Hon. Rolando Olvera
Nominee, United States District Court for the Southern District of Texas
Responses to Questions for the Record
From Senator Ted Cruz

<u>Judicial Philosophy</u>

1. Describe how you would characterize your judicial philosophy.

Response: My judicial philosophy is based on a combination of the following factors: (1) a commitment to enforce and administer the law; (2) an unwavering demeanor of courtesy and respect to all before the court; (3) a hard work ethic to move the docket quickly and efficiently; and (4) a goal of fair, consistent, and sagacious rulings.

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: My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to the doctrine of stare decisis and the rule of law. If confirmed as a federal district judge, I would continue said commitment to binding precedent, without regard to personal values or beliefs.

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: I am firmly committed to the doctrine of stare decisis. My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to said doctrine and the rule of law; I apply precedent without first asking myself whether a case was wrongly decided. If confirmed as a federal district judge, I would continue said commitment to binding precedent, without regard to personal beliefs.

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

Response: While I respect any individual to have reached the level of a Supreme Court Justice, I would not presume to intimately know the judicial philosophy of any Supreme Court Justice, past or present. Regardless, my judicial philosophy is my own, and if confirmed, I would continue the same philosophy I have demonstrated and developed the past twelve years as a state district judge.

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: I am aware that the Supreme Court evaluated how the words of the Second Amendment were commonly understood by ordinary citizens when that provision was ratified in order to determine its meaning. See *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I would apply *Heller* and other Supreme Court and Fifth Circuit precedent regarding methods 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: Foreign courts and/or foreign laws play no role in determining the meaning of the United States Constitution, unless required to do so by binding precedent in a specific case set forth by the U.S. Supreme Court and Fifth Circuit.

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

Response: While the rulings of federal courts may affect said institutions, federal courts administer justice and the courts, nothing else.

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: As a state district court judge, I have not been involved in any legal debate as to the theory of a living Constitution. I do believe in the doctrine of judicial restraint, which I would define as a judge's responsibility to decide only the contested issues properly before the court and to base said decision on text and precedent, without regard to personal beliefs. My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to the doctrine of stare decisis and the rule of law. If confirmed as a federal district judge, I would continue said commitment to judicial restraint, and would apply any binding precedent from the Supreme Court and Fifth Circuit, without regard to how some legal commentators may classify a case.

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

Response: In my day to day work experience, any case directly on point as to an issue in controversy before the court may be deemed a favorite case. My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to the doctrine of stare decisis and the rule of law. If confirmed as a federal district judge, I would continue said commitment to binding precedent, without regard to personal beliefs.

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

Response: My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to said doctrine and the rule of law; I apply precedent without first asking myself whether a case is an example of judicial activism. If confirmed as a federal district judge, I would continue said commitment to binding precedent, without regard to personal beliefs.

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: Legal scholars define natural law as a set of laws inherent to human nature and civilized course of conduct that govern human society. If confirmed, I would look to the text of

the constitutional or statutory provision at issue and apply binding precedent to any case requiring the interpretation of 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: My term as a state district court judge for approximately twelve years demonstrates a proven record of commitment to said doctrine and the rule of law. If confirmed as a federal district judge, I would continue said commitment, without regard to personal beliefs. Thus, if presented with a case involving the constitutional limits on federal power versus state sovereign interests, I would apply the *Garcia* case along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

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

Response: The Supreme Court has addressed the limits of Congress' Commerce Clause power as to non-economic activity in the following cases: (1) *United States v. Lopez*, 514 U.S. 549 (1995); (2) *United States v. Morrison*, 529 U.S. 598 (2000); and (3) *Gonzales v. Raich*, 545 U.S. 1 (2005). Thus, if confirmed, I would apply all three of the above cases, along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

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: In *South Dakota v. Dole*, 483 U.S. 203, 207-208 (1987), the Supreme Court set forth the following limits on congressional ability to attach conditions upon States with respect to the receipt of federal funds: (1) the conditions must be in pursuit of "the general welfare"; (2) the conditions must be expressed unambiguously enabling the States to exercise an informed decision as to the consequences of using said funds; (3) the conditions must be related to a federal interest in national projects or programs; and (4) the conditions must not violate any constitutional provisions that would bar conditional grants of federal funds. Thus, if confirmed, I would apply the *Dole* case, along with any other relevant binding precedent from the Supreme Court, such as *NFIB v. Sebelius*, 132 S. Ct. 2566, 2602 (2012), and Fifth Circuit.

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: This question is currently being litigated. In the *Sebelius* case, five justices concluded that Congress did not have sufficient authority under the Commerce Clause and Necessary and Proper Clause to pass the Affordable Care Act.

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 ability to issue executive orders is addressed by the Supreme Court in cases including *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), and *Medellin v. Texas*, 552 U.S. 491 (2008). These cases stand for the proposition that the President's executive orders or executive actions must result from either an act of Congress or the Constitution. If confirmed, I would apply these cases along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

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

Response: The President's possession of unenumerated powers is addressed by the Supreme Court in cases including *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), and *Medellin v. Texas*, 552 U.S. 491 (2008). These cases stand for the proposition that the President's powers must result from either an act of Congress or the Constitution. If confirmed, I would apply these cases along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

Individual Rights

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held that a right is fundamental for purposes of the substantive due process clause when it is "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" (internal quotations and citations omitted). If confirmed, I would apply the *Glucksberg* case along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

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

Response: In *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1995), the Supreme Court held that classifications that are "so seldom relevant to the achievement of any legitimate state interest" such as classifications based upon race, alienage, national origin, gender, or illegitimacy would be subject to heightened scrutiny under the Equal Protection Clause. If confirmed, I would apply the *Cleburne* case along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

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: I have no personal expectations on the issue of the use of racial preferences in public higher education. If confirmed, I would apply *Grutter* and *Fisher v. University of Texas*, 133 S.

Ct. 2411 (2013), along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

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

Response: In *Grutter v. Bollinger*, 539 U.S. 306, 308 (2003), the Supreme Court held that race based actions may be valid if "necessary to further a compelling governmental interest", and would not be a violation of the Equal Protection Clause if such actions were "narrowly tailored to further that interest." If confirmed, I would apply *Grutter* and *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013), along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.

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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held the Second Amendment established an individual right for U.S. citizens to possess firearms in the home. Although the Supreme Court has not specifically addressed the issue, related Fifth Circuit case law has established broader restrictions for the use of firearms in public. For example, in *National Rifle Association v. McCraw*, 719 F.3d 338, 346 (5th Cir. 2013), the court upheld a state law prohibiting individuals aged eighteen to twenty from carrying handguns in public. If confirmed, I would apply the *Heller* case along with any other relevant binding precedent from the Supreme Court and Fifth Circuit.