply with the purposes set forth in" section 3553(a)(2) regarding "the need for the sentence imposed -- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner...." If confirmed as a district judge, I would impose sentences based upon the factors in section 3553, the Advisory Sentencing Guidelines, and other laws applicable to the specific case before me in order to adjudicate the matter in a fair, impartial, and dispassionate manner without regard to race, ethnicity or other demographic aspects of the individual defendant.

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

Response: I am not familiar with this statement or the context in which it was made. This question requests my personal views on a matter of public policy and statements of political figures. As a sitting judge and as a judicial nominee, it is not appropriate for me to opine on such matters.

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

Response: The terms "equity" and "equality" mean different things to different people and are they subject of ongoing public policy debates. This question calls for my views on a matter of public policy. As a sitting judge and as a judicial nominee, it would be inappropriate for me to opine on this matter.

27. Should equity be taken into consideration in determining the outcome of a case?

Response: A judge must apply the law in a fair, impartial and dispassionate manner, regardless of personal views or issues of social equity.

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

Response: Although this question incorporates question 24, it appears intended to incorporate question 25 above. I have considered both question 24 and 25 in

responding to this question. This question requests my personal views on a matter of public policy and statements of political figures. As a sitting judge and as a judicial nominee, it is not appropriate for me to opine on such matters, or to comment on abstract legal issues or hypothetical questions.

29. How do you define "systemic racism?"

Response: I do not use the phrase "systemic racism," but the Cambridge Dictionary online version defines it as "policies and practices that exist throughout a whole society or organization, and that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others based on race."

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

Response: The phrase "critical race theory" means different things to different people. I have not studied this matter and do not have a definition.

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

Response: As explained in my response to Question 30, I have not studied these issues and do not have a definition for "critical race theory."

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
November 17, 2021
David A. Ruiz, Nominee to the District Court for the Northern District of Ohio

Questions for all nominees:

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

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

   Response: My role as a judge is to treat all persons with respect and dignity, to consider each party's position with an open mind, to work hard to be well prepared for every proceeding by thoroughly analyzing the specific facts and pertinent issues in the case, and to render clear, legally correct decisions that fully and faithfully apply Supreme Court and Sixth Circuit precedent in a fair, impartial, and dispassionate manner.

4. **Would you describe yourself as an originalist?**

   Response: The term originalist has many different meanings to different people. I do not describe myself by any particular judicial ideology. In construing the text of a statute, for example, the starting point would be the plain language of the text, taking into consideration pertinent Supreme Court and Sixth Circuit precedent to render a fair, impartial, and dispassionate decision.

5. **Would you describe yourself as a textualist?**

   Response: The term textualist has many different meanings to different people. I do not describe myself by any particular judicial ideology. In construing the text of a statute, for example, the starting point would be the plain language of the text, taking into consideration pertinent Supreme Court and Sixth Circuit precedent to render a fair, impartial, and dispassionate decision.

6. **Do you believe the Constitution is a "living" document whose precise meaning can change over time? Why or why not?**

Response: The phrase living constitution has many different meanings for different people. I believe the Constitution is a fixed and enduring document.

7. Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.

Response: There is no single Justice whose jurisprudence I admire the most.

8. Was Marbury v. Madison correctly decided?

Response: As a sitting judge, and if confirmed as a district udge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me. In addition, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. There, however, is Supreme Court precedent that adjudicated constitutional issues that are beyond further debate due to the passage of time and subsequent legal decisions, rendering it highly improbable to be the subject of future litigation before me and thereby enabling me—within my ethical obligations—to state a public opinion. Within that framework, I am comfortable stating that *Marbury v. Madison* was correctly decided.

9. Was Lochner v. New York correctly decided?

Response: The Supreme Court, in *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937), overruled *Lochner v. New York*, 198 U.S. 45 (1905), and found "that freedom to contract is qualified, and not an absolute, right. There is no absolute freedom to do as one wills or to contract as one chooses." 300 U.S. at 392. Because *Lochner* has been overruled, I would not apply it in future cases should I be fortunate enough to be confirmed as a district judge.

10. Was Brown v. Board of Education correctly decided?

Response: As a sitting judge, and if confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me. In addition, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. There, however, is Supreme Court precedent that adjudicated constitutional issues that are beyond further debate due to the passage of time and subsequent legal decisions, rendering it highly improbable to be the subject of future litigation before me and thereby enabling me—within my ethical obligations—to state a public opinion. Within that framework, I am comfortable stating that *Brown v. Board of Education* was correctly decided.

11. Was Bolling v. Sharpe correctly decided?

Response: The Supreme Court decided *Bolling v. Sharpe* on the same day as *Brown v. Board of Education*, with both cases addressing racial segregation in public schools. Within the framework set forth in response to Question No. 10, I am comfortable stating that *Bolling v. Sharpe* was correctly decided.

12. Was Cooper v. Aaron correctly decided?

Response: As a sitting judge, and if confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me. In addition, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. There, however, is Supreme Court precedent that adjudicated constitutional issues that are beyond further debate due to the passage of time and subsequent legal decisions, rendering it highly improbable to be the subject of future litigation before me and thereby enabling me—within my ethical obligations—to state a public opinion. Within that framework, I am comfortable stating that *Cooper v. Aaron* was correctly decided.

13. Was Mapp v. Ohio correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

14. Was Gideon v. Wainwright correctly decided?

Response: As a sitting judge, and if confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me. In addition, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. There, however, is Supreme Court precedent that adjudicated constitutional issues that are beyond further debate due to the passage of time and subsequent legal decisions, rendering it highly improbable to be the subject of future litigation before me and thereby enabling me—within my ethical obligations—to state a public opinion. Within that framework, I am comfortable stating that *Gideon v. Wainwright* was correctly decided.

15. Was Griswold v. Connecticut correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

16. Was South Carolina v. Katzenbach correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

17. Was Miranda v. Arizona correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

18. Was Katzenbach v. Morgan correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

19. Was Loving v. Virginia correctly decided?

Response: As a sitting judge, and if confirmed as a district judge, I am duty bound to fully and faithfully apply binding Supreme Court precedent to each case and controversy before me. In addition, as a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. There, however, is Supreme Court precedent that adjudicated constitutional issues that are beyond further

debate due to the passage of time and subsequent legal decisions, rendering it highly improbable to be the subject of future litigation before me and thereby enabling me—within my ethical obligations—to state a public opinion. Within that framework, I am comfortable stating that *Loving v. Virginia* was correctly decided.

20. Was Katz v. United States correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

21. Was Roe v. Wade correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

22. Was Romer v. Evans correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

23. Was United States v. Virginia correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

24. Was Bush v. Gore correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

25. Was District of Columbia v. Heller correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

26. Was Crawford v. Marion County Election Board correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

27. Was Boumediene v. Bush correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

28. Was Citizens United v. Federal Election Commission correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

29. Was Shelby County v. Holder correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

30. Was United States v. Windsor correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

31. Was Obergefell v. Hodges correctly decided?

Response: As a sitting judge and judicial nominee, it is generally not appropriate for me to characterize Supreme Court precedent as correctly decided because pertinent issues raised in such decisions may be subject to ongoing or future litigation. Rendering an opinion in that context may suggest to present and future litigants before me that I have predetermined an issue that may impact their claims. If confirmed as a district judge, I would fully and faithfully apply binding Supreme Court precedent to each case and controversy before me.

32. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: As a sitting judge and should I be so fortunate to be confirmed as a district judge, I must follow Supreme Court and Sixth Circuit precedent without regard to whether it may be read to conflict with the original public meaning of the Constitution. I am not aware of substantive factors an appellate court must consider in determining whether to affirm its own precedent that conflicts with the original public meaning of the Constitution.

33. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: As a sitting judge and should I be so fortunate to be confirmed as a district judge, I must follow Supreme Court and Sixth Circuit precedent without regard to whether it may be read to conflict with the original public meaning of the text of a statute.

I am not aware of substantive factors an appellate court must consider in determining whether to affirm its own precedent that conflicts with the original public meaning of the text of a statute.

34. What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?

Response: The starting point in construing a statute is the plain language of the text, taking into consideration pertinent Supreme Court and Sixth Circuit precedent to render a fair, impartial, and dispassionate decision based upon the plain meaning of the text. If the statute remains unclear or ambiguous after considering those sources, then it would be appropriate to consider canons of statutory construction and other case law considering the same or analogous statutory provisions. The Supreme Court has instructed if the aforementioned does not resolve the issue, then it is appropriate to consider legislative history. However, "general principles of justice" are not relevant when interpreting the text of a statute.

35. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: No. A federal judge's sentencing determination is governed by 18 U.S.C. section 3553(a), which sets forth pertinent factors to consider when imposing a "sentence sufficient, but not greater than necessary, to comply with the purposes set forth in" section 3553(a)(2) regarding "the need for the sentence imposed -- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner...." If confirmed as a district judge, I would impose sentences based upon the factors in section 3553, the Advisory Sentencing Guidelines, and other laws applicable to the specific case before me in order to adjudicate the matter in a fair, impartial, and dispassionate manner without regard to race or ethnicity of the individual defendant.

Questions from Senator Thom Tillis for David Augustin Ruiz
Nominee to be United States District Judge for the Northern District of Ohio

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 views are irrelevant when it comes to interpreting and applying the law.

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

   Response: The phrase "judicial activism" has many meanings to different people. In my view, it refers to proceedings in which a judge renders a decision based not upon governing law and precedent, but to further a personal belief or agenda. I do not consider doing so appropriate. It essential that judges set aside any personal opinions and render decisions that apply the governing law and precedent to the facts in each case in a fair and impartial manner, because that enhances public confidence in a fair and impartial judiciary.

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

   Response: Impartiality is an expectation for a judge.

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 judge fully and faithfully applies the governing law, it may sometimes result in a decision with which the judge personally disagrees. The role of a judge is not to make public policy or create laws, but to fully and faithfully apply the governing law and precedent to the facts before the court, regardless of personal views and opinions. That is what I have done as a sitting judge over the past five years, and it is what I would continue to do if confirmed.

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

   Response: No.

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

   Response: If confirmed, I would fully and faithfully apply the Supreme Court precedent from *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and their progeny, as well as governing precedent from the Sixth Circuit Court of Appeals, when considering issues concerning the Second Amendment.

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: I would consider the parties' positions with an open mind, analyze the statutory and legal authority they rely upon regarding the processing of handgun purchase permits, thoroughly research the area of law, and render a fair and impartial decision that fully and faithfully applies the precedent referenced in response to Question No. 7. Because of the on-going impact of COVID-19 and the possibility that governmental restrictions may be the subject of future litigation before me as a sitting judge, it would be inappropriate for me to render an opinion in response to abstract legal issues and hypothetical questions. I am comfortable committing that I would continue to fully and faithfully apply Supreme Court and Sixth Circuit precedent to cases and controversies before me to adjudicate such matters in a fair and impartial manner.

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: As a lower court judge, in my current position and if confirmed as a district judge, I must follow Supreme Court and Sixth Circuit precedent. The Sixth Circuit Court of Appeals, following Supreme Court precedent, has stated that "Qualified immunity shields officers from civil liability unless they violate a plaintiff's clearly established constitutional or statutory rights." *Abdur-Rahim v. City of Columbus*, 825 Fed. Appx. 284, 286 (6th Cir. 2020) (*citing Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). According to the Sixth Circuit, "This affords officers breathing room to make reasonable but mistaken judgments, and protects all but the plainly incompetent or those who knowingly violate the law." *Abdur-Rahim*, 825 Fed. Appx. at 286 (internal citation omitted). If confirmed as a district judge, I would fully and faithfully apply Supreme Court and Sixth Circuit precedent to render correct, fair, impartial, and dispassionate determinations in each case before me.

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

    Response: In my current role and if confirmed as a district judge, I would apply governing Supreme Court and Sixth Circuit precedent in adjudicating the cases before me. The question about whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers is one better answered by policymakers.

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

    Response: Please see my response to Question No. 10.

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 have served as a federal magistrate judge for over five years and as a civil litigator for sixteen years before that, I have not handled a patent matter. This is an area that I would need to familiarize myself with if so fortunate enough to be confirmed as a district judge and a case came before me presenting questions regarding patent eligibility. In all cases before me, whether in my current role as federal magistrate judge or if confirmed as a district judge, I have and would continue to fully and faithfully apply Supreme Court, Sixth Circuit, and analogous Federal Circuit precedent on patent issues to adjudicate the matter in a fair and impartial manner.

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 sitting judge and judicial nominee, who if confirmed may preside over patent lawsuits, it is not appropriate for me to opine regarding the desired outcome of an abstract legal issue or hypothetical case. During the past five years as a sitting judge, I have worked hard to consider the specific legal issues in each case

with an open mind, to research the area of law thoroughly and render correct, fair, and impartial decisions that faithfully apply Supreme Court and Sixth Circuit precedent. If presiding over a future patent case, I would continue to preside in the same manner.

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: See my response to Question No. 13a.

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: See my response to Question No. 13a.

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: See my response to Question No. 13a.

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: See my response to Question No. 13a.

f. **A business methods company, *FinancialServices 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: See my response to Question No. 13a.

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** ***BioTech Co*** **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: See my response to Question No. 13a.

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: See my response to Question No. 13a.

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: See my response to Question No. 13a.

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: See my response to Question No. 13a.

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: See my response to Question No. 12.

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: During the past five years as a federal magistrate judge, I have presided over multiple intellectual property cases, upon consent of the parties and upon referral from a district judge, that included copyright claims. In such cases, I have presided over the case management schedule, addressed discovery-related issues, and rendered decisions on pertinent legal matters.

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

    Response: During the past five years as a federal magistrate judge, I recall presiding over one case upon consent of the parties that presented claims under the Digital Millennium Copyright Act (DMCA). I presided over the case management schedule, addressed discovery-related issues, ruled on plaintiff's motion for summary judgment, and awarded statutory damages for found violations of the DMCA.

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

    Response: I do not recall presiding over any case concerning the issue of intermediary liability for online service providers.

    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 been involved in and presided over several cases including First Amendment claims that addressed free speech issues. I do not recall presiding over any case concerning free speech and intellectual property issues.

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: The starting point in construing a statute is the plain language of the text, taking into consideration pertinent Supreme Court and Sixth Circuit precedent to render a fair, impartial, and dispassionate decision based upon the plain meaning of the text. If the statute remains unclear or ambiguous after considering those sources, then it would be appropriate to consider canons of statutory construction and other case law considering the same or analogous statutory provisions. The Supreme Court has instructed if the aforementioned does not resolve the issue, then it is appropriate to consider legislative history.

    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: In *Chevron*, the Supreme Court determined that "a court must give effect to an agency's regulation containing a reasonable interpretation of an ambiguous statute." *Christensen v. Harris County*, 529 U.S. 576, 586-87 (2000) (citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)). However, "[i]nterpretations such as those in opinion letters—like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant *Chevron*-style deference." *Christensen*, 529 U.S. at 587. The Supreme Court further explained, "interpretations contained in formats such as opinion letters are 'entitled to respect' under our decision in *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S. Ct. 161, 89 L.Ed. 124 (1944), but only to the extent that those interpretations have the 'power to persuade[.]'" *Christensen*, 529 U.S. at 587. Should I be fortunate enough to be confirmed, I would faithfully apply Supreme Court and Sixth Circuit precedent in considering advice and analysis from the agency with jurisdiction over the pertinent issue.

    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: It is not appropriate for me as a sitting judge and judicial nominee to opine regarding the desired outcome of an abstract legal issue or hypothetical questions. During the past five years as a sitting judge, I have worked hard to consider the specific legal issues in each case with an open mind, to research the area of law thoroughly, and to render correct, fair, and impartial decisions that faithfully apply Supreme Court and Sixth Circuit precedent. If confirmed, I would continue to preside in the same manner.

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: The best way to interpret and apply laws is according to the plain meaning of the statute's text, while considering the parties' positions with an open mind and faithfully following governing precedent.

    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 my response to Question 17a.

18. **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: In the United States District Court for the Northern District of Ohio where I serve as a magistrate judge and would serve if so fortunate to be confirmed as a district judge, there is an Eastern Division and Western Division that each include multiple district judges. Cases are assigned by random draw to a district judge. I am not familiar with how other systems may operate and their benefits or downsides.

19. **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.

a. 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 my response to Question No. 18.

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

Response: See my response to Question No. 19a.

20. I have expressed concerns about the fact that nearly one quarter of all the 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: As a sitting federal magistrate judge and if so fortunate enough to be confirmed as a district judge, I would continue to faithfully apply statutes regarding appropriate venue and controlling precedent on the same issue regardless of any views I personally may hold.

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

Response: See my response to Question No. 20a.

21. **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: This would be an appropriate matter for the Chief Judge of the court to consider and, if a complaint alleged the federal judge committed "conduct prejudicial to the effective and expeditious administration of the business of the courts" under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. section 351-364, an appropriate matter for the Chief Judge of the circuit to consider by either dismissing

and concluding the complaint or appointing a special committee of judges to investigate the complaint.

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

Response: See my response to Question No. 21a.

22. **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?**

Response: This is not an issue that I have examined as a legal scholar, and it may be an inquiry best conducted by Congress to determine whether existing venue statutes are best serving the needs of litigants. As a sitting federal magistrate judge and if so fortunate enough to be confirmed as a district judge, I would continue to faithfully apply statutes regarding appropriate venue and controlling precedent on the same issue regardless of any views I personally may hold.

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: This may be an inquiry best conducted by Congress to determine whether existing venue statutes are best serving the needs of litigants.

23. **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: This question requests my views on a matter of public policy. As a sitting judge and judicial nominee, it is inappropriate for me to opine on this matter.

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

Response: See my response to Question 23a.