Senator Chuck Grassley
Questions for the Record

Luis Felipe Restrepo
Nominee, U.S. Circuit Judge for the Third Circuit

1. **How are you preparing to preside over matters at the appellate level? Please also explain how your experience at the District Court level has prepared you to be an appellate judge.**

   Response: My tenure as a District Court Judge, United States Magistrate Judge and practicing attorney have prepared me well to preside over matters at the appellate level. Prior to issuing an opinion I carefully read the written submissions, review the statutes and/or case law cited by parties, listen to any argument presented, consider the facts relevant to the disputed issue(s) and do independent research of the statutes and/or case law at issue. As a federal trial court judge I have also gained much experience in properly making the record and addressing all issues presented to me by the parties.

   In an effort to prepare myself for the role of a Circuit Judge, should I be confirmed, I have sought out the advice of judges that currently serve as Circuit Judges on topics such as the effective administration of the appellate docket and collaboration among judges and with the Circuit staff.

2. **In a 1991 article regarding the efficacy of providing interpreters for defendants you discussed a Supreme Court case, *Hernandez v. New York,* U.S. 111 S. Ct. 1859 (1991), which held that a peremptory strike can be based on the fact that a potential juror speaks the language that will be translated out of a concern that the listener will question the translation. You did not agree with the Court's decision stating, "…this almost guarantees the impaneling of a jury with little understanding of the defendant's culture." If confirmed, would you have any trouble following *Hernandez v. New York*? Please explain.**

   Response: *Hernandez v. New York* is established Supreme Court precedent. During my 9 years of service as a federal judge I have always followed the holdings of Supreme Court opinions and would have no trouble doing so should I be confirmed to the Court of Appeals.

3. **While in private practice, you represented Oscar Antonio Grande, a member of the notoriously violent gang known as Mara Salvatrucha or MS-13, in a federal capital murder trial. Grande was charged with and convicted of killing Brenda Paz, a 17 year-old government witness who was 16 weeks pregnant at the time. The murder was**

ordered by MS-13 to silence Paz's cooperation with the government. According to testimony, during the attack in which she was stabbed sixteen times, Paz asked "why" to which the attackers replied "because you're a rat." After finding Grande guilty of murder and four other counts, the jury could not reach a unanimous decision with respect to capital punishment, thus defaulting to a sentence of life without the possibility of release. Following this jury decision, you were described as expressing joy or elation for the decision. ("expresó su alegría por la decision"). I recognize you were zealously defending your client. Is there anything in your personal views that would preclude you from upholding a sentence of death if the law required? If so, please explain why.

Response: I believe the quote referenced in this question should be read to note that Mr. Grande expressed his joy or elation for the decision. In any event, I can assure the Committee that nothing in my personal views would preclude me from upholding a sentence of death if the law required such a sentence.

4. **In questions for the record posed during your nomination to be District Court Judge, you were asked to comment on a quote from one of your articles, "Where it becomes important is to the people who use the system. If all they see day after day is people on the bench who can't identify with their language or color, it is not healthy." Specifically, you were asked how diverse should a bench be to be considered healthy. You answered, "Our justice system overall benefits when it reflects the demographics of the community it serves." Please provide a bit more detail.**

    a. **Why do you believe that if a judge does not share the same language or color of a plaintiff or defendant, it is not "healthy" for the judicial system?**

    Response: I do not believe that a judge need share the same language or color of a plaintiff or defendant. I do however believe that organizations that serve the public, such as the federal courts, do benefit from diversity in terms of demographics and professional experience. Diversity in terms of professional experience and demographics promotes confidence in the system and enhances the legitimacy of the organization.

    b. **Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

Response: No. A judge should apply relevant precedent to the facts established in the case regardless of the judge's gender, ethnicity or other demographic factor.

5. **Do you believe the original intent of the Framers of the Constitution is the primary guiding point for interpreting and applying modern statutes and regulations to constitutional questions? Are there other interpretive techniques that you use?**

The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) applied original public meaning to their interpretation of the Second Amendment. I would faithfully apply *Heller* and all other binding precedent to issues of constitutional interpretation.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is a firm commitment to following the rule of law. I believe that during my 7-year term as a United States Magistrate Judge and my 2-year tenure as a United States District Judge I have demonstrated that I possess this attribute.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: In my view, the appropriate temperament of a judge includes the qualities of impartiality, fairness, respectfulness, humility, integrity and the commitment to the rule of law. I believe that I have met these standards as both a United States Magistrate Judge and a United States District Judge and that I would continue to meet these standards if confirmed as a United States Circuit Judge.

8. **In general, Supreme Court precedents are binding on all lower federal courts. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I am committed to following the precedent of higher courts faithfully and giving them full force and effect, even if I personally disagree with such precedents.

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In cases involving statutory interpretation, I would first turn to the text of the statute. In cases involving Constitutional interpretation I would first turn to the text of the Constitution. If the text is not clear I would turn to analogous rules of construction contained in Supreme Court and Third Circuit precedent. Where such precedent is not available I would examine analogous precedent from other Supreme Court and Third Circuit decisions.

10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: I must and would apply the decision(s) of the Supreme Court and the Third Circuit. I would follow such precedent regardless of my own judgment or personal beliefs.

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Only in a properly presented case or controversy and if there were no construction of the statute that would preserve its constitutionality would it be appropriate for a federal court to declare a statute enacted by Congress unconstitutional. I would follow Supreme Court and Third Circuit precedent in making such a determination.

12. Please describe your understanding of the workload of the Third Circuit. If confirmed, how do you intend to manage your caseload?

Response: My understanding is that the workload of the Third Circuit is substantial. I will work with my colleagues, law clerks and Circuit staff to ensure the prompt disposition of motions and the efficient issuing of opinions. I would also seek out the advice of judges who have experience as appellate judges and take advantage of resources available to the federal judiciary from the Administrative Office of the U.S. Courts.

13. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

Response: Unless mandated to do so by the Supreme Court or the Court of Appeals it is not proper for judges to rely on foreign law or the view of the "world community" in determining the meaning of the Constitution.

14. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I am confident that my record as a United States District Court Judge for 2 years and record as a United States Magistrate Judge for 7 years can provide the Committee with assurance and evidence that, if confirmed as a Circuit Judge, my decisions will continue to be grounded in precedent and the text of the law rather than any underlying political ideology or motivation.

15. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: I am confident that my record as a United States District Court Judge and a United States Magistrate Judge can provide the Committee with assurance and evidence that, if confirmed as a Circuit Judge, I will continue to put aside any personal views and be fair to all who appear before me.

16. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

Response: I would look to Fed. R. App. P. 35(a) in deciding when an appellate court *en banc* should overturn precedent within the Circuit. Rule 35(a) notes that: *en banc* consideration is necessary to secure or maintain uniformity of the court's decisions; or the proceeding involves a question of exceptional importance. I would also consider the applicability of any Supreme Court precedent relevant to the issue.

17. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: I read the written submissions of the parties, review the cases and statutes cited by the parties, listen and consider any oral argument presented, do independent research of the statutes and case law at issue and apply the law as set forth in the decisions of the Supreme Court and the Third Circuit to the facts of the case.

18. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work and interaction with colleagues on the Court, if confirmed?

I do believe that collegiality is an important element of the work of the Circuit Court. Should I be confirmed I would approach colleagues with respect, listen carefully and consider their position on issues with an open mind.

19. At a speech in 2005, Justice Scalia said, "I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that's what it says, that's what it says."

a. Do you agree with Justice Scalia?

Response: Although I am not familiar with Justice Scalia's 2005 speech or the context of the quote, I do agree with the sentences quoted.

b. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?

Response: No.

20. Do you think judges should consider the "current preferences of the society" when ruling on a constitutional challenge? What about when seeking to overrule longstanding Supreme Court or circuit precedent?

Response: Unless directed to do so by the Supreme Court, I do not think judges should consider the "current preferences of the society" when ruling on constitutional challenges or when considering challenges to Supreme Court or Circuit precedent.

21. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

Response: My judicial philosophy is to apply the Constitution to all statutes equally based on the text of the Constitution and binding precedent of the Supreme Court and Third Circuit.

22. What weight or consideration should a judge give to evolving norms and traditions of our society in interpreting the written Constitution?

Response: Unless directed to do so by the Supreme Court or Circuit precedent, a judge should not consider the evolving norms and traditions of our society in interpreting the written Constitution.

23. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?

Response: In *Locke v. Davey*, 540 U.S. 712, 719 (2004) the Supreme Court recognized that: "The Religion Clauses of the First Amendment provide: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'" The Court recognized that "the Establishment Clause and the Free Exercise Clause are frequently in tension [but that] 'there is room for play in the joints.'" See also *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

24. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: I do not agree with the perspective that the Constitution is a "living" document that is constantly evolving as society interprets it.

25. Do you believe there is a right to privacy in the U.S. Constitution?

Response: The Supreme Court has recognized a right to privacy in several contexts, for example, in the right to be free from unreasonable searches and seizures under the 4th Amendment, *see Katz v. United States*, 389 U.S. 347 (1967), and *United States v. Dunn*, 480 U.S. 294 (1987), and the privacy interest in the freedom of association under the 1st Amendment, *see NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). Regardless of any personal beliefs I may have, I apply Supreme Court and Circuit precedent to the facts of the case.

a. Where is it located?

Response: Please see response above.

b. From what does it derive?

Response: Please see response above.

c. What is your understanding, in general terms, of the contours of that right?

Response: My understanding is that the contours of the right to privacy are defined by Supreme Court precedent, which I apply to the facts of each specific case.

26. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

Response: As a District Judge I do not read between the lines and will not do so if confirmed as a Circuit Judge

b. Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?

Response: No, as a District Judge I do not search for penumbras and emanations in the Constitution and will not do so if confirmed as a Circuit Judge.

27. In *Brown v. Entertainment Merchants Association*., Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

Response: Appellate review is restricted to the original papers and exhibits filed in the district court, transcripts of proceedings, if any, and certified copy of the docket entries prepared by the district clerk. See Fed. R. App. P. 10.

b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

Response: It would only be appropriate for appellate judges to base their opinions on psychological and sociological scientific studies if the studies had been appropriately presented to the District Court consistent with Supreme Court and Circuit precedent and conforming to the Federal Rules of Evidence and the Federal Rules of Appellate Procedure.

28. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: Neither *District of Columbia v. Heller*, 554 U.S. 570 (2008) nor *McDonald v. City of Chicago*, 554 U.S. 570 (2008) identify the specific standard of scrutiny appropriate to a Second Amendment challenge to a federal or state gun law. The Third Circuit, interpreting *Heller*, has held that some heightened scrutiny is required and that rational

basis is not sufficient. *See Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013), and *United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010). As a District Court judge in the Third Circuit, I follow such precedent and would follow subsequent Supreme Court and Third Circuit precedent relevant to this issue.

29. What would be your definition of an "activist judge"?

Response: An "activist judge" has an agenda and is result driven notwithstanding binding precedent from superior courts.

30. What weight should a judge give legislative intent in statutory analysis?

Response: The role of the courts in interpreting a statute is to give effect to Congress's intent. *See Negonsott v. Samuels*, 507 U.S. 99 (1993). Because it is presumed that Congress expresses its intent through the ordinary meaning of its language, every exercise in statutory interpretation begins with an examination of the plain meaning of the statute. *See Mansell v. Mansell*, 490 U.S. 581 (1989).

31. Please describe with particularity the process by which these questions were answered.

Response: The questions were provided to me by personnel from the Department of Justice on the evening of June 17, 2015. I prepared responses to the questions and reviewed them with a representative of the Office of Legal Policy of the Department of Justice, then asked that my responses be submitted to the Senate Judiciary Committee.

32. Do these answers reflect your true and personal views?

Response: These answers do reflect my true and personal views.

Questions for Judicial Nominees
Senator Ted Cruz

Luis Felipe Restrepo
Nominee – U.S. Circuit Judge for
the Third Circuit

Judicial Philosophy

1. Describe how you would characterize your judicial philosophy.

Response: My judicial philosophy is based on a firm commitment to the rule of law and treating all litigants with respect and dignity. During my 2-year tenure as a United States District Judge and my previous 7 years as a United States Magistrate Judge, my record demonstrates a commitment to applying Supreme Court and Third Circuit precedent to the facts established by the evidence.

2. How does a responsible judge interpret constitutional provisions, such as due process or equal protection, without imparting his own values to these provisions?

Response: Fidelity to the doctrine of *stare decisis* is the cornerstone of our judicial system, inspiring confidence and ensuring a predictable application of the law. A responsible judge does not impose his/her values on constitutional provisions; rather, the judge applies Supreme Court and Circuit precedent to his/her analysis of the established facts regardless of the judge's personal view.

3. With the assumption that you will apply all the law announced by the Supreme Court, please name a Warren Court, Burger Court, and Rehnquist Court precedent that you believe was wrongly decided—but would nevertheless faithfully apply as a lower court judge. Why do you believe these precedents were wrongly decided?

Response: As a sitting District Court Judge I do not feel it appropriate to express my personal views about Supreme Court decisions. I apply Supreme Court precedent regardless of whether I think such precedent was wrongly decided and would continue to do so should I be confirmed as a Circuit Judge.

4. Which sitting Supreme Court Justice do you most want to emulate?

Response: Although I have great respect for the Justices of the Supreme Court I am not in a position to identify a single justice I would most want to emulate.

Among the traits I most respect in judges are humility, patience, legal acumen and respect for the rule of law.

5. Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, other)?

Response: The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) applied original public meaning to their interpretation of the Second Amendment. I would faithfully apply *Heller* and all other binding precedent to issues of constitutional interpretation.

6. What role, if any, should the constitutional rulings and doctrines of foreign courts and international tribunals play in the interpretation of our Constitution and laws?

Response: None.

7. What are your views about the role of federal courts in administering institutions such as prisons, hospitals, and schools?

Response: The role of federal courts in administering institutions such as prisons, hospitals and schools is governed by the Constitution, applicable statutes and Supreme Court and Circuit precedent.

8. What are your views on the theory of a living Constitution, and is there any conflict between the theory of a living Constitution and the doctrine of judicial restraint?

Response: I do not subscribe to the theory of a living Constitution. Constitutional issues should be decided by looking to the text of the Constitution and applying binding Supreme Court and Circuit precedent.

9. What is your favorite Supreme Court decision in the past 10 years, and why?

Response: I do not have a favorite Supreme Court decision of the past 10 years.

10. Please name a Supreme Court case decided in the past 10 years that you would characterize as an example of judicial activism.

Response: As a sitting District Judge I do not feel it appropriate to express my personal views about Supreme Court decisions. Supreme Court opinions are

binding regardless of whether a judge takes the view that the opinion is an example of judicial activism.

11. What is your definition of natural law, and do you believe there is any room for using natural law in interpreting the Constitution or statutes?

Response: However defined, natural law is not precedent in interpreting the Constitution or statutes.

Congressional Power

12. Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: As a nominee to the Third Circuit Court of Appeals and a sitting District Judge I do not feel it appropriate to express my personal views about Supreme Court decisions. *Garcia* is binding precedent, and I would follow it regardless of my personal views.

13. Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In his concurring opinion in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia summarized the relevant Supreme Court precedent as follows: "Congress may regulate even noneconomic activity if that regulation is a necessary part of a more general regulation of interstate commerce." Justice Scalia further noted: "Congress may regulate noneconomic intrastate activities only where the failure to do so 'could …undercut' its regulation of interstate commerce." *Id.* at 38. As a District Judge and if confirmed as a Circuit Judge, I would faithfully follow the Supreme Court's decisions in this area including *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000).

14. What limits, if any, does the Constitution place on Congress's ability to condition the receipt and use by states of federal funds?

Response: The Supreme Court has "... recognized limits on Congress's power under the Spending Clause to secure state compliance with federal objectives."

See NFIB v. Sebelius 132 S. Ct. 2566, 2602 (2012). In *South Dakota v. Dole*, 483 U.S. 203, 207 (1987), the Supreme Court acknowledged that, per the language of Constitution, "the exercise of the spending power must be in pursuit of 'the general welfare.'" The Supreme Court, in *South Dakota v. Dole*, also acknowledged that: (1) "if Congress desires to condition the States' receipt of federal funds, it 'must do so unambiguously . . ., enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation;'" (2) "conditions on federal grants might be illegitimate if they are unrelated 'to the federal interest in particular national projects or programs;'" and (3) "other constitutional provisions may provide an independent bar to the conditional grant of federal funds." *Id.* at 207-08.

15. Is Chief Justice Roberts' decision in *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), on the Commerce Clause and Necessary and Proper Clause binding precedent?

Response: Given that this question is currently being litigated I do not think it would be appropriate for me, as a sitting District Court Judge to respond. I can assure the Committee that I will faithfully apply all binding United States Supreme Court and Circuit precedent should I have to address this issue as a judge.

Presidential Power

16. What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President's authority to issue executive orders and executive actions is limited by the Constitution and federal statutes. If the President takes action that is not authorized by the Constitution or an act of Congress and a challenge to that action is properly brought, then a federal judge must invalidate the action as exceeding Presidential authority. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

17. Does the President possess any unenumerated powers under the Constitution, and why or why not?

Response: A judge considering this issue should look to *Youngstown* and other relevant Supreme Court and Circuit precedents consistent with the facts presented.

Individual Rights

18. When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In discussing the "established method of substantive-due process analysis," the Supreme Court has observed that "Due Process Clause specifically protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,'… and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). As a District Judge and if confirmed as a Circuit Judge, I would apply this and all other applicable precedent.

19. When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: In accordance with Supreme Court precedent, a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it classifies based on race, alienage, national origin or gender. The Court has also explained that heightened scrutiny should be applied when a classification burdens a right the Court has identified as "fundamental," such as the right to vote.

20. Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: As a District Judge and if confirmed as a Circuit Judge I would follow and apply *Grutter* and all Supreme Court precedents concerning this issue regardless of any individual expectations.

21. To what extent does the Equal Protection Clause tolerate public policies that apportion benefits or assistance on the basis of race?

Response: The Supreme Court has applied a "strict scrutiny" analysis when reviewing public policies that apportion benefits or assistance on the basis of race. *See Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), and *Grutter v. Bollinger*, 539 U.S. 306 (2003).

22. Does the Second Amendment guarantee an individual right to keep and bear arms for self-defense, both in the home and in public?

Response: An individual's Second Amendment right to keep and bear arms in the home for self-defense was addressed by the Supreme Court in *District of Columbia v. Heller*, 554 S. Ct. 570 (2005) and *McDonald v. Chicago* 561 U.S. 742 (2010). The Supreme Court has yet to consider the issue of whether an

individual has a Second Amendment right to keep and bear arms for self-defense in public. Given that I am a sitting District Court Judge and a nominee to the Third Circuit I do not believe that I should comment on this issue. As a District Court Judge and if confirmed as a Circuit Judge I would apply binding Supreme Court and Circuit precedent to any Second Amendment question.

Questions for the Record from Senator Vitter addressed to L. Felipe Restrepo, nominee United States Court of Appeals for the Third Circuit.

1. **What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?**

   Response: The United States Supreme Court's holding in *NLRB v. Canning,* 134 S. Ct. 2550 (2014), is binding precedent on all lower courts. The opinion noted that a recess of 3-10 days is presumptively too short to fall within the recess appointment clause but that extraordinary circumstances may warrant exercise of the President's recess appointment powers during a shorter break.

2. **In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?**

   Response: *Planned Parenthood v. Casey,* 505 U.S. 833, 878 (1992), held that "…an undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." The issue presented in the above question is currently being litigated in the lower courts. Given that I am a sitting United States District Judge and a nominee to the United States Court of Appeals for the Third Circuit I do not believe that I should comment on this matter. I can assure you that I will faithfully apply all binding Supreme Court and Circuit precedent should I have to address this issue as a judge.

3. **The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?**

   Response: Although the Supreme Court has issued opinions modifying *Roe v. Wade*, see for example, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and *Gonzales v. Carhart*, 550 U.S. 124 (2007), the Court has not reversed *Roe v. Wade* and as modified it is settled precedent.

4. **Do you agree that the ruling in Baker v. Nelson precludes the federal courts from hearing cases regarding state definitions of marriage? Do you think that US v. Windsor contradicts the Court's previous ruling in Baker?**

   Response: The issue presented in the above question is currently being litigated in the lower courts. Given that I am a sitting United States District Judge and a nominee to the

United States Court of Appeals for the Third Circuit I do not believe that I should comment on this matter. The Court may very well resolve this issue in its anticipated decision in *Obergefell v. Hodges*. I can assure you that I will faithfully apply all binding Supreme Court and Circuit precedent should I have to address this issue as a judge.

5. **What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?**

   Response: My philosophy on judicial precedent is that Supreme Court precedent is binding on all lower courts and that Circuit precedent is binding on all District Courts within the relevant Circuit. As a United States District Judge I am bound by prior binding case law even if I personally disagree with it.

6. **How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in <u>McDonald v. City of Chicago</u> with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?**

   Response: An individual's Second Amendment right to bear arms in the home for self-defense was addressed by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742 (2010). The issues identified above are currently being litigated in the lower courts and the Supreme Court has yet to consider these Second Amendment issues. Given that I am a sitting United States District Judge and a nominee to the United States Court of Appeals for the Third Circuit I do not believe that I should comment on this matter. I can assure you that I will faithfully apply all binding Supreme Court and Circuit precedent should I have to address this issue as a judge.

7. **Do you support suspending capital punishment sentencing pending the Supreme Court's decision on the use of lethal injection drugs in Oklahoma?**

   Response: The issue presented in the above question is currently being litigated in the lower courts. Given that I am a sitting United States District Judge and a nominee to the United States Court of Appeals for the Third Circuit I do not believe that I should comment on this matter. The Court may well resolve this issue in its anticipated decision in *Glossip v. Gross*. I can assure you that I will faithfully apply all binding Supreme Court and Circuit precedent should I have to address this issue as a judge.

8. **How should a judge's gender, race, or background influence a judge's judicial philosophy or view on the law?**

Response: A judge's gender, race or background should have no influence on a judge's judicial philosophy or view on the law.

9. You represented Oscar Antonio Grande, a member of the MS-13 gang, who was eventually convicted of murder and sentenced to life in prison without parole. In your questionnaire response you stated:

> **"Mitigation efforts included finding an expert who was in a position to discuss the evolution of MS-13, the conflict in El Salvador and Mr. Grande's family."**

a. Do you believe that a person's culture and origin should be considered mitigating factors in sentencing?

Response: I do believe that the jury's consideration of the evolution of MS-13, the conflict in El Salvador and Mr. Grande's family were relevant mitigating sentencing considerations in the penalty phase of his case. Given that Title 18 U.S.C. Section 3592 allows the finder of fact to consider "any mitigating factor" when determining the appropriate sentence in a capital case I do believe it appropriate to give the fact finder any and all information that may inform their decision as to the appropriate sentence. Information about an individual's culture, origin, personal and family history may be relevant mitigation information that should be considered by the fact finder.

b. If so, to what extent should they be mitigating factors?

Response: The "extent" of any individual mitigating factor is left to the discretion of the jury in a jury trial and to the judge in a bench trial consistent with Title 18 U.S.C. Sections 3592 and 3593.

10. Have you ever expressed an opinion on whether the death penalty is unconstitutional?

Response: No.

a. If so, what was that opinion?

b. If not, do you have such an opinion?

Response: The United States Supreme Court has held that the death penalty is constitutional. As a United States District Judge I am bound by Supreme Court and Circuit precedent. I can assure the Committee that nothing in my personal views would prevent me from upholding a sentence of death if the law required such a sentence.

11. Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), applied original public meaning to their interpretation of the Second Amendment. I would faithfully apply *Heller* and all other binding precedent to issues of constitutional interpretation.

12. Under what circumstance would you overrule or overturn precedent as a judge?

Response: As a District Judge and if fortunate enough to be confirmed and serving as a member of a 3-judge panel I would not overturn precedent. If I were a member of the 3rd Circuit sitting *en banc* I would look to Fed. R. App. P. 35(a) which notes that: *en banc* consideration is necessary to secure or maintain uniformity of the court's decisions; or the proceeding involves a question of exceptional importance. I would also consider the applicability of any Supreme Court precedent relevant to the issue.

13. How would you characterize your judicial philosophy, and which past U.S. Supreme Court Justice's judicial philosophy is most analogous with yours?

Response: My judicial philosophy is based on a firm commitment to the rule of law and treating all litigants with respect and dignity. During my 2-year term as a United States District Judge and my 7-year term as a United States Magistrate Judge, my record demonstrates a commitment to applying Supreme Court and Circuit precedent to the facts established by the evidence.

Given the very different roles of a trial court and appellate court, I do not have a specific Justice of the Supreme Court whose judicial philosophy is most analogous to mine.

14. Describe in detail your views on the Free Exercise and Establishment Clauses of the First Amendment of the U.S. Constitution. Do you understand those clauses to ever require the affirmative accommodation of religious practices and beliefs? Do those protections extend to the workplace?

Response: In *Locke v. Davey*, 540 U.S. 712, 719 (2004), the Supreme Court recognized that: "The Religion Clauses of the First Amendment provide: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'" The Court recognized that "the Establishment Clause and the Free Exercise Clause are frequently in tension [but that] 'there is room for play in the joints.'" *See also Cutter v. Wilkinson*, 544 U.S. 709 (2005). I would apply this and all applicable precedents to a justiciable case presenting the question of affirmative accommodations and beliefs in the work place.