

Senator Lindsey Graham, Ranking Member
Questions for the Record
Ms. Lisa Wang
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 you or your firm have argued. How will you determine when it is proper to recuse yourself?**

Response: If confirmed, I would make recusal determinations in accordance with 28 U.S.C. § 455, the Code of Conduct for United States Judges, and all other laws, rules, and practices governing recusal decisions.

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 do not agree that judges should exercise their own independent value judgments in the adjudication of the cases before them. If confirmed, my opinions and “value judgments” would play no role in my adjudication of the matters before me in the Court of International Trade. Instead, I would faithfully follow Supreme Court and Federal Circuit precedent and apply the law to the facts of the case.

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 the full context of this statement or Judge Reinhardt’s intent in making it, and therefore cannot comment on its appropriateness. If confirmed, I would faithfully apply Supreme Court and Federal Circuit precedent, and apply the law to the facts of the case before me.

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: In *Students for Fair Admissions, Inc. v. University of North Carolina*, the organization Students for Fair Admissions, Inc. (SFFA) challenged the University of North Carolina’s consideration of race as a factor in its admissions process as violative of the Fourteenth Amendment. *Students for Fair Admissions, Inc. v. University of North Carolina*, 143 S. Ct. 2141 (2023). In *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, SFFA challenged Harvard College’s admissions process, which considered race as one of the factors in its admissions decisions, as violative of

Title VI of the Civil Rights Act of 1964. *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023). The Supreme Court held that the consideration of race as one of the factors in the admissions processes of the University of North Carolina and Harvard College violates the Equal Protection Clause of the Fourteenth Amendment. *Id.* The Supreme Court explained that “Courts may not license separating students on the basis of race without an exceedingly persuasive justification that is measurable and concrete enough to permit judicial review. ... The programs at issue here do not satisfy that standard.” *Id.*

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?**

Response: Yes.

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

Response: I have participated in hiring decisions for the following positions.

2022 – present

U.S. Department of Commerce

International Trade Administration, Enforcement and Compliance

Assistant Secretary of Commerce for Enforcement and Compliance

2016 – 2021

Picard, Kentz & Rowe LLP

Partner (2017 – 2021)

Counsel (2016)

2009 – 2012

United States Embassy Beijing, China

Commercial Section, United States Department of Commerce

Senior Import Administration Officer

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, I have never given preference to a candidate for employment or for another benefit on account of that candidate’s race, ethnicity, religion, or sex.

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

Response: No, I have never solicited applications for employment on the basis of race, ethnicity, religion or sex.

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?**

Response: No, I have never 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.

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: Not applicable.

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

Response: Yes. In *Graham v. Richardson*, the Supreme Court identified race as one of several “suspect classes” for which strict scrutiny applies. *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971); *see also Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

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

Response: In *303 Creative LLC v. Elenis*, the Supreme Court held that the First Amendment prohibits the government from forcing a website designer to create “expressive designs” or to speak messages with which the designer disagrees. *303 Creative LLC v. Elenis*, 600 U.S. ___ (2023). The Supreme Court explained that public accommodation laws like those of Colorado “can sweep too broadly when deployed to compel speech” and that “[w]hen a state public accommodation law and the Constitution collide, there can be no question which must prevail.” *Id.*

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: *West Virginia State Board of Education v. Barnette* is binding Supreme Court precedent. In writing for the Court, Justice Jackson explained that the government’s compulsion of actions “to affirm what is contrary to one’s religious beliefs is the antithesis of freedom of worship” under the First Amendment. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943); *see also 303 Creative LLC v. Elenis*, 600 U.S. __ (2023). If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent. As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision.

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

Response: If confirmed, my duty as a judge would be to faithfully apply Supreme Court and Federal Circuit precedent without consideration of my personal opinions. Further, as a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the quality of a particular Supreme Court decision.

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

Response: If confirmed, my duty as a judge would be to faithfully apply Federal Circuit precedent without consideration of my personal opinions. Further, as a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the quality of a particular Federal Circuit decision.

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

Response: 18 U.S.C. § 1507 is a federal statute that imposes a prohibition against conduct committed 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.”

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

Response: I am not aware of the Supreme Court or Federal Circuit addressing the constitutionality of 18 U.S.C § 1507. The Supreme Court, however, did consider a state statute comparable to 18 U.S.C § 1507 in *Cox v. State of Louisiana*, and found that the state statute was constitutional. *Cox v. State of Louisiana*, 379 U.S. 559 (1965). In the rare instance that such an issue would come before me in the Court of International Trade, if confirmed, I would dutifully apply Supreme Court and Federal Circuit precedent to determine the appropriate interpretation of 18 U.S.C. § 1507 to the facts of the case presented to me.

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: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision. *Brown v. Board of Education* is binding precedent for lower court judges. If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent. As the issue of *de jure* school segregation is unlikely to arise in a case before the Court of International Trade, and consistent with prior nominees, I can comfortably say that I believe *Brown v. Board of Education* was correctly decided.

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

Response: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision. *Loving v. Virginia* is binding precedent for lower court judges. If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent. As the issue of a *de jure* ban on interracial marriage is unlikely to arise in a case before the Court of International Trade, and consistent with prior nominees, I can comfortably say that I believe *Loving v. Virginia* was correctly decided.

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

Response: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision. *Griswold v. Connecticut* is binding precedent for lower court judges. If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent.

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

Response: *Roe v. Wade* was overruled by *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent.

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

Response: *Planned Parenthood v. Casey* was overruled by *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent.

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

Response: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision. *Gonzales v. Carhart* is binding precedent for lower court judges. If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent.

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

Response: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision. *District of Columbia v. Heller* is binding precedent for lower court judges. If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent.

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

Response: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision. *McDonald v. City of Chicago* is binding precedent for lower court judges. If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent.

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

Response: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision. *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding precedent for lower court judges. If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent.

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

Response: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision. *New York State Rifle & Pistol Assoc. v. Bruen* is binding precedent for lower court judges. If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent.

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

Response: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision. *Dobbs v. Jackson Women's Health* is binding precedent for lower court judges. If I am confirmed, I would faithfully apply all 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, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision. *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* are binding precedent for lower court judges. If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent.

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

Response: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision. *303 Creative LLC v. Elenis* is binding precedent for lower court judges. If I am confirmed, I would faithfully apply all 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 Assoc. v. Bruen*, the Supreme Court held that “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111, 2126 (2022). Thus, the government cannot assert that a law promotes an important interest to justify the law. The Supreme

Court held that “[r]ather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.*

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 one associated with Arabella’s subsidiaries, known or otherwise, has ever requested that I provide any services to or for them.

- 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: There is no selection commission to recommend candidates for nomination to the U.S. Court of International Trade. I was approached on March 30, 2023, by the judicial nominations team of the White House Counsel’s Office regarding my potential interest in an opening on the U.S. Court of International Trade. The next day, March 31, 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.

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, during my selection process, neither I or anyone on my behalf talked with any officials from or anyone directly associated with the organization, Demand Justice.

- 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, during my selection process, neither I or anyone on my behalf talked with any officials from or anyone directly associated with the American Constitution Society.

- 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, during my selection process, neither I or anyone on my behalf talked with any officials from or anyone directly associated with Arabella Advisors or any of its subsidies, known or otherwise.

- 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, during my selection process, neither I or anyone on my behalf talked with any officials from or anyone directly associated with the Open Society Foundation.

- 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, during my selection process, neither I or anyone on my behalf talked with any officials from or anyone directly associated with Fix the Court.

- 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?**

Response: No one associated with the Biden-Harris Administration or any Senator gave me advice about which cases to list on my 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: Not applicable.

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 March 30, 2023, I was approached by the judicial nominations team of the White House Counsel's Office regarding my potential interest in an opening on the U.S. Court of International Trade. The next day, March 31, 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.

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

Response: I answered these questions by conducting relevant research and drafting these written responses. Prior to the submission of my answers, I shared my draft responses with the Department of Justice, Office of Legal Policy, but the work and these answers are entirely my own.

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

Lisa Wang, nominee to be U.S. Judge for the Court of International Trade

You have extensive experience working in international trade. You currently serve in the Commerce Department as an Assistant Secretary of Commerce for Enforcement and Compliance, where you lead the federal government’s efforts to support economic growth by enforcing fair trade practices. Before that you served as a Senior Attorney at the Commerce Department and as an Assistant General Counsel in the Office of the U.S. Trade Representative before that.

- **What has your time at the Commerce Department and the U.S. Trade Representative taught you about the importance of a rules-based system of international trade?**

Response: My experience as the Assistant Secretary of Commerce for Enforcement and Compliance, along with my time at the Office of the U.S. Trade Representative and the U.S. Embassy in Beijing, China, has taught me the importance of maintaining a rules-based level playing field for U.S. businesses and workers. International trade law encompasses a wide range of stakeholders – from domestic manufacturers supporting the vibrancy of small rural towns, to U.S. importers critical to supply chain resiliency, to foreign governments negotiating multinational trade agreements. My approach to international trade law in the Executive Branch has been to respect these diverse perspectives by keeping an open mind and ensuring that all parties are treated with dignity. If confirmed, I would bring these same principles to the Court of International Trade.

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

1. How would you describe your judicial philosophy?

Response: If I were to be confirmed, my judicial philosophy would be the prompt, thorough and fair adjudication of the claims before me. It would be important for me to carefully consider the record, research relevant law and precedent, and to consider all the parties' arguments with an open mind.

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

Response: In deciding a case that turned on the interpretation of a federal statute, I would carefully review the language of the relevant statute and dutifully follow Supreme Court and Federal Circuit precedent, including the appropriate method of statutory interpretation. If the Supreme Court and Federal Circuit had not previously interpreted the statutory provision at issue, I would first look to the text of the statute and, if necessary, consider statutory canons of construction and the appropriate method of statutory interpretation. If appropriate, I would also look to Supreme Court and Federal Circuit decisions interpreting analogous legal texts.

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

Response: In deciding a case that turned on the interpretation of a constitutional provision, I would carefully review the language of the relevant constitutional provision and dutifully follow Supreme Court and Federal Circuit precedent, including with respect to methods of constitutional interpretation. For example, the Supreme Court has repeatedly looked to the original meaning of a constitutional provision in interpreting the Constitution. *See e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008); *New York State Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111 (2022) (*Bruen*).

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

Response: The Supreme Court has repeatedly held that the starting point for interpreting the Constitution is to look to the text of the constitutional provision. Further, the Supreme Court has repeatedly looked to the original meaning of a constitutional provision in interpreting the Constitution. *See e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008); *Bruen*, 142 S. Ct. 2111 (2022).

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: Please see my 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: If confirmed, my role as a judge would be to dutifully apply Supreme Court and Federal Circuit precedent, including the appropriate method of statutory and constitutional interpretation. In the Second Amendment context, for example, the Supreme Court has repeatedly looked to the original meaning of a constitutional provision in interpreting the Constitution. *See e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008); *New York State Rifle & Pistol Assoc. v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111 (2022). In the First Amendment context, as another example, the Supreme Court has explained that an evaluation of whether material is obscene should focus on “whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.” *Roth v. United States*, 354 U.S. 476, 489 (1957); *see also Ashcroft v. American Civil Liberties Union*, 535 U.S. 564 (2002).

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

Response: The requirements for standing in the Court of International Trade are dictated by Supreme Court and Federal Circuit precedent. The Supreme Court has held that “standing is an essential . . . part of the case-or-controversy requirement of Article III” of the Constitution and requires an applicant to demonstrate three criteria: (1) injury in fact; (2) causation; and (3) redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-561 (1992); *see also Figueroa v. United States*, 466 F.3d 1023, 1029 (Fed. Cir. 2006).

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

Response: The Supreme Court has explained that the framework for evaluating whether an unenumerated right is protected by the Constitution is to examine whether such rights are “deeply rooted in the Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997); *see also McCullough v. Maryland*, 17 U.S. 316, 400 (1819) (holding that Congress’ power to incorporate a federal Bank of the United States was “implied, and involved in the grant of specific powers in the constitution; because the end involves the means necessary to carry it into effect.”). If confirmed, I would faithfully apply Supreme Court and Federal Circuit precedent in evaluating any such claims regarding a potential unenumerated right in the Constitution.

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

Response: The Supreme Court has held that the “question of the constitutionality of action taken by Congress does not depend on recitals of the power which it

undertakes to exercise.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (*Sebelius*). In *Sebelius*, the Supreme Court found that if Congress does not have the authority to pass a law, “that law may not be enacted, even if it would not violate any of the express prohibitions in the Bill of Rights or elsewhere in the Constitution.” *Id.* at 535. If confirmed, I would be limited to the resolution of the claims before me using the relevant Supreme Court and Federal Circuit precedent and interpretative methods prescribed in such precedent.

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

Response: Please see my response to Question 7.

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

Responses: In *United States v. Lopez*, the Supreme Court identified three broad categories of activities that Congress may regulate under the Commerce Clause. *United States v. Lopez*, 514 U.S. 549, 558-559 (1995). These three categories are: (1) the use of the channels of interstate commerce; (2) the ability to regulate and protect the instrumentalities of interstate commerce; and (3) the power to regulate those activities that have a substantial relation to interstate commerce. *Id.*

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

Response: In *Mistretta v. United States*, the Supreme Court explained that in understanding the separation of powers in the Constitution’s structure, that “the greatest security against tyranny – the accumulation of excessive authority in a single Branch – lies not in a hermetic division between the Branches, but in a carefully crafted system of checked and balanced power within each Branch.” *Mistretta v. United States*, 488 U.S. 361, 381 (1989). The Supreme Court held that it is this concern of encroachment that has “animated our separation of powers jurisprudence and aroused our vigilance against the ‘hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power.’” *Id.* at 382; *see also Loving v. United States*, 517 U.S. 748, 756 (1996).

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, I would faithfully apply Supreme Court and Federal Circuit precedent to decide a case in which one branch may have assumed an authority not granted to it by the text of the Constitution. *See e.g., Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Marbury v. Madison*, 5 U.S. 137 (1803).

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

Response: If confirmed, my duty as a judge would be to faithfully apply Supreme Court and Federal Circuit precedent without consideration of my personal opinions.

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

Response: Both outcomes would be equally undesirable under our system of justice.

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 am not a legal academic nor have I researched the reasons as to what has accounted for the change in the Supreme Court’s exercise of its judicial review power over time, or the benefits and costs of this change. If confirmed, my duty as a judge would be to faithfully apply Supreme Court and Federal Circuit precedent to the facts of the case before me.

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

Response: Black’s Law Dictionary defines “judicial supremacy” as the “[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, especially 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). The definition of “judicial review” is “[a] court’s power to review the actions of other branches or levels of government; especially the courts’ power to invalidate legislative and executive actions as being unconstitutional.” *Id.*

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: All elected officials swear an oath or affirmation to uphold and support the Constitution under Article VI of the Constitution, and are required to follow the Supreme Court’s interpretation of the Constitution. *See Cooper v. Aaron*, 358 U.S. 1 (1958); *Marbury v. Madison*, 5 U.S. 137 (1803).

- 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: If confirmed as a judge to the Court of International Trade, my responsibility would be to adjudicate the case or controversy before me by faithfully applying Supreme Court and Federal Circuit precedent. Federalist 78 recognizes the role of judges to focus on the claims and parties before them, rather than to make law or to issue advisory opinions.

- 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: If confirmed, my personal agreements or disagreements with statements made by policymakers would play no role in the adjudication of cases before me. Black's Law Dictionary defines “equity” as “fairness; 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 “fairness; impartiality; evenhanded dealing.” *Id.* Black's Law Dictionary defines “equality” as the “quality, state, or condition of being equal; especially likeness in power or political status.” *Id.*

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

Response: The Equal Protection Clause of the Fourteenth Amendment states, in part, that “[n]o State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.” I am unaware of any pending litigation involving a challenge of the term “equity” as described in Question 19 and its relationship to the Fourteenth Amendment, but in the rare situation that this issue would come before me, if confirmed, I would faithfully apply Supreme Court and Federal Circuit precedent to the facts of the case.

- 22. How do you define “systemic racism?”**

Response: Although there does not seem to be a definition of “systemic racism” in the legal context, Black's Law Dictionary defines “systemic discrimination” as an

“ingrained culture that perpetuates discriminatory policies and attitudes toward certain classes of people within society or a particular industry, profession, company or geographic location.” Black’s Law Dictionary (11th ed. 2019). If confirmed as a judge to the Court of International Trade, I would ensure that all parties before me would be treated equally with an open-mind and in fairness.

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

Response: Black’s Law Dictionary defines “critical race theory” as “[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: Because I am not an academic, I have no basis to comment on whether or how to distinguish “critical race theory” from “systemic racism.” If confirmed as a judge to the Court of International Trade, I would ensure that all parties before me would be treated equally with an open-mind and in fairness.

25. You have spent much of your professional career focused on the intersection between international trade and diversity, equity, and inclusion, or DEI. How do you plan to incorporate your DEI experience into your role as a judge if confirmed?

Response: International trade law encompasses a wide range of stakeholders, from domestic manufacturers supporting the vibrancy of small rural towns, to U.S. importers critical to supply chain resiliency, to foreign governments negotiating multinational trade agreements. My understanding of diversity, equity, inclusion, and accessibility in international trade is to maintain an open mind with respect to diverse perspectives and to ensure fairness in our international trading system. In my current role as the Assistant Secretary of Commerce for Enforcement and Compliance, I ensure that all parties to Commerce’s quasi-judicial antidumping and countervailing duty proceedings are treated fairly and with an open mind. If confirmed, I would bring these same principles to the Court of International Trade.

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

Questions for the Record for Lisa Wen-Jia Wang, nominated to be Judge for the Court of International Trade

I. Directions

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

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

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

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

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

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

II. Questions

1. **Is racial discrimination wrong?**

Response: Yes.

2. **Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?**

Response: The Supreme Court has explained that the framework for evaluating whether an unenumerated right is protected by the Constitution is to examine whether such rights are “deeply rooted in the Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). If confirmed, I would faithfully apply Supreme Court and Federal Circuit law in evaluating any such claims regarding a potential unenumerated right in the Constitution.

3. **How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice’s philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

Response: If I were to be confirmed, my judicial philosophy would be the prompt, thorough and fair adjudication of the claims before me. It would be important for me to carefully consider the record, research relevant law and precedent, and to consider all the parties’ arguments with an open mind. The Court of International Trade is a specialized court focusing on international trade matters and, as such, is quite different from that of a Supreme Court Justice. The judicial philosophies of Supreme Court Justices would therefore not be analogous to mine.

4. **Please briefly describe the interpretative method known as originalism. Would you characterize yourself as an “originalist”?**

Response: “Originalism” is defined as the “doctrine that words of a legal instrument are to be given the meanings they had when they were adopted.” Black’s Law Dictionary (11th ed. 2019). I do not prescribe to any interpretative method. Rather, if confirmed, I would be limited to the resolution of the claims before me using the relevant Supreme Court and Federal Circuit precedent and interpretative methods prescribed in such precedent.

5. **Please briefly describe the interpretive method often referred to as living constitutionalism. Would you characterize yourself as a ‘living constitutionalist’?**

Response: “Living constitutionalism” is defined as the “doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values.” Black’s Law Dictionary (11th ed. 2019). I do not prescribe to any interpretative method. Rather, if confirmed, I would be limited to the resolution of the claims before me using the relevant Supreme Court and Federal

Circuit precedent and interpretative methods prescribed in such precedent.

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

Response: If confirmed as a judge to the Court of International Trade, it would be rare for me to confront a constitutional issue of first impression. If there were to be such a rare occasion, I would first look to the plain meaning of the text of the law in question. Then, I would look to the interpretative methods used by the Supreme Court and Federal Circuit in determining analogous issues. For example, in *District of Columbia v. Heller*, the Supreme Court looked to the “original understanding” to interpret the protections of the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008); *see also New York State Rifle & Pistol Assoc. v. Bruen*, 142 S. Ct. 2111 (2022) (*Bruen*). In such a circumstance, I would be bound by the precedent of the Supreme Court and Federal Circuit.

7. **Is the public’s current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: If confirmed to the Court of International Trade, I would be bound by the precedent of the Supreme Court and Federal Circuit, including those issues where the Courts have considered the public’s contemporaneous understanding of the Constitution or of a statute. For example, in *Atkins v. Virginia*, the Supreme Court examined various sources to “ascertain the contemporary American conceptions of decency for purposes of the Eighth Amendment.” *Atkins v. Virginia*, 536 U.S. 304, 324 (2002). As another example, in the First Amendment context, the Supreme Court has explained that an evaluation of whether material is obscene should focus on “whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.” *Roth v. United States*, 354 U.S. 476, 489 (1957); *see also Ashcroft v. American Civil Liberties Union*, 535 U.S. 564 (2002).

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

Response: No, the Constitution can change only through the Article V amendment process. In *Bruen*, the Supreme Court explained that “[a]lthough [the Constitution’s] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.” *Bruen*, 142. S. Ct. at 2132.

9. **Is the Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health Organization* settled law?**

Response: *Dobbs v. Jackson Women’s Health Organization* is binding precedent for lower court judges. If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent.

a. **Was it correctly decided?**

Response: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision.

10. **Is the Supreme Court’s ruling in *New York Rifle & Pistol Association v. Bruen* settled law?**

Response: *New York Rifle & Pistol Association v. Bruen* is binding precedent for lower court judges. If I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent.

a. **Was it correctly decided?**

Response: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision.

11. **Is the Supreme Court’s ruling in *Brown v. Board of Education* settled law?**

Response: *Brown v. Board of Education* is binding precedent for lower court judges. I am confirmed, I would faithfully apply all Supreme Court and Federal Circuit precedent.

a. **Was it correctly decided?**

Response: As a judicial nominee, and pursuant to the Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about the correctness of a binding Supreme Court decision. However, as the issue of *de jure* school segregation is unlikely to arise in a case before the Court of International Trade, and consistent with prior nominees, I can comfortably say that I believe *Brown v. Board of Education* was correctly decided.

12. **What sort of offenses trigger a presumption in favor of pretrial detention in the federal criminal system?**

Response: 18 U.S.C. § 3142 provides certain circumstances in which a rebuttable presumption is established in favor of pretrial detention in the federal criminal system. Such circumstances arise with respect to certain drug offenses carrying a maximum term of imprisonment of ten or more years, offenses carrying a maximum sentence of

life in prison or death, violent offenses, offenses involving minor victims, federal crimes of terrorism, and other enumerated offenses. 18 U.S.C. § 3142(e)(3).

a. **What are the policy rationales underlying such a presumption?**

Response: I am not aware of any decision by the Supreme Court or Federal Circuit which explains the policy rationale of 18 U.S.C. § 3142. However, the language of the statute itself reflects Congress' determination that those accused of certain crimes pose a flight risk or danger to the community such that pretrial detention may be warranted to "assure the appearance of the person as required and the safety of the community." *Id.*

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

Response: Yes. Such identifiable limitations are governed by Supreme Court precedent and the Religious Freedom Restoration Act of 1993. *See, e.g., 303 Creative LLC v. Elenis*, 600 U.S. ___ (2023); *Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993); 42 U.S.C. § 2000bb-1(a) (the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" except in certain enumerated circumstances).

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

Response: The Supreme Court has stated in several cases that any law that discriminates against religious organizations or religious people is subject to strict scrutiny and would only survive in "rare cases." *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 546; *see also Tandon*, 141 S. Ct. 1294.

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

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Supreme Court granted the preliminary injunction requested by the Roman Catholic Diocese of Brooklyn and Agudath Israel of America and affiliated entities. In granting such

injunctive relief, the Supreme Court found that these applicants clearly established their entitlement to the relief because they showed that “their First Amendment claims are likely to prevail, that denying them relief would lead to irreparable injury, and that granting relief would not harm the public interest.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020).

16. **Please explain the U.S. Supreme Court’s holding and rationale in *Tandon v. Newsom*.**

Response: In *Tandon v. Newsom*, the Supreme Court granted the preliminary injunction requested by the applicant to prohibit the State of California from enforcing COVID-19 restrictions on certain gatherings in private buildings, finding that the restrictions violated the Free Exercise Clause of the First Amendment. Specifically, the Supreme Court held that “government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (emphasis in original).

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

Response: Yes.

18. **Explain your understanding of the U.S. Supreme Court’s holding in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.**

Response: In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, the Supreme Court held that the Colorado Civil Rights Commission (CCRC) violated the Free Exercise Clause of the First Amendment when the CCRC determined that Masterpiece Cakeshop, a Colorado bakery, violated Colorado’s Anti-Discrimination Act by refusing to create a cake for a same-sex wedding. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719 (2018). The Supreme Court held that the “reason and motive for the baker’s refusal were based on his sincere religious beliefs and convictions,” and that the CCRC’s consideration of the case was inconsistent with the State’s obligation of religious neutrality. *Id.*, 138 S. Ct. at 1723.

19. **Under existing doctrine, are an individual’s religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: Yes. The Supreme Court has held that an individual’s religious beliefs are protected if they are sincerely held. *See id.*; *see also Frazee v. Illinois Dept. of Emp’t Security*, 489 U.S. 829 (1989). Further, the Religious Land Use and Institutionalized Persons Act of 2000 defines “religious exercise” as including “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A).

- a. **Are there unlimited interpretations of religious and/or church doctrine that can be legally recognized by courts?**

Response: Theoretically, yes. The Supreme Court held in *Burwell v. Hobby Lobby Stores, Inc.* that it is not for courts to determine if “religious beliefs are mistaken or insubstantial.” Instead, the “narrow function” of the court is to determine whether the religious belief reflects an “honest conviction.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) citing *Thomas v. Review Bd. of Indiana Emp’t Security Div.*, 450 U.S. 707, 716 (1981).

- b. **Can courts decide that anything could constitute an acceptable “view” or “interpretation” of religious and/or church doctrine?**

Response: Please see my response to Question 19(a).

- c. **Is it the official position of the Catholic Church that abortion is acceptable and morally righteous?**

Response: I am unaware of the Catholic Church taking an official position on whether abortion is acceptable and morally righteous, and I lack the expertise to provide comment on the official positions of the Catholic Church.

20. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment’s Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court’s holding and reasoning in the case.**

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, the Supreme Court held that the First Amendment forecloses civil courts from adjudicating the employment-discrimination claims of employees against their religious employers under the “ministerial exception.” *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. ___, 140 S. Ct. 2049 (2020); see also *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 596 U.S. 171 (2012). The Supreme Court explained that “courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions” because church autonomy requires “independence in matters of faith and doctrine and in closely linked matters of internal government.” *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. at 2060-61.

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

Response: In *Fulton v. City of Phila.*, the Supreme Court held that the City of Philadelphia’s refusal to contract with Catholic Social Services (CSS) unless it agreed to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. *Fulton v. City of Phila.*, 593 U.S. ___; 141 S. Ct. 1868 (2021). The Supreme Court explained that although laws incidentally burdening religion are ordinarily not subject to strict scrutiny if they are “neutral and generally applicable,” the City of Philadelphia’s law did not meet the requirement of being neutral and generally applicable. *Id.*, 141 S. Ct. at 1876-77 citing *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878-82 (1990). That is because “[n]o matter the level of deference we extend to the City, the inclusion of a formal system of entirely discretionary exceptions ... renders the contractual non-discrimination requirement not generally applicable.” *Fulton*, 141 S. Ct. at 1878.

22. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine’s tuition assistance program because it discriminated against religious schools and thus undermined Mainers’ Free Exercise rights. Explain your understanding of the Court’s holding and reasoning in the case.**

Response: In *Carson v. Makin*, the Supreme Court held that “Maine’s ‘nonsectarian’ requirement for its otherwise generally available tuition assistance payments violates the Free Exercise Clause of the First Amendment.” *Carson v. Makin*, 596 U.S. ___; 142 S. Ct. 1987, 2002 (2022). The Supreme Court explained that Maine’s tuition assistance program operated to identify and exclude otherwise eligible schools “on the basis of their religious exercise,” and as such, was subject to a strict scrutiny review. *Id.* Citing *Espinoza v. Montana Dept. of Revenue*, the Supreme Court held that a “[s]tate need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious.” *Id.* at 2000 citing *Espinoza v. Montana Dept. of Revenue*, 591 U.S. ___, 140 S. Ct. 2246, 2261 (2020).

23. **Please explain your understanding of the U.S. Supreme Court’s holding and reasoning in *Kennedy v. Bremerton School District*.**

Response: In *Kennedy v. Bremerton Sch. Dist.*, the Supreme Court held that a person’s religious expressions are protected from government reprisal under the Free Exercise and Free Speech Clauses of the First Amendment. 597 U.S. ___, 142 S. Ct. 2407 (2022). The Supreme Court explained that the petitioner’s speech of prayer was private speech, not government speech as “he was not engaged in speech ‘ordinarily within the scope’ of his duties as a coach.” *Id.*, 142 S. Ct. at 2424. Further, and under strict scrutiny review, the Supreme Court held that the government could not demonstrate that its restrictions on the petitioner’s protected rights serve a compelling interest and are narrowly tailored to that end. *Id.* at 2426. In reaching this conclusion, the Supreme Court explained that an “analysis focused on original meaning and history ... has long represented the rule rather than some ‘exception’ within the ‘Court’s Establishment Clause jurisprudence.’” *Id.* at 2428.

24. **Explain your understanding of Justice Gorsuch’s concurrence in the U.S. Supreme**

Court’s decision to grant certiorari and vacate the lower court’s decision in *Mast v. Fillmore County*.

Response: In *Mast v. Fillmore County*, Justice Gorsuch joined the full Court in remanding the proceeding to the Court of Appeals of Minnesota for further consideration in light of the Supreme Court’s holding in *Fulton v. Philadelphia*, 593 U.S. ___, 141 S. Ct. 1868 (2021). *Mast v. Fillmore County*, 594 U.S. ___, 141 S. Ct. 2430 (2021). Justice Gorsuch provided a concurring opinion to highlight a few issues for the lower court and administrative authorities to consider in the remand regarding his views of the requirements of the Religious Land Use and Institutionalized Persons Act. *Id.* Specifically, Justice Gorsuch explained that the government and lower courts erred by treating the government’s “general interest in sanitation regulations as ‘compelling’ without reference to the specific application of those rules” to the Amish community. *Id.* at 2432. In his opinion, Justice Gorsuch found that the question at issue is not the enforcement of the sanitation requirements generally, but whether the government has an “interest in denying the exception from that requirement to the Swartzentruber Amish *specifically*.” *Id.* (emphasis in original).

25. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person’s First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

Response: 18 U.S.C. § 1507 imposes a prohibition against conduct committed 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.” If such an issue came before me in the Court of International Trade, if confirmed, I would dutifully apply Supreme Court and Federal Circuit precedent to determine the appropriate interpretation of 18 U.S.C. § 1507 to the facts of the case presented to me.

26. **Would it be appropriate for the court to provide its employees trainings which include the following:**

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

28. **Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?**

Response: Yes.

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

Response: The authority to make political appointments is vested with the President of the United States, upon advice and consent of the Senate pursuant to Article II, Section 2, Clause 2 of the Constitution. I do not believe this issue would arise before the Court of International Trade, a court of limited subject matter jurisdiction, but if confirmed and asked to rule upon the constitutionality of a particular appointment, I would faithfully apply Supreme Court and Federal Circuit precedent to the facts of the case before me.

30. **If a program or policy has a racially disparate outcome, is this evidence of either purposeful or subconscious racial discrimination?**

Response: It is difficult to provide comments on whether a program or policy with a racially disparate outcome would be evidence of purposeful or subconscious racial discrimination, as some examples of disparate impact could evidence purposeful discrimination while other examples would not.

31. **Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: The question of the size of the composition of the Supreme Court is a policy issue for policymakers. I would be bound by the precedent of the Supreme Court irrespective of the number of Justices on the Court.

32. **In your opinion, are any currently sitting members of the U.S. Supreme Court illegitimate?**

Response: No.

33. **What do you understand to be the original public meaning of the Second Amendment?**

Response: In *District of Columbia v. Heller*, the Supreme Court held that the original public meaning of the Second Amendment includes protection for an individual's right to keep and bear arms in the home for self-defense. *District of Columbia v. Heller*, 554 U.S. 570 (2008). Further, the Supreme Court held in *Bruen* that the original public meaning of the Second Amendment includes protection for an individual's right to keep and bear arms outside the home for self-defense. *Bruen*, 142 S. Ct. at 2122.

34. **What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: In *Bruen*, the Supreme Court held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 2126. Thus, the government cannot assert that a law promotes an important interest to justify the law. The Supreme Court held that "[r]ather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

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

Response: Yes.

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

Response: No. In *Bruen*, the Supreme Court held that the protection of Second Amendment rights "accords with how we protect other constitutional rights." *Bruen*, 142 S. Ct. at 2130.

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

Response: Please see my response to Question 36.

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

Response: Article II, Section 3 of the Constitution requires that the President “shall take Care that the Laws be faithfully executed” and that the President’s role is to enforce the law. The Supreme Court has held that the executive branch generally has “absolute discretion” to determine whether to initiate enforcement proceedings. *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). As a judicial nominee, it would not be appropriate for me to opine on the lawfulness or appropriateness of how the President should exercise the discretion provided under the Constitution.

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

Response: In *Chrysler Corp. v. Brown*, the Supreme Court has described a “substantive rule” as one which “affect[s] individual rights and obligations.” *Chrysler Corp. v. Brown*, 441 U.S. 281, 301–02 (1979). In *Bordenkircher v. Hayes*, the Supreme Court explained that “prosecutorial discretion” generally describes that “so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.” *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978). Such discretion, however, must be within the limits set by Congress’ constitutionally valid definition of chargeable offenses. *Id.* To my knowledge, the Supreme Court has never addressed the distinction between an act of mere “prosecutorial discretion” from a substantive administrative rule change, and I do not have a further understanding of the distinction.

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

Response: No, the President does not have the unilateral authority to abolish the death penalty. The death penalty is statutorily authorized for the federal offenses enumerated under 18 U.S.C. § 3591.

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

Response: In *Ala. Ass’n of Realtors v. HHS*, the Supreme Court vacated a stay on the District Court for the District of Columbia’s ruling that the Centers for Disease Control (CDC) lacked the statutory authority to issue a ban on the eviction of tenants from certain residential rental properties. *Alabama Association of Realtors v. HHS*, 594 U.S. ___, 141 S. Ct. 2485 (2021). The Supreme Court held that the stay was no longer justified under the governing four-factor test, particularly because the applicants challenging the ban had a substantial likelihood of success on the merits. *Id.*, 141 S. Ct. at 2488. The Supreme Court explained that “it is a stretch to maintain” that the statute provided the CDC authority to impose such a wide-reaching eviction moratorium, and that the Supreme Court “expect[s] Congress to speak clearly when authorizing an agency to exercise powers of ‘vast ‘economic and political significance.’” *Id.* at 2488-89.

42. **Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?**

Response: No.

43. **You serve as the Assistant Secretary of Commerce for Enforcement and Compliance, which issues many of the determinations that the Court of International Trade will ultimately review. In other words, you oversee the rulings that you will examine in your new role, if confirmed.**

- a. **As a result of this obvious conflict, won't you be forced to recuse from the bulk of the Court of International Trade's docket for several years?**

Response: No. If confirmed, I would make recusal determinations in accordance with 28 U.S.C. § 455, the Code of Conduct for United States Judges, and all other laws, rules, and practices governing recusal issues. The subject matter jurisdiction of the Court of International Trade is provided for under 28 U.S.C. § 1581. This list of enumerated jurisdiction is significantly broader than the antidumping duty and countervailing duty proceedings that I currently oversee as an Assistant Secretary of Commerce. *See* 28 U.S.C. § 1581.

- b. **If yes, the American people have the right to know where you would sit as a judge in the meantime. Where would you plan to sit, if confirmed?**

Response: Not applicable.

Questions from Senator Thom Tillis
for Lisa Wen-Jia Wang 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: Section 592 of the Tariff Act of 1930, as amended, addresses the penalties that may be imposed by the government for fraud, gross negligence and negligence of the failure to remit lawful duties, taxes, and fees. The *Fighting Trade Cheats Act* would provide for certain amendments to this provision, including a private right of enforcement action for customs fraud, and has bipartisan support from co-sponsors, Senators Baldwin, Britt and Brown. The House of Representatives has introduced a similar piece of legislation with bipartisan support from Representatives Bost, Sewell, Murphy, Mrvan and Tenney. If confirmed, I would faithfully apply the laws passed by Congress to the facts of the case before me.

- 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: Please see my response to Question 1(a).

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

Response: If confirmed, I would ensure that the cases that come before me in the Court of International Trade, including customs enforcement actions, would be promptly, thoroughly, and fairly adjudicated. As a judicial nominee, and pursuant to Code of Conduct for United States Judges, it is generally inappropriate for me to offer a personal view about policy issues and legislative initiatives.

- 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: Trade complaints brought to multilateral and bilateral dispute settlement panels, such as the World Trade Organization and U.S.-Mexico-Canada Agreement, are resolved in

accordance with the procedures and timing of those dispute settlement chapters, and the judgement of the panelists. Trade proceedings initiated pursuant to the Tariff Act of 1930, as amended, are resolved in accordance with the statutory and regulatory provisions governing each complaint, which includes strict administrative deadlines. If confirmed, I would ensure that the cases that come before me in the Court of International Trade would be promptly, thoroughly, and fairly adjudicated.

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: My experience as the Assistant Secretary of Commerce for Enforcement and Compliance, along with my time at the Office of the U.S. Trade Representative and the U.S. Embassy in Beijing, China, has taught me the importance of maintaining a rules-based level playing field for U.S. businesses and workers. International trade law encompasses a wide range of stakeholders – from domestic manufacturers supporting the vibrancy of small rural towns, to U.S. importers critical to supply chain resiliency, to foreign governments negotiating multinational trade agreements. My approach to international trade law in the Executive Branch has been to respect these diverse perspectives by keeping an open mind and ensuring that all parties are treated with dignity. If confirmed, I would bring these same principles to the Court of International Trade.