Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Hernán Diego Vera
Nominee to be United States District Judge, Central District of California

1. **In 2017, then Governor Jerry Brown, a Democrat, signed a bill authorizing the split of the California bar into two distinct sections, one of which would "mandate[] that the bar's 16 specialty law sections depart the agency and become an independent nonprofit entity." One of the driving forces for the split "was several years of scandals that generated frequent negative headlines and criticism asserting the State Bar was distracted from its mission of protecting the public from unethical lawyers." Advocates argued that it would spur the creation of a more effective regulatory system "of legal services to Californians, and a more potent and less costly professional association for lawyers." You not only vigorously opposed this split, but in June 2016 as a then-bar board trustee you authored a scathing email to advocates of the split, writing: "'This will set access to justice back decades, and hurt the very people that we are charged with protecting. I am sickened to be associated with you . . . .'" This was more than twenty years after you graduated from law school.**

   What assurance do we have that you will not treat litigants, counsel, law clerks, court personnel, or fellow judges with the same lack of collegiality and respect?

   Response: The 2017 email to which this question refers was sent in the context of a broader discussion about bar reforms, and expressed my strong concern that various proposals could impair the continued ability of the State Bar to advance and protect access to justice in California. Though I note that I did feel strongly about those issues, I have been absolutely committed throughout my 27-year career as a lawyer and as a judge to treating everyone with the highest standards of civility and professionalism. In addition, I would note that since that email was sent, I have been selected to serve as a state trial court judge and believe I have demonstrated that I have the appropriate temperament to serve on the federal bench.

2. **In 2014, you authored an article in the *Los Angeles Daily Journal* where you argued that then-Governor Jerry Brown should "appoint a practicing lawyer with a proven track record of progressive work" to an opening on the California Supreme Court.**
   a. **Why did you argue that judges should be selected on the basis of their "proven track record of progressive work"?**

      Response: My 2014 article for the Daily Journal was written in my capacity as President & CEO of Public Counsel. In that article, I was not making a normative statement applicable to all judicial appointments. Rather, I was giving my view that Governor Brown should consider for appointment to the California Supreme Court a practicing lawyer with a breadth of experience.

b. **Given that you believe a progressive track record is an important prerequisite for judicial nominees, does your track record of progressive work indicate that you will take a similar approach on the bench?**

Response: I believe that my track record as a practicing lawyer and now a sitting judge exemplifies a steadfast commitment to the rule of law, the highest standards of professionalism, and the fair and impartial application of the law to the facts.

3. **In the same article referenced above, you mention the value of "experiential diversity." Please explain, with specificity, the "experiential diversity" you would bring to the bench, if confirmed.**

Response: My professional career has included more than eleven years as a business litigator practicing in state and federal courts, more than thirteen years as a civil rights and public interest litigator representing low-income clients in a wide variety of areas, and now as a sitting judge in the Los Angeles Superior Court.

4. **In 2014, you authored an opinion piece in the *Los Angeles Daily Journal* where you stated that "our border is secure." *Yahoo! News* recently released an article entitled "Illegal immigration soars under Biden to third-highest in 97 years," noting that "federal law enforcement officials stopped 1,956,519 noncitizens who tried to gain entry to the U.S. by walking across from Canada or Mexico, entering by way of the Atlantic or Pacific coasts, or pass through an air, land, or sea port."[1] Almost 2 million people have illegally entered the United States since the beginning of the year, a number that *Yahoo! News* ranks as the "third-highest in 97 years." Do you stand by your 2014 statement that "our border is secure"? Please explain.**

Response: The August 4, 2014 article that I co-authored for the Daily Journal was written in my capacity as President & CEO of Public Counsel. The opinions expressed therein were intended to advance the interests of Public Counsel's clients, and highlighted the challenges faced by children facing immigration proceedings without counsel.

The issues of border security and immigration are ones for policymakers and legislators. As a Los Angeles Superior Court judge, and a nominee to the district court, I do not believe it is appropriate for me to comment further on matters of public policy.

5. **In a 2018 piece for the *Los Angeles Times*, you noted, in your personal capacity, that you did not approve of the Los Angeles Sheriff's Department giving ICE space inside the jails, which granted ICE agents access to inmates convicted of serious or violent crimes. You noted that "[w]hen the 18,000 men and women from the Sheriff's Department come into work, the people should know that they're working for them only, and not for Immigration and Customs Enforcement."**

[1] Anna Giaritelli, *Yahoo! News*, "Illegal immigrations soars under Biden to third-highest in 97 years," Oct. 22, 2021, available at: https://news.yahoo.com/illegal-immigration-soars-under-biden-200400500.html

a. **Do you believe that federal authorities should not have access to illegal immigrants who have been convicted of serious or violent crimes? Please explain.**

Response: Before I became a judge, I served on the Los Angeles County Sheriff's Civilian Oversight Commission. At one point, the Commission recommended that the Los Angeles Sheriff's Department should no longer honor ICE detainer requests, or otherwise give ICE special non-public access, where such requests are unaccompanied by a lawful warrant. This recommendation was based on the Commission's determination that the Department's voluntary actions on ICE requests raised public safety concerns by increasing the underreporting of crimes. For example, the Commission had received testimony that many individuals in Los Angeles County would not report violent crimes to law enforcement if they were afraid that such reporting could have federal immigration consequences. To be clear, however, the Sheriff's Department is obligated at all times to comply with actions required by federal law. As a Los Angeles Superior Court judge, and a nominee to the district court, I do not believe it is appropriate for me to comment further on matters of public policy.

b. **Do you believe that releasing serious or violent illegal immigrants has consequences to the community?**

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

c. **Do you believe that victims of violent or serious crimes committed by illegal immigrants have any recourse for the system failing them?**

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

d. **If you are confirmed, how do I have any assurance that you will enforce federal immigration laws in your courtroom?**

Response: As a Los Angeles Superior Court judge, I swore an oath to apply the law faithfully regardless of my personal beliefs. I take that oath seriously, and that commitment to the rule of law guides my decisions each and every day. If confirmed, I commit to applying all of the laws of the United States fully and without reservation, including all immigration laws.

6. **If confirmed, will you impose a mandatory minimum sentence where the defendant meets the qualifications for such a sentence?**

Response: Yes.

7. **Please discuss your criminal legal experience, including the number of felony cases that you have personally handled, how many misdemeanor cases you have personally handled, and how many times you have argued before the court in a criminal matter.**

Response: In my current role as a Los Angeles Superior Court judge in the Juvenile Division, I am responsible for making findings and orders in a number of areas related to the criminal context, including issuing investigative search warrants and protective custody warrants, and adjudicating petitions arising out of criminal conduct such as sexual abuse, physical abuse, drug-related activity, and domestic violence. I also have broad exposure to criminal justice issues through my service on the board of directors of the State Justice Institute, and my past service on the Civilian Oversight Commission of the Los Angeles County Sheriff's Department. I have not personally represented any individuals in felony or misdemeanor cases, nor have I argued any criminal cases before a court. Rather, my professional career has included more than eleven years as a business litigator practicing in state and federal courts and more than thirteen years as a civil rights and public interest litigator representing low-income clients in a wide variety of areas.

8. **Please discuss your familiarity with the Federal Rules of Criminal Procedure and the United States Sentencing Commission's Advisory Sentencing Guidelines. Specifically:**
    a. **How often have you cited to either of these tomes during the course of your work?**

        Response: My professional career has included more than eleven years as a business litigator practicing in state and federal courts and more than thirteen years as a civil rights and public interest litigator representing low-income clients in a wide variety of areas, and, as a result, I do not recall citing to either of these two sources.

    b. **How often have you had an opportunity to work within these constructs during the course of your career?**

        Response: My professional career has included more than eleven years as a business litigator practicing in state and federal courts and more than thirteen years as a civil rights and public interest litigator representing low-income clients in a wide variety of areas, and, as a result, I do not recall working with either of these two sources.

9. **Who should respond to a domestic violence call where there is an allegation that the aggressor is armed—the police or a social worker? Or some combination of the two—i.e., the Mental Evaluation Teams established in California?**

    Response: This is a question for policymakers. As a Los Angeles Superior Court judge, and a nominee to the district court. I do not believe it is appropriate for me to give an opinion on the decisionmaking process of law enforcement or social service agencies.

10. **In what situation does qualified immunity not apply to a law enforcement officer in California?**

Response: The touchstone Supreme Court case on qualified immunity continues to be *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), which held that a government official performing a discretionary function has individual immunity from civil liability if his/her conduct does not violate "clearly established" statutory or constitutional rights. This test has been affirmed repeatedly, most recently in *White v. Pauly*, 137 S. Ct. 542 (2017) and *Rivas-Villegas v. Cortesluna*, 595 U.S. ___ (2021). Specifically, in *Rivas-Villegas*, the Court explained that this test "must be undertaken in light of the specific context of the case" and that existing precedent "must have placed the statutory or constitutional question beyond debate." *Id*. (slip op., at 6) (internal citations omitted).

11. **As a member of the Los Angeles County Board of Supervisors from the Working Group on the Civilian Oversight Commission for the Los Angeles County Sheriff's Department, you opposed the inclusion of a current or former officer from the Los Angeles County Sheriff's Department on the Commission.**

    a. **Why did you believe and advocate against the inclusion of a former or current member of the Los Angeles County Sheriff's Department on the Commission?**

    Response: The Working Group referenced in this question was created by the County of Los Angeles to provide recommendations to the Los Angeles County Board of Supervisors concerning the establishment of a Civilian Oversight Commission. To that end, the Working Group received extensive input and public comment on the proposed composition of the Commission, its mission, powers, staffing, and functions. One comment that was raised repeatedly by members of the public was the view that the Commission would engender more public trust as an independent body if it did not contain any members from the same organization that it was going to oversee.

    b. **If confirmed as a judge, you must be open to hearing both sides of an argument. How do I have any assurances that you will not jump to conclusions based on any preconceived biases against parties appearing before you?**

    Response: As a Los Angeles Superior Court judge, I swore an oath to apply the law faithfully regardless of my personal beliefs. I take that oath seriously, and that commitment to the rule of law guides my decisions each and every day. I believe firmly in the importance of listening to all counsel and litigants, and to reviewing the facts thoroughly and dispassionately before making any judicial decision.

    c. **Given your strong advocacy against the Los Angeles County Sheriff's Department, do you intend to recuse in any matter involving the Sheriff's Department?**

    Response: If confirmed, I would address any actual or potential conflicts of interest by applying 28 U.S.C. § 455, the Code of Conduct for United States

Judges, and any other relevant ethical canons or rules. Throughout my judgeship, I would also monitor any new cases that could give rise to an actual or apparent conflict and decide whether to recuse on a case-by-case basis in conformity with any applicable statutes, canons, and rules.

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

Response: Judicial decisions should be based solely on what the law requires. In some situations, statutes, rules, and/or case law allow for (or even mandate) the consideration of equitable principles in applying the law to the facts, and in those circumstances a court should be guided by applicable precedent in how those considerations are balanced and applied.

13. **What is implicit bias?**

Response: Implicit bias is defined differently by researchers, academics, and other policymakers. Generally, my understanding is that implicit bias is the cognitive theory that all persons have unconscious assumptions by which they attribute certain characteristics to groups of people.

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

Response: A foundational canon of judicial ethics is the principle that all judges should decide cases fairly and impartially without regard to their personal beliefs or other pre-conceived notions or attitudes. *See* Code of Conduct for United States Judges, Canon 3 ("A judge should perform the duties of the office fairly, impartially, and diligently."); *see also* California Code of Judicial Ethics, Canon 3 ("A judge should perform the duties of judicial office impartially, competently, and diligently."). That is the standard that I employ every day as a sitting judge.

15. **Do you think the Supreme Court should be expanded?**

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment on matters of public policy. This is a question best left for policymakers to consider.

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

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment on matters of public policy. This is a question best left for policymakers to consider.

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

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment on matters of public policy. This is a question best left for policymakers to consider.

18. **What is the legal basis for a nationwide injunction?**

    Response: The legal basis for federal injunctions, including nationwide injunctions, is found in Rule 65 of the Federal Rules of Civil Procedure. Additional authority can be found in the Administrative Procedure Act.

19. **Does illegal immigration impose costs on border communities?**

    Response: The issues surrounding societal costs and benefits of immigration are questions for policymakers and legislators. As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment on matters of public policy.

20. **When was the last time that you visited the U.S.-Mexico border?**

    Response: I have visited Mexico on many occasions, both as a tourist and on work-related trips. My last trip to Mexico was in January 2018. I have not visited the U.S.-Mexico border as its own destination or for any other professional or academic purpose.

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

    Response: Yes.

22. **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: To the best of my knowledge, no.

23. **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: To the best of my knowledge, no.

24. **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: No.

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: To the best of my knowledge, no.

25. **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: To the best of my knowledge, no.

26. **Fix the Court is purportedly 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: To the best of my knowledge, no.

27. **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: In January 2021, I submitted an application to be a United States District Judge for the Central District of California to the Selection Committees of Senators Dianne Feinstein and Alex Padilla. I was interviewed by members of Senator Padilla's committee on multiple occasions from March through June 2021. During this same period, I was also interviewed twice by members of Senator Feinstein's committee. On May 20, 2021, I interviewed with Senator Padilla. On June 9, 2021, I interviewed with attorneys from the White House Counsel's Office. Since June 11, 2021, I have been in regular contact with officials from the Office of Legal Policy at the Department of

Justice. On September 8, 2021, the President announced his intent to nominate me to the district court, and on September 20, 2021, my nomination was submitted to the Senate.

28. **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: To the best of my knowledge, no.

29. **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: To the best of my knowledge, no.

30. **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: To the best of my knowledge, no.

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

    Response: To the best of my knowledge, no.

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

    Response: To the best of my knowledge, no.

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

    Response: On June 9, 2021, I interviewed with attorneys from the White House Counsel's Office. Since June 11, 2021, I have been in regular contact with attorneys from the Office of Legal Policy at the United States Department of Justice.

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

    Response: I received these questions on October 27, 2021. I conducted my own research on the questions presented, reviewed past responses for context, and drafted my responses. I submitted drafts of my answers to the Office of Legal Policy, received feedback, and finalized my answers for submission on November 1, 2021.

Senator Marsha Blackburn
Questions for the Record to Hernan D. Vera
Nominee for the Central District of California

1. **Over the years, you have written various articles about illegal immigration. In an article written for the *Los Angeles Daily Journal* on August 4, 2014, you wrote:**

   "Our border is secure. This is precisely why children fleeing for their lives are presenting themselves to border agents for protection. We can no longer use the myth of needing more border security to delay immigration reform. The problems with our immigration policies didn't start with the Central American children forced by violence to flee their home. The problems are the result of nonsensical laws that demonize immigrants rather than celebrate them as the driving force behind our country's prosperity."

   Seven years later, as our southern border is overwhelmed by a record number of border crossings, do you still believe our border is secure?

   Response: The August 4, 2014 article that I co-authored for the Daily Journal was written in my capacity as President & CEO of Public Counsel. The opinions expressed therein were intended to advance the interests of Public Counsel's clients, and highlighted the challenges faced by children facing immigration proceedings without counsel.

   The issues of border security and immigration are ones for policymakers and legislators. As a Los Angeles Superior Court judge, and a nominee to the district court, I do not believe it is appropriate for me to comment further on matters of public policy.

2. **Prior to recommendations from the Los Angeles County Sherriff's Civil Oversight Commission, the Sherriff's Department had allowed ICE "to use office space inside the jails and gave ICE access to inmates who had been convicted of serious or violent crimes." You opposed giving any access to ICE and dismissed criticism that barring ICE would undermine public safety.**
   a. **Do you believe police departments should not cooperate with federal immigration enforcement and protect violent criminals who are unlawfully present in the United States?**

      Response: Before I became a judge, I served on the Los Angeles County Sheriff's Civilian Oversight Commission. At one point, the Commission recommended that the Los Angeles Sheriff's Department should no longer honor ICE detainer requests, or otherwise give ICE special non-public access, where such requests are unaccompanied by a lawful warrant. This recommendation was based on the Commission's determination that the Department's voluntary actions on ICE requests raised public safety concerns by increasing the underreporting of crimes. For example, the Commission had received testimony that many individuals in Los Angeles County would not report violent crimes to law enforcement that they either directly experienced or witnessed if they were afraid that reporting such crimes could have federal immigration consequences. To be

clear, however, the Sheriff's Department is obligated at all times to comply with actions required by federal law. As a Los Angeles Superior Court judge, and a nominee to the district court, I do not believe it is appropriate for me to comment further on matters of public policy.

b. Do you believe ICE should be "defunded" or disbanded?

Response: The issue of immigration enforcement is one for policymakers and legislators. As a Los Angeles Superior Court judge, and a nominee to the district court, I do not believe it is appropriate for me to comment further on matters of public policy.

Nomination of Hernan D. Vera
to be United States District Judge for the Central District of California Questions for the Record
Submitted October 27, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

   Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   Response: No.

3. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   Response: As a Los Angeles Superior Court judge, and as a nominee to the district court before whom certain live issues may be litigated, I do not believe it is generally appropriate for me to comment on whether cases were rightly or wrongly decided.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   Response: The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) held that the Second Amendment right to keep and bear arms is an individual right, and that the prefatory clause relating to militias does not limit that individual right.

5. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).**

   Response: The Supreme Court in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) analyzed the Free Exercise Clause of the First Amendment in the context of religious gatherings in the home, and held that strict scrutiny applies to government regulations that treat any comparable secular activity more favorably than religious activities.

6. **Please describe what you believe to be the Supreme Court's holding in *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021).**

   Response: The Supreme Court in *Brnovich v. Democratic National Committee*, 141 S.

Ct. 2321 (2021) reviewed two of Arizona's election-related regulations – one banning ballot collection and the other banning out-of-precinct voting – and found them to be constitutional. Specifically, the Court held that the provisions did not violate Section 2 of the Voting Rights Act because neither regulation had a racially discriminatory purpose.

7. **Please describe what you believe to be the Supreme Court's holding in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).**

   Response: The Supreme Court in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) addressed the question of whether immigrants in detention have a statutory right to periodic bond hearings. The Ninth Circuit had held that three sections of the Immigration and Nationality Act (8 U.S.C. §§ 1225(b), 1226(a), and 1226(c)) require that a detained alien be given a bond hearing every six months, and that continued detention beyond six months is permitted only if the government can show by clear and convincing evidence that further detention is justified. The Supreme Court reversed, holding that the relevant provisions of the Immigration and Nationality Act do not expressly afford detained immigrants the right to periodic bond hearings, and further holding that nothing in the statutory text supports the inference of a six-month limit on detention.

8. **Do federal drug scheduling actions pursuant to the Controlled Substances Act preempt state or local laws that purport to 'legalize' substances contrary to their federal drug control status?**

   Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment or speculate on the potential application of preemption in this area. If confirmed, I would faithfully and fully follow the decisions of the Court in every case, and on this issue would look specifically at the Court's decision in *Gonzales v. Raich*, 545 U.S. 1 (2005) (holding that the Controlled Substances Act did not exceed Congress' Commerce Clause powers, and that Congress could therefore lawfully criminalize production of cannabis).

9. **What is your view of arbitration as a litigation alternative in civil cases?**

   Response: The Federal Arbitration Act (9 U.S.C. § 1 *et seq*.) generally governs the validity and enforceability of arbitration agreements. It was enacted in 1925 and has been upheld and applied in various contexts in federal courts around the country, including by numerous opinions of the Supreme Court. As a Los Angeles Superior Court judge, I have no opinion regarding the use of arbitration as a litigation alternative in civil cases.

10. **Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.**

Response: I received these questions on October 27, 2021. I conducted my own research on the questions presented, reviewed past responses for context, and drafted my answers. I submitted drafts of my answers to the Office of Legal Policy, received feedback, and finalized my responses for submission on November 1, 2021.

11. **Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.**

    Response: No.

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

Questions for the Record for Hernan Diego Vera, Nominee for the Central District of California

I. Directions

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

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

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

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

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

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

II. Questions

1. **In 2017, you had a disagreement about whether the California bar should split into several divisions. You were serving as a trustee of the bar at the time, and one of the emails you sent later became public. You wrote that you were "sickened to be associated with" the other trustees who disagreed with you. This raises some concerns about your temperament. Will you take a more measured course with litigants with whom you hold personal or policy disagreements?**

Response: The 2017 email to which this question refers was sent in the context of a broader discussion about bar reforms, and expressed my strong concern that various proposals could impair the continued ability of the State Bar to advance and protect access to justice in California. Though I note that I did feel strongly about those issues, I have been absolutely committed throughout my 27-year career as a lawyer and as a judge to treating everyone with the highest standards of civility and professionalism. In addition, I would note that since that email was sent, I have been selected to serve as a state trial court judge and believe I have demonstrated that I have the appropriate temperament to serve on the federal bench.

2. **You have taken an active role to promote what you call "diversity of experience" on the bench. In a letter to Governor Brown, you stated that, "The current court is composed of absolutely stellar justices, but they are former prosecutors, commercial litigators, academics, and appellate judges." Your language implies that these experiences are not diverse or satisfactory.**

   a. **Do you think that judges who worked as commercial litigators or prosecutors are biased or inadequate to the task of being a federal judge?**

      Response: No.

   b. **Do the years you spent as a commercial litigator, working "on all aspects of complex business litigation, with a focus on class actions, insurance defense, and intellectual property" hinder or disqualify you from serving as a judge?**

      Response: No. I do not believe that my professional experience as a business litigator hinders or disqualifies me from serving as a judge.

3. **While serving on the Los Angeles Sheriff's Civilian Oversight Commission, you advocated for the Sheriff's Department to block ICE officials from accessing *any* illegal alien inmates convicted of serious or violent crimes. Please explain the legal basis for your proposal under the Supremacy Clause.**

Response: Before I became a judge, I served on the Los Angeles County Sheriff's Civilian Oversight Commission. At one point, the Commission recommended that the Los Angeles Sheriff's Department should no longer honor ICE detainer requests, or otherwise give ICE special non-public access, where such requests are unaccompanied by a lawful warrant. This recommendation was based on the Commission's determination that the Department's voluntary actions on ICE requests raised public safety concerns by increasing the underreporting of crimes. For example, the Commission had received testimony that many individuals in Los Angeles County would not report violent crimes to law enforcement if they were afraid that such reporting could have federal immigration consequences. To be clear, however, the Sheriff's Department is obligated at all times to comply with actions required by federal law. As a Los Angeles Superior Court judge, and

a nominee to the district court, I do not believe it is appropriate for me to comment further on matters of public policy.

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

Response: I am unaware of any applicable precedent by the Supreme Court or the Ninth Circuit directly on this issue as it applies to presidential appointments. In the event that a case with this issue were to come before me, I would carefully research and apply all applicable precedent.

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

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

Response: I have no knowledge of the trainings provided to court employees by the Administrative Office of the U.S. Courts or other federal agencies. I assume and expect that such trainings are fully vetted by the Court's legal and human resources staff, and that they fully comply with all applicable law.

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

Response: I have no knowledge of the trainings provided to court employees by the Administrative Office of the U.S. Courts or other federal agencies. I assume and expect that such trainings are fully vetted by the Court's legal and human resources staff, and that they fully comply with all applicable law.

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

Response: I have no knowledge of the trainings provided to court employees by the Administrative Office of the U.S. Courts or other federal agencies. I assume and expect that such trainings are fully vetted by the Court's legal and human resources staff, and that they fully comply with all applicable law.

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

Response: I have no knowledge of the trainings provided to court employees by the Administrative Office of the U.S. Courts or other federal agencies. I assume and expect that such trainings are fully vetted by the Court's legal and human resources staff, and that they fully comply with all applicable law.

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

Response: I have no knowledge of the trainings provided to court employees by the Administrative Office of the U.S. Courts or other federal agencies. I assume and expect that such trainings are fully vetted by the Court's legal and human resources staff, and that they fully comply with all applicable law.

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

Response: I am aware that there have been studies and robust public discussions about the racial disparities of various sentencing guidelines concerning crack and powder cocaine, and I understand that those discussions have led to reforms. However, the broader issue raised in this question is one for policymakers, legislators, and the public at large. As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment on this issue. I can state unequivocally that I decide each case on its facts, without regard for a litigant's race, and that if confirmed I would decide each case before me impartially and fairly.

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

Response: The Religious Freedom Restoration Act of 1993 (RFRA) directly addresses this issue, and the Supreme Court has discussed the application of RFRA to both religious organizations and businesses owned by observant owners. *See In Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020); *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682 (2014).

9. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

Response: In *Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63 (2020), the Supreme Court granted the application for injunctive relief brought by two synagogues and enjoined an executive order by the New York Governor relating to occupancy limits. The

Court applied strict scrutiny because of its finding that the challenged restrictions were neither neutral nor of general applicability. *Id*. at 67. The Court applied the traditional analysis for injunctive relief, and held that: (1) the applicants established a likelihood of success on the merits by showing a violation of "the minimum requirement of neutrality", (2) irreparable harm was sufficiently shown because loss of First Amendment freedoms "for even minimal periods of time constitutes irreparable injury", and (3) the State of New York did not establish that "public health would be imperiled if less restrictive measures were imposed." *Id*. at 66-67.

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Court reviewed the constitutionality of California's Covid-related restrictions on the size of gatherings in private homes. The Court found the restrictions to be in violation of the Free Exercise Clause, holding that government regulations which provide more favorable treatment to any comparable secular activity are subject to strict scrutiny. One of the principal rationales for the holding was the Court's finding that "California treats some comparable secular activities more favorably than at-home religious exercise, permitting hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at a time." *Id*. at 1297.

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

Response: Yes. The Free Exercise Clause of the First Amendment is not confined to private homes or houses of worship.

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

Response: The Supreme Court has repeatedly held that government regulations or actions which discriminate on the basis of religion violate the Free Exercise Clause unless the government can meet its burden under a strict scrutiny standard. *See, e.g*., *Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63 (2020); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

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

Response: The Take Care Clause of the Constitution states that the President "shall take Care that the Laws be faithfully executed. . . ." U.S. Const., Art. II, § 3. The executive branch, however, has broad discretion relating to how and when to enforce federal law.

See Wayte v. U.S., 470 U.S. 1524, 607 (1985). More specifically, the Administrative Procedures Act sets forth limitations on judicial review of agency decisions to enforce or not enforce various provisions. *See, e.g., Heckler v. Chaney*, 470 U.S. 821 (1985) ("we recognize that an agency's refusal to institute proceedings shares to some extent the characteristics of the decision of a prosecutor in the Executive Branch not to indict -- a decision which has long been regarded as the special province of the Executive Branch, inasmuch as it is the Executive who is charged by the Constitution to 'take Care that the Laws be faithfully executed.'"). As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment further on this issue.

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

Response: Please see my response to Question 13.

15. **Describe how you would characterize your judicial philosophy on the bench in California thus far, and identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

Response: My broader judicial philosophy is a procedural one that focuses on ensuring that every case is decided individually through a careful and attentive application of the relevant law to the facts at issue. I endeavor to hear every case impartially and dispassionately, without regard to my personal beliefs, views, or opinions, to create and enforce procedures in the courtroom so that every litigant has a full and fair opportunity to be heard, and to treat all litigants and counsel with dignity and respect. That is the approach that I strive to employ every day.

In terms of statutory interpretation, I begin with the text of the statute itself. If the meaning of the statutory language is clear and unambiguous, I apply the legal provisions to the facts, and check to see if there is any applicable precedent bearing on the issue. However, if there is an ambiguity in the statutory language, then I look to relevant Ninth Circuit and Supreme Court precedent to determine if there is any recommended interpretative method for the statute in question. If not, I look for guidance to the canons of statutory construction to determine whether legislative history, extrinsic evidence, technical meanings, or other interpretative sources or methods are appropriate.

I do not presume to analogize or compare my judicial philosophy to the philosophical trends in the Warren, Burger, Rehnquist, or Roberts Courts.

16. **Please briefly describe the interpretative method known as originalism.**

Response: My understanding of originalism is that it is an approach to statutory and constitutional interpretation that looks to the original and historical meaning of the language of the text at the time that the statute or writing was adopted.

17. **Please briefly describe the interpretive method often referred to as living constitutionalism.**

Response: My general understanding of "living constitutionalism" is that it is a doctrine that seeks to interpret the Constitution in light of changing social values and customs.

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

Response: The starting point for a constitutional question is always the text of the Constitution itself. In many cases, the Supreme Court has looked primarily to the original public meaning of the Constitution in reaching a decision. *See Bostock v. Clayton Cty*., 140 S. Ct. 1731, 1738 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."). On other occasions, however, the Court has looked to other sources and methods of interpretation. If faced with a constitutional issue of first impression, I would look to analogous Supreme Court precedent to see what interpretative methods the Court has followed on similar questions involving that particular constitutional provision.

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

Response: The interpretation of the Constitution – including its meaning, scope, and application – is ultimately a question for the Supreme Court. If confirmed, I would faithfully and fully follow applicable and binding precedent on issues relating to the meaning of the Constitution.

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

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment on the issue of the Court's size or composition. If confirmed, I would faithfully and fully follow the decisions of the Court in every case.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court held that the Second Amendment right to keep and bear arms is an individual right, and that the prefatory clause relating to the regulation of militias does not limit that individual right.

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

Response: No.

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

Response: No.

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

Response: 18 U.S.C. § 3591 is the statutory provision that authorizes the federal death penalty. My understanding is that abolition of the death penalty would require legislation. I would also note that the President does have broad authority to grant pardons and commutations for federal crimes.

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

Response: In *Alabama Association of Realtors v. HHS*, 141 S. Ct. 2485 (2021), the Court analyzed the Center for Disease Control's nationwide eviction moratorium and held that the CDC exceeded its authority. In doing so, the Court stated, "If a federally imposed eviction moratorium is to continue, Congress must specifically authorize it." *Id.* at 2490.

26. **Do you believe that unlawfully setting a building on fire, amidst general rioting, is a violent act?**

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment on possible sentencing factors involved in this hypothetical. If confirmed, I would faithfully and fully follow the decisions of the Court in every case.

27. **Are students accused of sexual misconduct entitled to due process?**

Response: My understanding is that the answer to this question may depend on the specific facts of the case. A person (including a student) charged with a crime of sexual

assault in the criminal justice system is entitled to due process under the Fifth and Fourteenth Amendments. A student in a public educational institution facing disciplinary charges for alleged sexual misconduct is generally entitled to due process, *see Goss v. Lopez*, 419 U.S. 565 (1975), although the level of process may depend on the three-part test laid out in *Matthew v. Eldridge*, 424 U.S. 319 (1976). Broadly speaking, the due process clause does not apply to private schools. *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982). But Title IX requires schools receiving federal funding to institute and enforce certain procedural protections, and through that framework students facing disciplinary charges for sexual misconduct are provided due process protections.

28. **In *Carpenter v. United States*, what criteria did the U.S. Supreme Court use to distinguish between phenomena that are covered by the Fourth Amendment Third Party Doctrine and those that are not?**

Response: In *Carpenter v. United States*, 138 S. Ct. 2206 (2018), the Court addressed the question of whether its prior Fourth Amendment search and seizure jurisprudence applied to a person's location history maintained on a cell phone. The Court in *United States v. Miller*, 425 U.S. 435 (1976) and *Smith v. Maryland*, 442 U.S. 735 (1979) had previously enunciated a "third party doctrine", under which the Court generally held that persons do not have Fourth Amendment expectations of privacy in bank records and telephone records voluntarily disclosed to a third party. In *Carpenter*, however, the Court "declined to extend" the reasoning in *Smith* and *Miller* to cell-site records. *Id*. at 2217. The Court stated that a person "does not surrender all Fourth Amendment protections by venturing into the public sphere." *Id*. It distinguished its prior application of the third-party doctrine by highlighting "the unique nature of cell phone records." *Id*. Based on this analysis, the Court held that the government "must generally obtain a warrant supported by probably cause before acquiring such records." *Id.* at 2221.

29. **Do Americans have a privacy interest in their financial affairs?**

Response: In *United States v. Miller*, 425 U.S. 435 (1976), the Court held that the Fourth Amendment does not protect the privacy of a person's bank records, on the grounds that the financial information had been provided voluntarily to a third-party. In reaction to that decision, Congress passed the Right to Financial Privacy Act of 1978, codified in 12 U.S.C. § 3401 *et seq*., which generally does provide for the confidentiality of such records, and creates a procedure for individuals to object to the release of their financial records by a bank or other financial institution.

30. **Are there any limitations on the Third Party Doctrine as applied to an individual's banking records? What are they?**

Response: The applicable statute would be the Right to Financial Privacy Act of 1978, codified at 12 U.S.C. § 3401.

31. **In *Americans for Prosperity Foundation v. Bonta,* the Court majority ruled that California's disclosure requirement was facially invalid because it burdens donors' First Amendment rights to freedom of association. However, the majority was evenly split as to which standard of scrutiny should apply to such cases. Please explain your understanding of the two major arguments, and which of the two standards an appellate judge is bound to apply?**

Response: In *Americans for Prosperity Foundation v. Bonta,* 141 S. Ct. 2373 (2021), the majority enunciated two different standards: "exacting scrutiny" and strict scrutiny. My understanding is that, where there is such a split, an appellate judge is bound to apply the most limited ground that applies to both.

32. **Please explain your understanding of the Supreme Court's holding and rationale in *Apple v. Pepper*. How does it reconcile with *Illinois Brick*?**

Response: In *Apple v. Pepper*, 139 S. Ct. 1514 (2019), the Court held that consumers who made purchases in Apple's App Store were "direct purchasers" with sufficient standing to raise alleged antitrust violations. The Court analyzed and applied the test in *Illinois Brick* and found that consumers were directly affected by Apple's 30% fee through the resulting price of the apps.

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

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), the Court held that the contractual non-discrimination clause at issue imposed a burden on the agency's religious exercise and did not qualify as generally applicable because of its process for granting exceptions. The Court applied strict scrutiny and found that the City "offers no compelling reason why it has a particular interest in denying an exception to CSS while making them available to others." *Id*. at 1882.

34. **Please explain the Supreme Court's holding and rationale in *Associated Press v. United States*.**

Response: In *Associated Press v. United States*, 326 U.S. 1 (1945), the Court held that the Associated Press's practices and bylaws, which prohibited members from selling news to nonmembers, were an unlawful restraint of trade in violation of the Sherman Act. The Court found that the practices of the Associated Press had "hindered and impeded the

growth of competing newspapers" and that "the fact that an agreement to restrain trade does not inhibit competition in all of the objects of that trade cannot save it from the condemnation of the Sherman Act." *Id*. at 12-17.

35. **Should courts place significant weight on underlying First Amendment considerations when making antitrust determinations relating to the dissemination of information to the public, as the *Associated Press* majority suggests?**

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment on the issues raised in this hypothetical. If confirmed, I would faithfully and fully follow the decisions of the Court in every case.

Senator Josh Hawley
Questions for the Record

Judge Hernán Vera
Nominee, U.S. District Court for the Central District of California

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

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

    Response: No.

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

    Response: Judges take an oath to decide cases fairly and impartially without regard to their personal beliefs or other pre-conceived notions or attitudes. *See* Code of Conduct for United States Judges, Canon 3 ("A judge should perform the duties of the office fairly, impartially, and diligently."). Justice Marshall served with distinction on the Supreme Court for 24 years. I do not know the context of Justice Marshall's statement and would not presume to question his commitment to the rule of law.

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

    Response: My understanding is that there are essentially five federal abstention doctrines. Burford abstention requires federal courts to abstain from ruling on state law claims where state courts have greater expertise and where the issue affects an important state policy or interest. The Pullman abstention doctrine involves cases with both state law and federal claims and generally requires federal courts to abstain where a state court ruling on the state law issue would resolve the entire litigation. Younger abstention requires federal courts to abstain from enjoining a pending state proceeding where the federal issue is already being litigated in state court. Colorado River abstention applies in situations where there is parallel state and federal litigation, and requires abstention only in exceptional circumstances. Finally, the Rooker-Feldman doctrine bars jurisdiction of federal cases involving a party that has already lost in state court and is seeking relief in federal court from the alleged injury caused by the state court judgment.

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

a. Do you agree with Judge Learned Hand?

Response: My experience in private practice has included some but not extensive work in antitrust law. I am generally aware that Supreme Court and Ninth Circuit cases have expressed various opinions on the requisite market share for a finding of market power under the Sherman Act. *See, e.g., American Tobacco Co. v. United States*, 328 U.S. 781 (1946)); *Image Tech. Servs., Inc. v. Eastman Kodak Co*., 125 F.3d 1195 (9th Cir. 1997). But I do not believe there is a fixed number applicable to all situations given that a variety of factors may be relevant to the market share analysis.

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

Response: Please see my response to Question 3.a. above.

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

Response: Please see my response to Question 3.a. above.

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

Response: No.

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

Response: Not applicable.

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

Response: The original public meaning of the Constitution plays an important role in judicial interpretation. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), for example, the Court analyzed and applied the original public meaning of the text of the Second Amendment in ultimately holding that the right to keep and bear arms is an individual right.

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

Response: My understanding is that legislative history is potentially relevant only where a legal text is ambiguous. *See Bostock v. Clayton County*, 140 S. Ct. 1731, 1749 (2020) ("legislative history can never defeat unambiguous statutory text").

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

Response: My understanding is that, generally, committee reports and other writings reflecting a broader view of the legislative body are more authoritative and probative of legislative intent than correspondence or comments from individual legislators.

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

Response: I am unaware of any case where the Supreme Court has approved of consulting the laws of foreign nations in interpreting the meaning of the U.S. Constitution.

7. What were the last three books you read?

Response: *The Order of Time* by Carlo Rovelli, *Prime Minister* by Anthony Trollope, and *Enlightenment Now* by Steven Pinker.

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

Response: The Supreme Court's most recent decision on the issue of execution protocols and the Eighth Amendment is *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019). In *Bucklew*, the Supreme Court analyzed Missouri's lethal injection protocol. The Court reaffirmed the test set out in *Baze v. Rees*, 553 U. S. 35 (2008) and *Glossip v. Gross*, 135 S. Ct. 2726 (2015) that "an inmate cannot successfully challenge a method of execution under the Eighth Amendment unless he identifies an alternative that is feasible, readily implemented, and in fact significantly reduces a substantial risk of severe pain." 139 S. Ct. at 1121 (internal citations omitted).

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

Response: Yes.

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

Response: No. To the contrary, the Supreme Court has held that no such constitutional right to DNA analysis exists in the habeas context. *See District Attorney's Office for Third Judicial District v. Osborne,* 557 U.S. 52 (2009).

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

Response: No.

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

Response: The most recent Supreme Court decision on the Free Exercise Clause and the standard to be applied to governmental action is *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). In *Tandon*, the Court reviewed the constitutionality of California's Covid-related restrictions on the size of gatherings in private homes. The Court found the restrictions to be in violation of the Free Exercise Clause, holding that government regulations which provide more favorable treatment to any comparable secular activity are subject to strict scrutiny. One of the principal rationales for the holding was the Court's finding that "California treats some comparable secular activities more favorably than at-home religious exercise, permitting hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at a time." *Id*. at 1297.

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

Response: Please see my response to Question 12.

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

Response: The Supreme Court most recent decision on this issue is *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682 (2014). The Court explained that, on the question of whether a religious belief is sincerely held, the courts play a very limited role in determining "whether the plaintiffs' asserted religious belief reflects 'an honest

conviction.'" *Id*. at 725 (*citing Thomas v. Review Bd., Ind. Empl. Sec. Div*., 450 U. S. 707, 716 (1981)).

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

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

Response: The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) held that the Second Amendment right to keep and bear arms is an individual right, and that the prefatory clause relating to militias does not limit that individual right.

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

Response: No.

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

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

Response: In *Lochner v. New York*, 198 U.S. 45 (1905), the Court declared unconstitutional a New York law prohibiting bakers from working more than 60 hours per week. Herbert Spencer was a social scientist who argued that people adapt to their social conditions and later coined the term "survival of the fittest." I assume that Justice Holmes, Jr. in his dissent was making the point that the Constitution should not serve to force employees to adapt to the most stringent conditions allowed in the marketplace.

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

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided. I am aware, however, that *Lochner* was effectively abrogated by a series of later Supreme Court decisions. *See, e.g., United States v. Darby*, 312 U.S. 100 (1941); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

17. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: Although I cannot presume to know Justice Robert's exact intention in using that phrase, my assumption is that he was linking back to the initial phrase of that sentence ("Korematsu was gravely wrong the day it was decided") and making the broader point that history itself has essentially passed judgment on the error of that decision.

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

a. If so, what are they?

Response: As a trial judge, I do not make the distinctions suggested by this question. If a specific opinion is binding and applicable, I will apply it fully and without reservation.

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

Response: Yes.

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

Response: My understanding is that common law is the development of jurisprudential principles through historical reliance on precedent, and federal common law is the development of precedent in the federal legal system.

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

Response: The interpretation of a state constitutional provision must start with the text of the provision itself, but canons of statutory construction also require that a specific provision be construed in light of, and together with, the text of the entire document. Thus, while identical state and federal provisions may often be interpreted in the same way, how the provisions function syntactically, logically, and functionally in the broader text of which they are a part must also be considered.

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

Response: Please see my response to Question 20.a.

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

Response: I have not considered this issue in my practice or on the bench, and have no opinion at this time.

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

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future. Under this standard, I believe it is acceptable to note that *Brown v. Board of Education* is a case whose holding and applicability is not subject to debate and was correctly decided.

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

Response: Yes.

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

Response: Fed. R. Civ. P. 65.

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

Response: Each case must be decided on its facts, but my understanding is that a nationwide injunction is generally considered an extraordinary remedy granted only in those rare cases where it is necessary to provide full relief to the parties. *See, e.g., Trump v. International Refugee Assistance Project*, 137 S. Ct. 2080, 2088–89 (2017); *see also Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 343–44 (1999).

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

Response: Please see my answer to Question 22. b.

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

Response: Federalism is inherent in our system of government. The principle is recognized and codified throughout the Constitution and the Bill of Rights, including but

not limited to the Supremacy Clause, the Commerce Clause, the Ninth Amendment, the Tenth Amendment, and the Fourteenth Amendment.

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

Response: Please see my response to Question 2.

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

Response: The appropriate remedy in each case depends upon the remedies allowed by the particular statute, what the plaintiff is seeking, and what applicable precedent authorizes.

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

Response: My understanding is that the Supreme Court has recognized through the doctrine of substantive due process the existence of various fundamental rights protected under the Constitution and Bill of Rights. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Court reaffirmed the principle that the Due Process Clauses of the Fifth and Fourteenth Amendments protect certain fundamental rights that are "deeply rooted in our country's history and tradition" and "implicit in the concept of ordered liberty." *Id.* at 721.

28. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: My understanding is that the Supreme Court has looked unfavorably on any attempts to put a numerical figure on the "beyond a reasonable doubt" standard.

29. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment on issues

relating to habeas corpus which could come before me. If confirmed, I would faithfully and fully follow the applicable law and decisions of the Supreme Court in every case.

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment on issues relating to habeas corpus which could come before me. If confirmed, I would faithfully and fully follow the applicable law and decisions of the Supreme Court in every case.

c. If you disagree with either of these statements, please explain why and provide examples.

Response: Please see my responses to Questions 29.a. and 29.b.

30. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

Response: California and Ninth Circuit law both allow for the issuance of unpublished decision, although their citation and use is limited. *See* Cal. Rules of Court, Rule 8.1115(a); U.S. Ct. of App. 9th Cir. Rule 36-3.

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

Response: These are the rules applicable to state and federal courts in California and the Ninth Circuit, and I follow them.

c. If confirmed, would you treat unpublished decisions as precedential?

Response: Circuit Rule 36-3 states, "Unpublished dispositions and orders of this Court are not precedent, except when relevant under the doctrine of law of the case or rules of claim preclusion or issue preclusion."

d. If not, how is this consistent with the rule of law?

Response: Please see my responses to Questions 12.a., b., and c.

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

Response: Please see my responses to Questions 12.a., b., and c.

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

Response: No, but I would strictly adhere to and enforce Circuit Rule 36-3.

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: No, but I would strictly adhere to and enforce Circuit Rule 36-3.

31. In your legal career:

a. How many cases have you tried as first chair?

Response: I have tried eight cases to verdict or final decision. Four of these were jury trials, two were bench trials, and two were complex, multi-week arbitrations. I was co-lead counsel in five of these cases, and associate counsel in the remaining three.

b. How many have you tried as second chair?

Response: I have tried eight cases to verdict or final decision. Four of these were jury trials, two were bench trials, and two were complex, multi-week arbitrations. I was co-lead counsel in five of these cases, and associate counsel in the remaining three.

c. How many depositions have you taken?

Response: I cannot provide an accurate estimate, but it is well over 100.

d. How many depositions have you defended?

Response: I cannot provide an accurate estimate, but it is well over 100.

e. How many cases have you argued before a federal appellate court?

Response: None.

f. How many cases have you argued before a state appellate court?

Response: None.

g. How many times have you appeared before a federal agency, and in what capacity?

Response: None that I can recall.

h. How many dispositive motions have you argued before trial courts?

Response: I have argued dozens of dispositive motions.

i. How many evidentiary motions have you argued before trial courts?

Response: I have argued many dozens of discovery-related motions and motions in limine.

32. If any of your previous jobs required you to track billable hours:

a. What is the maximum number of hours that you billed in a single year?

Response: My best estimate is approximately 2,400 hours.

b. What portion of these were dedicated to pro bono work?

Response: During my time in private practice, I averaged between 200 and 300 hours of pro bono annually.

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

a. What do you understand this statement to mean?

Response: I assume that he meant that judges who always reach results that they like are not applying the law to the facts independent of their personal beliefs.

34. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

Response: Generally, I understand him to mean that the role of a judge is not to create the law, but to apply existing law to the facts.

b. Do you agree or disagree with this statement?

Response: Yes.

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

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

Response: The Supreme Court has issued a robust line of cases on the Free Exercise Clause, most recently in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). Please see my responses to Questions 12 and 14.

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

Response: My understanding is that the free exercise of religion is generally considered more expansive than the right to worship, and includes other activities related to a person's religious observance and beliefs.

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

Response: Please see my responses to Questions 12 and 14.

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

Response: Please see my response to Question 14.

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

Response: My understanding is that the provisions of the Religious Freedom Restoration Act do apply to other federal laws, including employment and education.

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

Response: No.

36. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

Response: I do not know the context in which this comment was made, but I assume he meant that the job of a judge is to apply the law to the facts and not to attempt to achieve some pre-conceived notion of a just result independent of the record.

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: Generally, yes.

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

Response: Yes.

a. If yes, please provide appropriate citations.

Response: To the best of my knowledge, and based on the preliminary research that I could conduct at this time, these include: *League of United Latin American Citizens v. Wilson*, 94-CV-7569-MRP (C.D. Cal.); *J.B. v. California Department of Education, et al.*, 2:06-CV-04067 (C.D. Cal.); *Nozzi v. Hous. Auth. of City of L.A.*, 2:07-CV-00380-GHW (C.D. Cal.); *Franco-Gonzalez v. Holder*, 2:10-CV-02211-DMG (C.D. Cal.); and *Los Angeles Leadership Academy, Inc. v. Jeffrey Prang, et al*., BC599466 (Los Angeles Superior Court).

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

Response: No.

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

Response: The issue of discrimination is one for policymakers, legislators, and the public at large. As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment on this issue. I can state unequivocally that I decide each case on its facts, without regard for a litigant's race, and that if confirmed I would decide each case before me impartially and fairly.

40. What case or legal representation are you most proud of?

Response: Although it is difficult to single out one case in my 26 years as a business litigator and public interest attorney, I would perhaps point to *Reyes v. Kaiser Foundation Hospitals*, BC362075 (L.A. Sup. Ct.) where I represented an elderly homeless patient dumped in skid row by Kaiser Permanente.

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

Response: Not that I can recall.

a. How did you handle the situation?

Response: Not applicable.

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

Response: Yes.

42. What three law professors' works do you read most often?

Response: In my work as a Los Angeles Superior Court judge, I rely primarily on statutory authority and case law. I do not read law review articles with enough frequency to identify specific law professors.

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

Response: I am familiar with and have read many of the Federalist Papers, but I cannot say that they have significantly shaped my view of the law.

44. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: Many judicial opinions have changed my understanding of the scope and application of relevant statutes and precedent. In the dependency context, one recent example is the California Supreme Court's discussion of the parental benefit exception in *In re Caden C*, 11 Cal. 5th 614 (2021).

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

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to comment on issues being actively litigated and which could come before me. If confirmed, I would faithfully and fully follow the applicable precedent in every case.

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

Response: Not that I can recall.

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

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

Response: No.

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

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

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

a. Apple?

Response: No.

b. Amazon?

Response: No.

c. Google?

Response: No.

d. Facebook?

Response: No.

e. Twitter?

Response: No.

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

Response: During my early years as an associate at O'Melveny & Myers, it is possible that I drafted or edited sections of a larger brief without my name necessarily appearing on the brief itself. These occasions would have been rare, however.

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

Response: I cannot recall any specific cases where this occurred.

50. Have you ever confessed error to a court?

Response: Not that I recall.

a. If so, please describe the circumstances.

Response: Not applicable.

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

Response: All judicial nominees take an oath to provide truthful information to the Senate Judiciary Committee.

Questions for the Record for Hernan D. Vera
From Senator Mazie K. Hirono

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

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

      Response: No.

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

      Response: No.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
October 20, 2021

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 broader judicial philosophy is a procedural one that focuses on ensuring that every case is decided individually through a careful and attentive application of the relevant law to the facts at issue. I endeavor to hear every case impartially and dispassionately, without regard to my personal beliefs, views, or opinions, to create and enforce procedures in the courtroom so that every litigant has a full and fair opportunity to be heard, and to treat all litigants and counsel with dignity and respect. That is the approach that I strive to employ every day.

   In terms of statutory interpretation, I begin with the text of the statute itself. If the meaning of the statutory language is clear and unambiguous, I apply the legal provisions to the facts, and check to see if there is any applicable precedent bearing on the issue. However, if there is an ambiguity in the statutory language, then I look to relevant Ninth Circuit and Supreme Court precedent to determine if there is any recommended interpretative method for the statute in question. If not, I look for guidance to the canons of statutory construction to determine whether legislative history, extrinsic evidence, technical meanings, or other interpretative sources or methods are appropriate.

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

   Response: No. I do not subscribe to any specific school of constitutional interpretation. My judicial philosophy is as described in my response to Question 3 above. The Supreme Court has recognized originalism as one of various methods of interpretation,

and I would follow it faithfully when and as specified by applicable precedent and other canons of statutory interpretation.

5. Would you describe yourself as a textualist?

Response: No. I do not subscribe to any specific school of constitutional interpretation. My judicial philosophy is as described in my response to Question 3 above.

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

Response: The Constitution is an enduring document that serves as the cornerstone of this country's jurisprudence and system of government. The meaning of the Constitution is interpreted by the Supreme Court, and its terms may be amended over time through the process outlined in Article V.

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

Response: I cannot name just one Justice whose jurisprudence I most admire. As a lover of the law and student of history, I appreciate the careful thought, respect for procedure and precedent, and impressive scholarship that Supreme Court Justices have exhibited in their opinions and dissents. If confirmed, I will faithfully apply Supreme Court precedent in every case that comes before me.

8. Was Marbury v. Madison correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future. Under this standard, I believe it is acceptable to note that *Marbury v. Madison* is a case whose holding and applicability is not subject to debate and was correctly decided.

9. Was Lochner v. New York correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future. I am aware, however, that *Lochner* was effectively abrogated by a series of later Supreme Court decisions. *See, e.g., United States v. Darby*, 312 U.S. 100 (1941); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

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

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future. Under this standard, I believe it is acceptable to note that *Brown v. Board of Education* is a case whose holding and applicability is not subject to debate and was correctly decided.

11. Was Bolling v. Sharpe correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

12. Was Cooper v. Aaron correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

13. Was Mapp v. Ohio correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

14. Was Gideon v. Wainwright correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

15. Was Griswold v. Connecticut correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

16. Was South Carolina v. Katzenbach correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been

rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

17. Was Miranda v. Arizona correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

18. Was Katzenbach v. Morgan correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

19. Was Loving v. Virginia correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future. Under this standard, I believe it is acceptable to note that *Loving v. Virginia* is a case whose holding and applicability is not subject to debate and was correctly decided

20. Was Katz v. United States correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

21. Was Roe v. Wade correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

22. Was Romer v. Evans correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

23. Was United States v. Virginia correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

24. Was Bush v. Gore correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

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

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

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

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

27. Was Boumediene v. Bush correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

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

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

29. Was Shelby County v. Holder correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

30. Was United States v. Windsor correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

31. Was Obergefell v. Hodges correctly decided?

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is generally appropriate to give an opinion on whether a case has been rightly or wrongfully decided where the relevant issue in the case is either actively litigated or subject to possible litigation in the future.

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: The Supreme Court has discussed the role of *stare decisis* in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1991). The Court identified various considerations in following precedent, including reliance and workability. I have been nominated to the district court, and I would not be in a position to suggest to an appellate court what factors it should use in reaffirming its own precedent.

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: Please see my response to Question 32.

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: Where a statute's meaning is unambiguous, legislative history and other extrinsic interpretive tools are generally irrelevant. However, legislative history has been recognized as an appropriate tool for measuring legislative intent in certain situations where the plain meaning of a statute is not clear.

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: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to speculate on hypothetical sentencing decisions. If confirmed, I would faithfully and fully follow the federal sentencing guidelines and decisions of the Court in every case.

Questions from Senator Thom Tillis for Hernán Diego Vera
Nominee to be United States District Judge for the Central District of California

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

   Response: Yes.

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

   Response: The term "judicial activism" has been defined and used in different ways. My understanding of the term is an approach to judging that attempts to reach a particular result based on the judge's personal beliefs, regardless of what the law and facts require. I do not consider this judicial approach to be consistent with the canons of judicial ethics, and I strive every day to avoid it.

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

   Response: Impartiality is not only an expectation, it is a requirement imposed by the canons of judicial ethics.

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: Yes. Accepting the role of judge requires acceptance of undesirable case outcomes. But it is the duty of all judges to put aside their own preferences and personal beliefs and apply the law to the facts, and I attempt to do that in each and every case. I reconcile the two by the firm belief that this is what it means to be committed to the rule of law, and that, in the long run, a judge's dedication to this ideal leads to greater consistency, predictability, and transparency in the law.

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

   Response: Absolutely not.

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 commit every day to fully and faithfully applying the binding precedents of the Supreme Court, including the Court's Second Amendment decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010).

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: If faced with a lawsuit involving restrictions on handgun purchases, I would analyze the underlying facts and look in the first instance to the Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010). I would also look to any other applicable precedent in the Ninth Circuit and any other relevant statutes.

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: The touchstone Supreme Court case on qualified immunity continues to be *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), which held that a government official performing a discretionary function has individual immunity from civil liability if his/her conduct does not violate "clearly established" statutory or constitutional rights. This test has been affirmed repeatedly, most recently in *White v. Pauly*, 137 S. Ct. 542 (2017) and *Rivas-Villegas v. Cortesluna*, 595 U.S. ___ (2021). Specifically, in *Rivas-Villegas*, the Court explained that this test "must be undertaken in light of the specific context of the case" and that existing precedent "must have placed the statutory or constitutional question beyond debate." *Id*. (slip op., at 6) (internal citations omitted).

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: The qualified immunity test laid out by the Supreme Court in *Harlow* is the law of the land, and one that I would follow faithfully and without reservation. As a Los Angeles Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on issues that may come before me.

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

Response: The qualified immunity test laid out by the Supreme Court in *Harlow* is the law of the land, and one that I would follow faithfully and without reservation. As a Los Angeles

Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on issues that may come before me.

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

Response: In my many years as a business litigator, I did not practice patent law, and do not have any opinion on the question of patent eligibility posed above.

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: Generally, I am aware that the question of patent eligibility is governed by Section 101 of the Patent Act, as interpreted by a robust line of Supreme Court precedent including, most recently, the Court's decision in *Alice Corp Pty, Ltd. v. LCS Bank Intl'l*, 573 U.S. 208 (2014). The Court in *Alice* summarized a two-step framework for distinguishing between "abstract ideas" from other patent-eligible applications of those ideas. *Id*. at 217-218. The Court described the first step as a determination of whether the relevant claims are "directed at one of those patent-ineligible concepts" and the second step as a search for an "inventive concept" that either individually or in combination is sufficient to transform the abstract idea into an invention eligible for patent protection. *Id*. at 217-221.

I have not practiced patent law, however, and I am unable to give a more fulsome legal opinion on the question presented. Moreover, as a Los Angeles Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on hypotheticals raising legal issues that may come before me.

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

Response: Generally, I am aware that the question of patent eligibility is governed by Section 101 of the Patent Act, as interpreted by a robust line of Supreme Court precedent including, most recently, the Court's decision in *Alice Corp Pty, Ltd. v. LCS Bank Intl'l*, 573 U.S. 208 (2014). The Court in *Alice* summarized a two-step framework for distinguishing between "abstract ideas" from other patent-eligible applications of those ideas. *Id*. at 217-218. The Court described the first step as a determination of whether the relevant claims are "directed at one of those patent-ineligible concepts" and the second step as a search for an "inventive concept" that either individually or in combination is sufficient to transform the abstract idea into an invention eligible for patent protection. *Id*. at 217-221.

I have not practiced patent law, however, and I am unable to give a more fulsome legal opinion on the question presented. Moreover, as a Los Angeles Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on hypotheticals raising legal issues that may come before me.

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: Generally, I am aware that the question of patent eligibility is governed by Section 101 of the Patent Act, as interpreted by a robust line of Supreme Court precedent including, most recently, the Court's decision in *Alice Corp Pty, Ltd. v. LCS Bank Intl'l*, 573 U.S. 208 (2014). The Court in *Alice* summarized a two-step framework for distinguishing between "abstract ideas" from other patent-eligible applications of those ideas. *Id*. at 217-218. The Court described the first step as a determination of whether the relevant claims are "directed at one of those patent-ineligible concepts" and the second step as a search for an "inventive concept" that either individually or in combination is sufficient to transform the abstract idea into an invention eligible for patent protection. *Id*. at 217-221.

I have not practiced patent law, however, and I am unable to give a more fulsome legal opinion on the question presented. Moreover, as a Los Angeles Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on hypotheticals raising legal issues that may come before me.

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: Generally, I am aware that the question of patent eligibility is governed by Section 101 of the Patent Act, as interpreted by a robust line of Supreme Court precedent including, most recently, the Court's decision in *Alice Corp Pty, Ltd. v. LCS Bank Intl'l*, 573 U.S. 208 (2014). The Court in *Alice* summarized a two-step framework for distinguishing between "abstract ideas" from other patent-eligible applications of those ideas. *Id*. at 217-218. The Court described the first step as a determination of whether the relevant claims are "directed at one of those patent-ineligible concepts" and the second step as a search for an "inventive concept" that either individually or in combination is sufficient to transform the abstract idea into an invention eligible for patent protection. *Id*. at 217-221.

I have not practiced patent law, however, and I am unable to give a more fulsome legal opinion on the question presented. Moreover, as a Los Angeles Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on hypotheticals raising legal issues that may come before me.

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: Generally, I am aware that the question of patent eligibility is governed by Section 101 of the Patent Act, as interpreted by a robust line of Supreme Court precedent including, most recently, the Court's decision in *Alice Corp Pty, Ltd. v. LCS Bank Intl'l*, 573 U.S. 208 (2014). The Court in *Alice* summarized a two-step framework for distinguishing between "abstract ideas" from other patent-eligible applications of those ideas. *Id*. at 217-218. The Court described the first step as a determination of whether the relevant claims are "directed at one of those patent-ineligible concepts" and the second step as a search for an "inventive concept" that

either individually or in combination is sufficient to transform the abstract idea into an invention eligible for patent protection. *Id*. at 217-221.

I have not practiced patent law, however, and I am unable to give a more fulsome legal opinion on the question presented. Moreover, as a Los Angeles Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on hypotheticals raising legal issues that may come before me.

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: Generally, I am aware that the question of patent eligibility is governed by Section 101 of the Patent Act, as interpreted by a robust line of Supreme Court precedent including, most recently, the Court's decision in *Alice Corp Pty, Ltd. v. LCS Bank Intl'l*, 573 U.S. 208 (2014). The Court in *Alice* summarized a two-step framework for distinguishing between "abstract ideas" from other patent-eligible applications of those ideas. *Id*. at 217-218. The Court described the first step as a determination of whether the relevant claims are "directed at one of those patent-ineligible concepts" and the second step as a search for an "inventive concept" that either individually or in combination is sufficient to transform the abstract idea into an invention eligible for patent protection. *Id*. at 217-221.

I have not practiced patent law, however, and I am unable to give a more fulsome legal opinion on the question presented. Moreover, as a Los Angeles Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on hypotheticals raising legal issues that may come before me.

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

Response: Generally, I am aware that the question of patent eligibility is governed by Section 101 of the Patent Act, as interpreted by a robust line of Supreme Court

precedent including, most recently, the Court's decision in *Alice Corp Pty, Ltd. v. LCS Bank Intl'l*, 573 U.S. 208 (2014). The Court in *Alice* summarized a two-step framework for distinguishing between "abstract ideas" from other patent-eligible applications of those ideas. *Id*. at 217-218. The Court described the first step as a determination of whether the relevant claims are "directed at one of those patent-ineligible concepts" and the second step as a search for an "inventive concept" that either individually or in combination is sufficient to transform the abstract idea into an invention eligible for patent protection. *Id*. at 217-221.

I have not practiced patent law, however, and I am unable to give a more fulsome legal opinion on the question presented. Moreover, as a Los Angeles Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on hypotheticals raising legal issues that may come before me.

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: I have not practiced patent law, and I am unable to give a more fulsome legal opinion on the question presented. Moreover, as a Los Angeles Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on hypotheticals raising legal issues that may come before me.

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: Generally, I am aware that the question of patent eligibility is governed by Section 101 of the Patent Act, as interpreted by a robust line of Supreme Court precedent including, most recently, the Court's decision in *Alice Corp Pty, Ltd. v. LCS Bank Intl'l*, 573 U.S. 208 (2014). The Court in *Alice* summarized a two-step framework for distinguishing between "abstract ideas" from other patent-eligible applications of those ideas. *Id*. at 217-218. The Court described the first step as a determination of whether the relevant claims are "directed at one of those patent-ineligible concepts" and the second step as a search for an "inventive concept" that either individually or in combination is sufficient to transform the abstract idea into an invention eligible for patent protection. *Id*. at 217-221.

I have not practiced patent law, however, and I am unable to give a more fulsome legal opinion on the question presented. Moreover, as a Los Angeles Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on hypotheticals raising legal issues that may come before me.

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: Generally, I am aware that the question of patent eligibility is governed by Section 101 of the Patent Act, as interpreted by a robust line of Supreme Court precedent including, most recently, the Court's decision in *Alice Corp Pty, Ltd. v. LCS Bank Intl'l*, 573 U.S. 208 (2014). The Court in *Alice* summarized a two-step framework for distinguishing between "abstract ideas" from other patent-eligible applications of those ideas. *Id*. at 217-218. The Court described the first step as a determination of whether the relevant claims are "directed at one of those patent-ineligible concepts" and the second step as a search for an "inventive concept" that either individually or in combination is sufficient to transform the abstract idea into an invention eligible for patent protection. *Id*. at 217-221.

I have not practiced patent law, however, and I am unable to give a more fulsome legal opinion on the question presented. Moreover, as a Los Angeles Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on hypotheticals raising legal issues that may come before me.

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: I have not practiced patent law, and I am unable to give a more fulsome legal opinion on the question presented. Moreover, as a Los Angeles Superior Court judge, and a nominee to the district court, I believe it is inappropriate for me to comment further on hypotheticals raising legal issues that may come before me.

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: As a business litigator for many years, I have been involved with numerous intellectual property matters, including many matters claiming copyright infringement.

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

Response: In private practice, I worked on several matters where I was asked by clients to assist with the removal of copyrighted works and images from various websites. To that end, I invoked specific provisions of the Digital Millennium Copyright Act in my negotiations with online service providers and the underlying websites themselves.

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

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

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: As a business litigator for many years, I have been involved with numerous matters involving intellectual property, including trademark and copyright matters. Specifically, these have included intellectual property disputes representing corporate clients in the technology, hospitality, consumer product, and entertainment sectors. Although I have not practiced at length in the First Amendment area, as a public interest lawyer I have had experience with free speech issues in the areas of education and civil rights.

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 Supreme Court has recognized that, where a statute or written instrument is ambiguous, legislative history may be an important tool in

discerning the meaning of the text.

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: My understanding is that interpretations by the U.S. Copyright Office are afforded *Skidmore* deference.

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

Response: As a Los Angeles Superior Court judge, and as a nominee to the district court, I do not believe it is appropriate for me to speculate on hypothetical copyright infringement considerations. If confirmed, I would faithfully and fully follow the applicable law in every case.

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 DMCA must be interpreted the same way as all other statutes; namely, the Act must be interpreted according to the plain language of the text and in light of all applicable 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: Please see my response to Question 17.a.