

Senator Lindsey Graham, Ranking Member
Questions for the Record
Mr. Joseph A. Laroski, Jr.
Nominee to be United States Judge for the Court of International Trade

- 1. If confirmed, it is likely that a number of matters that come before the court will be related to cases that your or your firm have argued. How will you determine when it is proper to recuse yourself?**

Response: If confirmed, I will follow the federal recusal statutes, 28 U.S.C. § 455, and the Code of Conduct for United States Judges. If any issue of a potential conflict were to arise, I would consult with applicable statutes and the Code and, if necessary, would seek advice from the Judicial Conference.

- 2. Please explain whether you agree or disagree with the following statement: “The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach.”**

Response: I am not familiar with this statement or the context in which the statement was made. To the extent that it suggests that a judge should interpret the Constitution based on his or her own personal values, I disagree. A judge’s analysis of the Constitution should begin with the text itself and any binding precedent interpreting that text. A judge’s personal values should not play a role in his or her analysis and interpretation of the Constitution.

- 3. When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt’s response was: “They can’t catch ’em all.” Is this an appropriate approach for a federal judge to take?**

Response: I am not familiar with this statement or the context in which the statement was made. It is not an approach I would take. If confirmed as a judge on the U.S. Court of International Trade, I would follow the binding precedent of the Supreme Court and the Court of Appeals for the Federal Circuit.

- 4. Please explain the facts and holding of the Supreme Court decisions in *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.**

Response: Students for Fair Admissions separately challenged the undergraduate admissions processes of Harvard College (“Harvard”) and of the University of North Carolina (“UNC”), both of which used race as a factor in their admissions decisions.

The Supreme Court ruled that Harvard’s and UNC’s consideration of race in its admissions processes violated the Equal Protection Clause of the Fourteenth Amendment. Specifically, the Court ruled that neither program satisfied the narrow conditions and

limitations on the use of race in admissions decisions established by Court precedent. The Court found that the race-based admissions programs failed to operate in a manner that was “sufficiently measurable to permit judicial [review]’ under the rubric of strict scrutiny;” failed to “articulate a meaningful connection between the means they employ and the goals they pursue;” impermissibly required racial stereotyping and allowed race to be used as a negative factor; and lacked a reasonable and logical end point. In so ruling, the Court made clear that their decisions did not prevent universities from continuing to consider an individual applicant’s discussion of how race affected his or her life, motivations, and goals.

5. Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment?

If yes, please list each job or role where you participated in hiring decisions.

Response: Yes. I have participated in hiring decisions (by reviewing applications, by identifying and interviewing candidates, by making hiring recommendations, and/or by approving staffing plans and hiring decisions) in the following roles:

Partner, Schagrin Associates, 2021 – present

Deputy Assistant Secretary for Policy and Negotiations, U.S. Department of Commerce, 2020 – 2021

Director of Policy, U.S. Department of Commerce, 2017 – 2020

Counsel, King & Spalding LLP, 2012 – 2016

Associate General Counsel, Office of the United States Trade Representative, Executive Office of the President, 2008 – 2012

Associate, Vinson & Elkins, 2006 – 2008

Associate, Willkie, Farr & Gallagher LLP, 2004 – 2006

Associate, Skadden, Arps, Slate, Meagher & Flom LLP, 1999 – 2004

Law Clerk to Hon. Dominick L. DiCarlo, U.S. Court of International Trade, 1998 – 1999

6. Have you ever given preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate’s race, ethnicity, religion, or sex?

Response: No.

- 7. Have you ever solicited applications for employment on the basis of race, ethnicity, religion, or sex?**

Response: No.

- 8. Have you ever worked for an employer (such as a law firm) that gave preference to a candidate for employment or for another benefit (such as a scholarship, internship, bonus, promotion, or award) on account of that candidate's race, ethnicity, religion, or sex?**

If yes, please list each responsive employer and your role at that employer. Please also describe, with respect to each employer, the preference given. Please state whether you played any part in the employer's decision to grant the preference.

Response: I have not been involved any employer's decision to grant a preference on account of a candidate's race, ethnicity, religion, or sex. To the best of my knowledge and recollection, I have not worked for an employer that gave preference to a candidate for employment or for another benefit on account of that candidate's race, ethnicity, religion, or sex.

- 9. Under current Supreme Court precedent, are government classifications on the basis of race subject to strict scrutiny?**

Response: Yes. As the Supreme Court recently noted,

Any exceptions to the Equal Protection Clause's guarantee must survive a daunting two-step examination known as "strict scrutiny," *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227, 115 S. Ct. 2097, 132 L.Ed.2d 158, which asks first whether the racial classification is used to "further compelling governmental interests," *Grutter v. Bollinger*, 539 U.S. 306, 326, 123 S. Ct. 2325, 156 L.Ed.2d 304, and second whether the government's use of race is "narrowly tailored," i.e., "necessary," to achieve that interest, *Fisher v. University of Tex. at Austin*, 570 U.S. 297, 311–312, 133 S. Ct. 2411, 186 L.Ed.2d 474.

Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 143 S. Ct. 2141, 2147 (2023).

- 10. Please explain the holding of the Supreme Court's decision in *303 Creative LLC v. Elenis*.**

Response: The Supreme Court in *303 Creative LLC v. Elenis* held, on First Amendment grounds, that the State of Colorado, acting pursuant to the Colorado Anti-Discrimination Act, could not compel a website designer to provide custom website design services to customers that wish to celebrate same-sex marriages, which are contrary to the web designer's religious belief that that marriage should be reserved to unions between one man and one woman.

- 11. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), Justice Jackson, writing for the Court, said: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”**

Is this a correct statement of the law?

Response: The Supreme Court's decision in *West Virginia State Board of Education v. Barnette* is binding precedent with respect to matters relating to the First Amendment and compelled speech. *See 303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2303 (2023).

- 12. Please identify a Supreme Court decision from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: I have not reviewed the past 50 years of Supreme Court jurisprudence for the purpose of identifying decisions that are particularly well-reasoned. If confirmed as a judge on the Court of International Trade, I would seek to issue decisions that (i) fairly, clearly, and accurately state the significant facts and rules of law that are relevant to the issues presented, (ii) demonstrate through organized and concise analysis the reasonableness the conclusions reached, and (iii) include in the disposition of the case clear instructions as to what the agency under review is expected to do.

- 13. Please identify a Federal Circuit judicial opinion from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: I have not reviewed the past 50 years of Federal Circuit jurisprudence for the purpose of identifying decisions that are particularly well-reasoned. If confirmed as a judge on the Court of International Trade, I would seek to issue decisions that (i) fairly, clearly, and accurately state the significant facts and rules of law that are relevant to the issues presented, (ii) demonstrate through organized and concise analysis the reasonableness the conclusions reached, and (iii) include in the disposition of the case clear instructions as to what the agency under review are expected to do.

- 14. Please explain your understanding of 18 USC § 1507 and what conduct it prohibits.**

Response: 18 U.S.C. § 1507 states that:

Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both.

Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

15. Is 18 U.S.C. § 1507 constitutional?

Response: I am not aware of any Supreme Court or Court of Appeals precedent that has analyzed whether 18 U.S.C. § 1507 is constitutional. The Supreme Court did uphold a Louisiana statute that was very similar to 18 U.S.C. § 1507 in *Cox v. Louisiana*, 379 U.S. 559, 85 S. Ct. 476, 13 L.Ed.2d 487 (1965).

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

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

Response: While it is generally not appropriate for a judicial nominee to comment on whether any specific Supreme Court case was correctly decided, as numerous prior judicial nominees have noted, the issues presented in *Brown v. Board of Education* are highly unlikely to be litigated in the future. Accordingly, I believe it is appropriate for me to express my view that *Brown v. Board of Education* was correctly decided.

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

Response: While it is generally not appropriate for a judicial nominee to comment on whether any specific Supreme Court case was correctly decided, as numerous prior judicial nominees have noted, the issues presented in *Loving v. Virginia* are highly unlikely to be litigated in the future. Accordingly, I believe it is appropriate for me to express my view that *Loving v. Virginia* was correctly decided.

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

Response: As a judicial nominee, it is not appropriate for me to give my opinion about whether any specific Supreme Court case was correctly decided. If confirmed as a judge on the U.S. Court of International Trade, I would faithfully apply *Griswold v. Connecticut* and all other binding Supreme Court and Federal Circuit precedent.

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

Response: *Roe v. Wade* was overruled by the decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). As a judicial nominee, it is not appropriate for me to give my opinion about whether any specific Supreme Court case was correctly decided. If confirmed as a judge on the U.S. Court of International Trade, I would faithfully apply *Dobbs v. Jackson Women's Health Organization* and all other binding Supreme Court and Federal Circuit precedent.

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

Response: *Planned Parenthood v. Casey* was overruled by the decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). As a judicial nominee, it is not appropriate for me to give my opinion about whether any specific Supreme Court case was correctly decided. If confirmed as a judge on the U.S. Court of International Trade, I would faithfully apply *Dobbs v. Jackson Women's Health Organization* and all other binding Supreme Court and Federal Circuit precedent.

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

Response: As a judicial nominee, it is not appropriate for me to give my opinion about whether any specific Supreme Court case was correctly decided. If confirmed as a judge on the U.S. Court of International Trade, I would faithfully apply *Gonzales v. Carhart* and all other binding Supreme Court and Federal Circuit precedent.

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

Response: As a judicial nominee, it is not appropriate for me to give my opinion about whether any specific Supreme Court case was correctly decided. If confirmed as a judge on the U.S. Court of International Trade, I would faithfully apply *District of Columbia v. Heller* and all other binding Supreme Court and Federal Circuit precedent.

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

Response: As a judicial nominee, it is not appropriate for me to give my opinion about whether any specific Supreme Court case was correctly decided. If confirmed as a judge on the U.S. Court of International Trade, I would faithfully apply *McDonald v. City of Chicago* and all other binding Supreme Court and Federal Circuit precedent.

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

Response: As a judicial nominee, it is not appropriate for me to give my opinion about whether any specific Supreme Court case was correctly decided. If confirmed as a judge on the U.S. Court of International Trade, I would faithfully apply *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* and all other binding Supreme Court and Federal Circuit precedent.

j. Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?

Response: As a judicial nominee, it is not appropriate for me to give my opinion about whether any specific Supreme Court case was correctly decided. If confirmed as a judge on the U.S. Court of International Trade, I would faithfully apply *New York State Rifle & Pistol Association v. Bruen* and all other binding Supreme Court and Federal Circuit precedent.

k. Was *Dobbs v. Jackson Women's Health* correctly decided?

Response: As a judicial nominee, it is not appropriate for me to give my opinion about whether any specific Supreme Court case was correctly decided. If confirmed as a judge on the U.S. Court of International Trade, I would faithfully apply *Dobbs v. Jackson Women's Health* and all other binding Supreme Court and Federal Circuit precedent.

l. Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?

Response: As a judicial nominee, it is not appropriate for me to give my opinion about whether any specific Supreme Court case was correctly decided. If confirmed as a judge on the U.S. Court of International Trade, I would faithfully apply *Students for Fair Admissions, Inc. v. University of North Carolina*, *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* and all other binding Supreme Court and Federal Circuit precedent.

m. Was *303 Creative LLC v. Elenis* correctly decided?

Response: As a judicial nominee, it is not appropriate for me to give my opinion about whether any specific Supreme Court case was correctly decided. If confirmed as a judge on the U.S. Court of International Trade, I would faithfully apply *303 Creative LLC v. Elenis* and all other binding Supreme Court and Federal Circuit precedent.

17. What legal standard would you apply in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights?

Response: In *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, the Supreme Court stated:

In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's “unqualified command.”

New York State Rifle & Pistol Ass’n, Inc. v. Bruen, 142 S. Ct. 2111, 2126 (2023).

If confirmed, in evaluating whether or not a regulation or statutory provision infringes on Second Amendment rights, I would follow the binding precedent of the Supreme Court and the Court of Appeals for the Federal Circuit, including *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*.

18. Demand Justice is a progressive organization dedicated to “restor[ing] ideological balance and legitimacy to our nation’s courts.”

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

Response: No.

- b. Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O’Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

19. The Alliance for Justice is a “national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society.”

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

Response: No.

- b. **Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

20. 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: No.

21. The Open Society Foundations is a progressive organization that “work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens.”

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

Response: No.

- b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

- c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

22. Fix the Court is a “non-partisan, 501(C)(3) organization that advocates for non-ideological ‘fixes’ that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people.”

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

Response: No.

- b. Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

- c. Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

- 23. 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 March 2023, Ambassador Jeffrey D. Gerrish, who was aware of my previous interest in serving as a judge on the U.S. Court of International Trade, approached me to determine whether I would be interested in having my name put forward as a possible nominee for one of the current vacancies on the Court. After indicating my interest in the opportunity, he suggested my name to other members of the trade bar that were working on identifying potential nominees for the Court's two vacancies. On April 7, 2023, I interviewed with attorneys from the White House Counsel's Office.

Since April 20, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 28, 2023 the President announced his intent to nominate me. On July 11, 2023, my nomination was submitted to the Senate.

- 24. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

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

Response: No.

- 26. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If**

so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

27. 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: No.

28. 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: No.

29. Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?

- a. If yes,
 - i. Who?
 - ii. What advice did they give?
 - iii. Did they suggest that you omit or include any particular case or type of case in your questionnaire?

Response: No.

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

Response: On April 7, 2023, I interviewed with attorneys from the White House Counsel's Office. Since April 20, 2023, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice regarding my nomination and the confirmation process.

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

Response: On August 2, 2023, I received these questions via e-mail from an attorney in the Office of Legal Policy at the Department of Justice. I reviewed the questions, researched relevant records and case law as appropriate, and prepared my responses. Attorneys at the Office of Legal Policy reviewed my answers and provided limited

feedback. After considering Office of Legal Policy's comments, I finalized and submitted my responses.

**Senate Judiciary Committee
Nominations Hearing
July 26, 2023
Questions for the Record
Senator Amy Klobuchar**

Joseph Laroski Jr., nominee to be U.S. Judge for the Court of International Trade

You have extensive experience working in international trade litigation, including as the Deputy Assistant Secretary for Policy and Negotiations and the Director of Policy at the Commerce Department's International Trade Administration. There you oversaw the team responsible for foreign trade negotiations and compliance efforts. You have also served as an Associate General Counsel in the Office of the U.S. Trade Representative where you represented the U.S. in disputes involving regional trade agreements.

- **How have your experiences prepared you to serve on the Court of International Trade?**

Response: As a U.S. government official tasked with responding to concerns raised by foreign government officials regarding the United States' application or threatened application of its international trade laws to their products and companies, the most effective points I could make would relate to the transparency of our legal processes, the strength of the rule of law, and the availability of independent judicial review of any decisions made. The rule of law served me well as I represented the United States as an international trade official. I now seek to bring the depth and breadth of my international trade experience to serve and represent the rule of law as a judge on the U.S. Court of International Trade.

The Court of International Trade is a court of unique and specialized jurisdiction. My entire 25-year career has been devoted to the U.S. and international trade laws that are the subject of the Court of International Trade's jurisdiction. My deep and varied background in international trade law and policy make me uniquely suited to serve as a judge on the Court of International Trade.

I have engaged with the U.S. and international trade laws from virtually every perspective. I have represented the domestic industry, the foreign producers and exporters, the U.S. importers, the government agencies tasked with enforcing and administering the trade laws, and the government representative tasked with defending and explaining U.S. trade law and practice in in bilateral meetings and in multilateral fora. These varied perspectives have allowed me to more fully understand the structure, operation, and interpretation of the laws governing international trade, as well as to better anticipate the positions that the interested parties and administering authorities will take and more effectively tailor the legal positions before the decision-making body. This deep understanding of the law from the varied perspectives of the full range of litigants that would come before me if I am confirmed as a judge on the Court of International Trade would similarly serve me well as I fairly and impartially evaluate the arguments of the parties and seek to issue through and well-reasoned legal decisions with clear instructions as to the disposition of the matter before me.

At the Department of Commerce, I had the opportunity to serve as a neutral arbiter in administrative proceedings. As Deputy Assistant Secretary, I served as the final administrative authority in any antidumping and countervailing duty proceedings from which the Assistant Secretary was recused, and presided over the any hearings held in those cases. I also presided over the process of evaluating and rendering the International Trade Administration's recommendation to grant or deny each of the thousands of product exclusion requests submitted in connection with Commerce's administration of the Section 232 duties on imports of steel products.

Senator Mike Lee
Questions for the Record
Joseph Laroski, Nominee to the United States Court of International Trade

1. How would you describe your judicial philosophy?

Response: If confirmed, my judicial philosophy would above all be to serve the rule of law. I would approach each case before me with an open mind and treat all parties with dignity and respect. I would be thoroughly prepared and knowledgeable with regard to the applicable laws and the facts and arguments presented by the parties, and then fairly and impartially apply the law and the appropriate standard of review to the facts before me. I would seek to issue prompt decisions with organized and clear reasoning that leave the parties satisfied that their arguments were fully heard and fairly considered.

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

Response: If confirmed, when deciding a case that turned on the interpretation of a federal statute, I would first look to the text of the statute and any binding Supreme Court or Federal Circuit precedent regarding the interpretation of the statute. If the above does not yield a clear answer to the inquiry, I would look to any statutory definitions and relevant canons of construction, as well as other sources that the Supreme Court and the Federal Circuit have authorized as reliable sources of insight into the interpretation of a federal statute.

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

Response: If confirmed, I would follow Supreme Court and Federal Circuit precedent when interpreting a constitutional provision. I would first look to the plain meaning of the text and any binding precedent from the Supreme Court and the Federal Circuit interpreting that provision. If the text is ambiguous and has not been previously interpreted by the Supreme Court or the Federal Circuit, I would follow the methods of interpretation the Supreme Court or the Federal Circuit have applied in analogous cases.

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

Response: The Supreme Court has looked to the original meaning of a constitutional provision in various contexts. *See, e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (Second Amendment); *District of Columbia v. Heller*, 554 U.S. 570 (2008), *Crawford v. Washington*, 541 U.S. 36 (2004) (Confrontation Clause). If confirmed, when interpreting the Constitution, I would follow binding Supreme Court and Federal Circuit precedent with regard to the role of text and original meaning of a constitutional provision.

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

Response: If confirmed, when deciding a case that turned on the interpretation of a federal statute, I would first look to the text of the statute. *See McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320, 1328 (Fed. Cir. 2005) (“Statutory interpretation begins with the language of the statute, the plain meaning of which we derive from its text and its structure.”). I would also look to any binding Supreme Court or Federal Circuit precedent regarding the interpretation of the statute.

Please also see response to Question 2.

a. Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: A statute is normally interpreted “in accord with the ordinary public meaning of its terms at the time of its enactment.” *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020). With respect to the Constitution, the Supreme Court has made clear that “its meaning is fixed according to the understandings of those who ratified it.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (citing *United States v. Jones*, 565 U. S. 400 (2012)).

6. What are the requirements for standing in the Court of International Trade?

Response: As Chief Judge Barnett outlined in *Vietnam Finewood Co. Ltd. v. United States*,

In order to have standing, a “plaintiff must have suffered an ‘injury in fact’—an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent”; the injury must be “fairly traceable” to the challenged action; and there must be a substantial likelihood that the relief requested will redress or prevent the plaintiff’s injury.

Vietnam Finewood Company Limited v. United States, 633 F.Supp.3d 1243, 1265 (Ct. Int’l Trade 2023) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992)).

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

Response: Article 1, Section 8 of the Constitution grants Congress broad authority to pass laws that are “necessary and proper” to carry out the powers that are expressly by the Constitution. *See, e.g., United States v. Comstock*, 560 U.S. 126 (2010); *McCulloch v. Maryland*, 17 U.S. 316 (1819).

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

Response: If confirmed, I would follow the binding precedent of the Supreme Court and the Federal Circuit when evaluating the constitutionality of a law that Congress enacted without reference to a specific Constitutional enumerated power. “The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.” *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948). Rather the Supreme Court has held that “[i]f the end be legitimate, and within the scope of the Constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect.” *McCulloch v. Maryland*, 17 U.S. 316 (1819); *see also National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012).

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

Response: Yes. The Due Process Clause found in the Fifth and Fourteenth Amendments to the Constitution “specially protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). The Supreme Court has recognized such rights to include the rights to marry a person of a different race; to marry a person of the same sex; to marital privacy; to have children; to reside with relatives; to make decisions about the education of one’s children; to engage in private, consensual sexual acts; and to use contraception. *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228, 2257-58 (2022); *Washington v. Glucksberg*, 521 U.S. at 720.

10. What are the limits on Congress’s power under the Commerce Clause?

Response: Under the Commerce Clause, Congress has the power to regulate three broad categories of activity: (i) “the use of the channels of interstate commerce,” (ii) “the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities,” and (iii) “those activities having a substantial relation” or “that substantially affect interstate commerce.” *See United States v. Lopez*, 514 U.S. 549 (1995).

While Congress’ authority under the Commerce Clause is broad, it is not unlimited. For example, in *United States v. Lopez*, the Supreme Court found that a federal criminal law that prohibited the possession of a firearm within 1000 feet of a school property “neither regulate[d] a commercial activity nor contain[ed] a requirement that the possession be connected in any way to interstate commerce” exceeded Congress’ authority under the Commerce Clause. *Id.*

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

Response: The Constitution’s system of checks and balances and separation of powers serves to protect the authority of each branch of government from encroachment by the other branches and to protect the individual liberties guaranteed by the Constitution. As the Supreme Court has explained:

The Framers knew that “[t]he accumulation of all powers, Legislative, Executive, and Judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.” . . . In order to prevent such tyranny, the Framers devised a governmental structure composed of three distinct branches—“a vigorous Legislative Branch,” “a separate and wholly independent Executive Branch,” and “a Judicial Branch equally independent.” . . . The separation of powers and the checks and balances that the Framers built into our tripartite form of government were intended to operate as a “self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.” . . . “The fundamental necessity of maintaining each of the three general departments of government entirely free from the control or coercive influence, direct or indirect, of either of the others, has often been stressed and is hardly open to serious question.”

Commodity Futures Trading Commn. v. Schor, 478 U.S. 833, 859-860 (1986) (citations omitted).

12. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: If confirmed, in deciding a case in which one branch assumed an authority not granted it by the text of the Constitution, I would examine the text of Constitution and apply any relevant binding Supreme Court or Federal Circuit precedent. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138 (1948); *Marbury v. Madison*, 5 U.S. 137 (1803).

13. What role should empathy play in a judge’s consideration of a case?

Response: A judge must fairly and impartially apply the law to facts. Empathy should not play a role in a judge’s consideration of a case.

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

Response: Neither result reflects an appropriate outcome.

15. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the

downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not researched or studied the trends in the Supreme Court's exercise of judicial review to strike down federal statutes as unconstitutional. If confirmed as a judge on the U.S. Court of International Trade, I would faithfully apply binding supreme Court and Federal Circuit precedent in evaluating the constitutionality of a federal statute.

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

Response: "Judicial review" refers to the principle established in *Marbury v. Madison* that the Judiciary has the power to review and determine whether the action of the Executive or Legislative branch violate the Constitution of the United States. "Judicial supremacy" refers to the "doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp[ecially] U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." *Black's Law Dictionary* (11th ed. 2019).

17. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Pursuant to Article VI of the Constitution, elected officials of both the federal and state governments take an oath to "support" the U.S. Constitution. As the Supreme Court explained in *Cooper v. Aaron*, "the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. . . . No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper v. Aaron*, 358 U.S. 1 (1958). An elected official can seek a constitutional amendment pursuant to Article V of the Constitution.

18. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.

Response: Hamilton's reference to the judiciary as the "least dangerous branch" appears in Federalist No. 78's explanation of his support of the proposed appointment of judges to serve "during good behaviour." Hamilton wrote:

Whoever attentively considers the different departments of power must perceive, that in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

“[P]ermanency in office,” serves to ensure the “firmness and independence” of a Judiciary that was vulnerable to “being overpowered, awed, or influenced by its coordinate branches,” and to enable the Judiciary to exercise its judgement, particularly in upholding the Constitution and interpreting the law.

Hamilton’s observations in Federalist 78 underscore the limited role of the Judiciary to interpret and apply the law; not to make or enforce them. The Judiciary’s power lies in the exercise of judgement “to secure a steady, upright, and impartial administration of the laws” and to serve “as the bulwarks of a limited Constitution against legislative encroachments.”

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

Response: I am not familiar with the quoted definition of “equity” or the context in which the Biden Administration put forward this definition. *Black’s Law Dictionary* defines the term “equity” as “[f]airness; impartiality; evenhanded dealing.” *Black’s Law Dictionary* (11th ed. 2019).

- 20. Is there a difference between “equity” and “equality?” If so, what is it?**

Response: “Equity” is defined as “[f]airness; impartiality; evenhanded dealing.” *Black’s Law Dictionary* (11th ed. 2019). “Equality” is defined as “[t]he quality, state, or condition of being equal; esp., likeness in power or political status.” *Black’s Law Dictionary* (11th ed. 2019).

21. Does the 14th Amendment’s equal protection clause guarantee “equity” as defined by the Biden Administration (listed above in question 24)?

Response: The Fourteenth Amendment provides that “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” My research found no binding legal precedent that references the definition of “equity” quoted in Question 19.

22. How do you define “systemic racism?”

Response: “Systemic racism” is defined as “the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems).” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/systemic%20racism> (accessed Aug. 3, 2023).

23. How do you define “critical race theory?”

Response: According to *Black’s Law Dictionary*, “critical race theory” is “[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities.” *Black’s Law Dictionary* (11th ed. 2019).

24. Do you distinguish “critical race theory” from “systemic racism,” and if so, how?

Response: Please see my responses to Questions 22 and 23.

Questions from Senator Thom Tillis
for Joseph A. Laroski, Jr. Nominee to be United States Judge for the Court of
International Trade

1. I am proud to be a co-lead of the *Fighting Trade Cheats Act*, which is legislation to fight back against bad actors who engage in customs fraud. This bill seeks to stop illegal dumping and counterfeiting by foreign producers and US importers trying to evade US customs law.

This legislation would raise penalties for customs fraud, prohibit bad actors from importing into the US for several years, and allow private companies to sue US importers who violate customs law.

- a. Do you agree that more must be done in order to stop foreign producers and US importers from evading US customs law?*

Response: In seeking to protect the American people, safeguard our border, and enhance the nation's economic prosperity, the mission of U.S. Customs and Border Protection ("CBP") is as difficult as it is broad. CBP must balance its resources and energies among priorities as diverse as facilitating lawful trade and travel, securing the border, combating transnational crime, countering the threat of terrorism, and protecting the revenue through the enforcement of trade laws.

In my experience as an official at the U.S. Department of Commerce ("Commerce") International Trade Administration, as a lawyer in the Office of the U.S. Trade Representative ("USTR") covering the Customs portfolio, and as a practitioner representing U.S. companies that have been injured by the foreign companies that seek to circumvent and evade U.S. trade laws, I have witnessed both the great skill with which CBP and other trade agencies work to prevent duty evasion and the sheer enormity of the evasion that CBP is trying to stop. Congress has enacted several measures in recent years that have proven effective in helping to enhance CBP's ability to detect, deter, and punish evasion of customs laws. It is the prerogative of the policy experts in CBP, Congress and the Administration to determine whether additional measures are warranted to strengthen CBP's ability to address evasion.

- b. Do you agree that a private right of action allowing US companies to sue US importers who are engaged in knowing trade violations would help to crack down on abuses?*

Response: I have not studied the measures proposed in the *Fighting Trade Cheats Act* in detail and defer to the policy experts in CBP, the Department of Justice, Congress and the Administration as to the likely effectiveness of a private right of action. It is the prerogative of these policy makers to determine whether enabling private companies to engage in direct action against presumably would help to increase trade enforcement activity and to deter future trade violations.

2. Regardless of your views on specific solutions, do you share my concerns that customs enforcement is taking too long?

Response: In my experience, the enforcement units within the trade agencies have generally adhered to the applicable statutory or regulatory deadlines except where circumstances warranted an extended timeline. Apparent delays in enforcement actions can arise for many reasons, including resource and personnel constraints, the need for a thorough investigation of facts (often in multiple foreign locations), the actions companies have taken to mask their identities or otherwise avoid trade enforcement measures, and the need to consult with domestic industry or trading partners.

3. What can be done either at the initial apprehension stage or during the administrative process to improve how quickly the US is able to resolve trade complaints?

Response: It is the prerogative of the policy experts in CBP, Congress and the Administration to determine what additional measures may be warranted to improve the efficiency of resolving trade complaints. In my experience at USTR and Commerce, measures such as increasing the level of information sharing between trade enforcement agencies, developing and expanding trade monitoring tools, establishing special units with a particular expertise or purpose (*e.g.*, Commerce's anti-circumvention unit), and increasing engagement with industry on enforcement concerns have proven to be effective means of improving efficiencies in resolving trade complaints.

4. How did your experience in the Executive Branch shape your views on customs enforcement, and how to fulfill the role of a judge on the Court of International Trade?

Response: As a U.S. government official tasked with responding to concerns raised by foreign government officials regarding the United States' application or threatened application of its international trade laws to their products and companies, the most effective points I could make would relate to the transparency of our legal processes, the strength of the rule of law, and the availability of independent judicial review of any decisions made. The rule of law served me well as I represented the United States as an international trade official. I now seek to bring the depth and breadth of my international trade experience to serve and represent the rule of law as a judge on the U.S. Court of International Trade.

The Court of International Trade is a court of unique and specialized jurisdiction. My entire 25-year career has been devoted to the U.S. and international trade laws that are the subject of the Court of International Trade's jurisdiction. My deep and varied background in international trade law and policy, including many years of service in the Executive Branch, make me uniquely suited to serve as a judge on the Court of International Trade.

With respect to customs enforcement, my experience at the U.S. Department of Commerce, the U.S. International Trade Commission, and the Office of the U.S. Trade Representative offered me insight into the challenges to monitoring compliance with and enforcing our customs laws. As Deputy Assistant Secretary for Enforcement and Compliance, for example, I supervised a unit that was dedicated to the identifying possible circumvention of the

antidumping and countervailing duty orders issued by Commerce. I also learned of the many tactics firms used to commit fraud and evasion and to avoid liability and prosecution through the creation of shell companies and country hopping.

In my work coordinating efforts with other trade agencies and discussing matters in the interagency Trade Policy Staff Committee, I learned how the cooperation, expertise, and information sources of our interagency partners could accelerate our efforts to address certain trade concerns. I also came to understand that, despite generally having shared enforcement goals each agency had resource limitations, differing intuitional cultures, and competing policy interests that complicated and, sometimes hindered the development of interagency solutions to shared enforcement goals.