

**Questions for Mr. Srinivasan
Senator Ted Cruz**

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: Were I to be confirmed, my judicial philosophy would be characterized by a commitment to an impartial adherence to the applicable law in addressing the cases that come before me, by which I mean an impartial and faithful application of the governing constitutional provisions, statutes, regulations, judicial precedents, or other pertinent legal instruments to the specific context and facts. I do not have sufficient familiarity with the body of decisions of any particular Justice of the Warren, Burger, or Rehnquist Courts to identify the single Justice whose judicial philosophy might be described as most analogous with mine. When a law student, however, I worked as a research assistant on Professor Gerald Gunther's biography of Judge Learned Hand, *Learned Hand: The Man and the Judge*, and in that capacity became sufficiently familiar with Judge Hand's general approach to the craft of judging to conclude that his general approach seemed a highly admirable one, without regard to his opinions in particular cases or his views on particular issues.

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: The quoted statement is from a Supreme Court decision that remains binding precedent on all lower courts, including the D.C. Circuit. The Supreme Court made that observation about "judicially created limitations on federal power" in the particular context of the issues before it in *Garcia*, and the Court has invoked state sovereign interests in applying judicially enforceable limitations on federal power in other cases such as *Printz v. United States*, 521 U.S. 898 (1997), and *New York v. United States*, 505 U.S. 144 (1992). I would faithfully apply the pertinent decisions of the Supreme Court addressing issues concerning state sovereign interests if I were to be confirmed and cases presenting those issues were to come before me.

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

Response: In *United States v. Morrison*, 529 U.S. 598, 610-611, 613 (2000), and *United States v. Lopez*, 514 U.S. 549, 560-561, 566-567 (1995), the Supreme Court emphasized the non-economic nature of the regulated conduct in invalidating an Act of Congress on the ground that it exceeded Congress's power under the Commerce Clause. The Court, however, did not hold that non-economic activity can never fall within the scope of Congress's power under the Commerce Clause. In *Gonzalez v. Raich*, 545 U.S. 1 (2005), Justice Scalia, after reviewing the Supreme Court's Commerce Clause jurisprudence, subsequently stated in a concurring opinion that "Congress may regulate even non-

economic activity if that regulation is a necessary part of a more general regulation of interstate commerce.” *Id.* at 37 (Scalia, J., concurring). Were I to be confirmed, if confronted with any issues concerning the scope of Congress’s authority to regulate non-economic conduct pursuant to its Commerce Clause power, I would carefully review the competing arguments and faithfully apply pertinent precedents of the Supreme Court and D.C. Circuit.

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

Response: The ability of the President to apply and enforce executive actions, including executive orders, would be subject to the applicable constitutional constraints on the exercise of federal power, including constraints established in the Bill of Rights. Those constraints would be judicially enforceable in the context of a justiciable case or controversy. With regard to whether the President has acted within the scope of constitutional or statutory authority in issuing executive actions including executive orders, Justice Jackson’s concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-638 (1952), set forth a framework for addressing the President’s actions, and the Supreme Court has subsequently applied that framework, *see, e.g., Medellin v. Texas*, 552 U.S. 491, 524-525 (2008); *Dames & More v. Regan*, 453 U.S. 654, 669-670 (1981). The Supreme Court has held, for instance, that the President, absent congressional action, could not take unilateral action to render the provisions of a non-self-executing Treaty binding in domestic courts. *Medellin*, 552 U.S. at 523-529. In any justiciable case or controversy concerning the validity of the President’s actions, including with respect to issuance or enforcement of executive orders, I would faithfully apply any pertinent precedent of the Supreme Court and D.C. Circuit.

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

Response: The Supreme Court has explained that its “established method of substantive-due-process analysis has two primary features.” *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). The first is that the “Due Process Clause specially protects those fundamental rights and liberties which are, objectively speaking, 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.” *Id.* at 720-721 (citations and internal quotation marks omitted). The second is that the Court has “required in substantive-due-process cases a careful description of the asserted fundamental liberty interest.” *Id.* (citations and internal quotation marks omitted). I would faithfully and carefully apply those principles and pertinent precedent of the Supreme Court and D.C. Circuit if I were confirmed and a case before me presented questions concerning whether an asserted right is fundamental for purposes of substantive due process.

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

Response: I am counsel to a client in a case currently pending in the Supreme Court, *United States v. Windsor*, Sup. Ct. No. 12-307, that raises questions concerning the standards for determining when a classification is subject to heightened judicial scrutiny

under the Equal Protection Clause and the application of those standards. I am therefore not in a position to address those issues outside the context of my ongoing role as counsel representing my client's position and interests in that pending matter. We have stated in that case that the Supreme Court's decisions have "established a set of factors that guide the determination of whether to apply heightened scrutiny to a classification," including "whether the class in question has suffered a history of discrimination," "whether the characteristic prompting the discrimination frequently bears no relation to ability to perform or contribute to society," "whether the discrimination against members of the class is based on obvious, immutable, or distinguishing characteristics that define them as a discrete group," and "whether the class is a minority or politically powerless." U.S. Br., *Windsor*, at 20 (citations and internal quotation marks omitted).

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: The quoted statement is from a Supreme Court decision that is binding precedent on all lower courts, including the D.C. Circuit. If I were to be confirmed, I would faithfully and carefully apply that precedent, as well as any pertinent additional precedent that may be issued by the Supreme Court or the D.C. Circuit—including any decision in *Fisher v. University of Texas*, Sup. Ct. No. 11-345, currently pending before the Supreme Court—to any case to come before me that may raise questions concerning the consideration of an applicant's race in the context of a public university's admissions decisions.