

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Irma Carrillo Ramirez
Nominee to the Court of Appeals for the Fifth Circuit
May 24, 2023

1. You have served as a magistrate judge since 2002. Before that, you were a practicing attorney for over ten years, working for both a large law firm and the U.S. Attorney's Office.

a. How has your work as a litigator shaped your approach to your work as a magistrate judge?

Response: As a United States Magistrate Judge, I have drawn on every facet of my prior training and experience in both the private and public sectors and in civil and criminal cases, including my experience with extensive motion practice in complex commercial litigation, civil litigation involving the United States and its officers, employees and agencies, trial practice, and prosecution of federal criminal offenses. These experiences have informed how I have managed my docket and handled my courtroom.

b. How has your experience prepared you to serve on the Court of Appeals for the Fifth Circuit?

Response: In addition to the more than 2,450 civil cases I have been assigned for full case management over the past 21 years, I have presided over 440 civil cases through judgment and the misdemeanor criminal cases of 44 defendants by consent of the parties. I have issued almost 5000 written opinions (including findings, conclusions, and recommendations and memorandum opinions and orders) and more than 16,500 orders on motions. These cases presented the same issues that are appealed to the United States Court of Appeals for the Fifth Circuit, and I am familiar with circuit precedent and applicable standards of review. My reversal rate is less than .08%. In addition, some of my work, particularly in the areas of Social Security appeals and prisoner habeas cases involving review of state and federal criminal trial court proceedings, is appellate in nature. Prior to becoming a United States Magistrate Judge, I also handled and argued a handful of cases before the United States Court of Appeals for the Fifth Circuit.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Irma Carrillo Ramirez
Judicial Nominee to the United States Court of Appeals for the Fifth Circuit

1. **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 disagree. As a judge for almost 21 years, I have been bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to faithfully apply precedent.

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt’s stock 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 that statement. I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to faithfully apply precedent.

3. **Please define the term “living constitution.”**

Response: Black’s Law Dictionary defines the term “living constitution” as “[a] constitution whose interpretation and application can vary over time according to changing circumstances and changing social values.” Black’s Law Dictionary (11th ed. 2019).

4. **Do you agree with then-Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a “living constitution”?**

Response: I am not familiar with that statement. The United States Supreme Court has stated that “[a]lthough its 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.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

5. **Under Supreme Court and Ninth Circuit precedent, what is a “fact” and what sources do courts consider in determining whether something is a question of fact or a question of law?**

Response: Black’s Law Dictionary defines “fact” as “[s]omething that actually exists; an aspect of reality” or “[a]n actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation.” Black’s Law Dictionary (11th ed. 2019). The Supreme Court has “observed, with regard to the problem of determining whether mixed questions of law and fact are to be treated as questions of law or of fact for purposes of appellate review, that sometimes the decision ‘has turned on a determination that, as a

matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question.” *Pierce v. Underwood*, 487 U.S. 552, 559–60, (1988) (citing *Miller v. Fenton*, 474 U.S. 104, 114 (1985)); *see also Merck Sharp & Dohme Corp. v. Albrecht*, 139 S. Ct. 1668, 1680 (2019); *S.E.C. v. Fox*, 855 F.2d 247, 250–51 (5th Cir. 1988) (citing *Pierce*, 487 U.S. at 559-60).

6. How do you distinguish between “attacks” on a sitting judge and mere criticism of an opinion he or she has issued?

Response: The Supreme Court has drawn a distinction between attacks on “the integrity or the competence of the judges”, which may subject lawyers to discipline, and criticism of the law or judges’ application of the law, which lawyers are free to do. *In re Sawyer*, 360 U.S. 622, 631-33 (1959).

7. Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?

Response: I have considered the factors set forth in 18 U.S.C. § 3553(a) when making sentencing decisions in the misdemeanor cases over which I have presided, giving each factor appropriate weight depending on the particular facts and circumstances of each case based upon a careful application of the law and evidence. This statute does not designate any one factor as more important than others.

8. Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.

Response: As a judge for almost 21 years, I have learned to carefully consider the issues presented by the parties, determine the applicable law, including precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and faithfully apply it to the record presented by the parties. I am not aware of a specific Supreme Court decision that is typical of my judicial philosophy.

9. Please identify a Ninth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.

Response: As a judge for almost 21 years, I have learned to carefully consider the issues presented by the parties, determine the applicable law, including precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and faithfully apply it to the record presented by the parties. I am not aware of a specific decision in the Ninth Circuit or Fifth Circuit that is typical of my judicial philosophy.

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

Response: Section 1507 of Title 18 provides 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.”

11. Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?

Response: I am unaware of any precedent of the United States Supreme Court or the United States Court of Appeals for the Fifth Circuit holding that 18 U.S.C. § 1507 is constitutional on its face. In *Cox v. Louisiana*, 379 U.S. 559, 561-64 (1965), the Supreme Court held that a state statute modeled after a bill pertaining to the federal judiciary, later enacted as 18 U.S.C. § 1507, was facially valid.

12. What is the operative standard for determining whether a statement is not protected speech under the “fighting words” doctrine?

Response: The Supreme Court has held that states are free to ban “fighting words,” or “those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction.” *Cohen v. California*, 403 U.S. 15, 20 (1971).

13. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?

Response: The Supreme Court has held that true threats encompass statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. *Virginia v. Black*, 538 U.S. 343, 359–60 (2003).

14. 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 sitting judge and nominee, I may not comment on the correctness of Supreme Court precedent. See Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent. Because *Brown v. Board of Education* presented legal issues which will not likely come before the courts again, I may state that it was correctly decided.

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

Response: As a sitting judge and nominee, I may not comment on the correctness of Supreme Court precedent. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent. Because *Loving v. Virginia* presented legal issues which will not likely come before the courts again, I may state that it was correctly decided.

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

Response: As a sitting judge and nominee, I may not comment on the correctness of Supreme Court precedent. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

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

Response: The Supreme Court recently overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

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

Response: The Supreme Court recently overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

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

Response: As a sitting judge and nominee, I may not comment on the correctness of Supreme Court precedent. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

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

Response: As a sitting judge and nominee, I may not comment on the correctness of Supreme Court precedent. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

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

Response: As a sitting judge and nominee, I may not comment on the correctness of Supreme Court precedent. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

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

Response: As a sitting judge and nominee, I may not comment on the correctness of Supreme Court precedent. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

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

Response: As a sitting judge and nominee, I may not comment on the correctness of Supreme Court precedent. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

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

Response: As a sitting judge and nominee, I may not comment on the correctness of Supreme Court precedent. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

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

Response: I would carefully consider the issues presented by the parties, determine the applicable law, including precedent of the United States Supreme Court in *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), and the United States Court of Appeals for the Fifth Circuit, in determining the "historical tradition" of acceptable firearm regulation.

16. 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.

17. 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.

18. 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.

19. **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.

20. 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.

21. 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: On September 13, 2022, I submitted my application to be considered for a vacancy on the United States Court of Appeals for the Fifth Circuit to Senators John Cornyn and Ted Cruz, and I was interviewed by their bi-partisan Federal Judicial Evaluation Committee on October 14, 2022. I then met with Senator Cornyn on December 12, 2022, and with Senator Cruz on January 4, 2023. On February 4, 2023, I was contacted by an attorney from the White House Counsel’s Office, and I interviewed with attorneys from that Office on February 8, 2023. After that, I was in contact with attorneys from the Office of Legal Policy at the Department of Justice. On April 14, 2023, the President announced his intent to nominate me to the United States Court of Appeals for the Fifth Circuit, and on April 17, 2023, he sent my nomination to the United States Senate. Since then, I have been in communication with staff from the White House and the Department of Justice in preparation for my Senate confirmation hearing.

22. 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.

23. 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.

24. **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.

25. **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.

26. **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.

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

Response: On February 4, 2023, I was contacted by an attorney from the White House Counsel's Office regarding my interest in being considered for potential nomination to United States Court of Appeals for the Fifth Circuit. I interviewed with attorneys from that Office on February 8, 2023. After that, I was in contact with attorneys from that Office as well as the Office of Legal Policy at the Department of Justice. On April 14, 2023, the President announced his intent to nominate me to the United States Court of Appeals for the Fifth Circuit. On April 17, 2023, the President sent my nomination to the United States Senate. Since then, I have been in communication with attorneys from the White House and the Department of Justice in preparation for my Senate confirmation hearing.

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

Response: After receiving these questions from the Office of Legal Policy at the Department of Justice on May 24, 2023, I drafted my responses. The Office of Legal Policy provided feedback, and I subsequently finalized and submitted my responses.

**Senate Judiciary Committee
Nominations Hearing
May 17, 2023
Questions for the Record
Senator Amy Klobuchar**

For Judge Irma Carrillo Ramirez, nominee to be United States Circuit Judge for the Fifth Circuit

You currently preside over the reentry court in the Northern District of Texas and have also served on the Special Committee on Reentry Standards in the Fifth Circuit since 2010.

- **How have you seen the use of reentry courts and other treatment courts as a means to help nonviolent offenders recover from addiction?**

Response: I have seen participants in reentry courts benefit from the additional resources, individualized attention, and extra support and encouragement they receive from a multi-disciplinary reentry team comprised of probation officers, treatment providers, prosecutors, defense attorneys, community partners, and judges. Increased accountability resulting from more intensive supervision through a reentry court program can also be an important tool in helping addicts recover from addiction and reducing recidivism.

- **Do you agree that expanding access to treatment courts is an important part of our criminal justice system and will you continue your work in this area as a circuit court judge?**

Response: I agree that treatment courts play an important role in our criminal justice system by helping reduce recidivism, and I sincerely hope to be able to continue my work in this area as a circuit judge, if I am confirmed.

Since 2002, you have served as a Magistrate Judge for the U.S. District Court for the Northern District of Texas. In this capacity you have been assigned full case management for over 2,400 civil cases and have presided over 13 trials.

- **How have your years of service as a federal magistrate judge prepared you to serve as a federal circuit court judge?**

Response: In addition to the more than 2,450 civil cases I have been assigned for full case management over the past 21 years, I have presided over 440 civil cases through judgment and the misdemeanor criminal cases of 44 defendants by consent of the parties. I have issued almost 5000 written opinions (including findings, conclusions, and recommendations and memorandum opinions and orders) and more than 16,500 orders on motions. These cases presented the same issues that are appealed to the United States Court of Appeals for the Fifth Circuit, and I am familiar with circuit

precedent and applicable standards of review. My reversal rate is less than .08%. In addition, some of my work, particularly in the areas of Social Security appeals and prisoner habeas cases involving review of state and federal criminal trial court proceedings, is appellate in nature. Prior to becoming a United States Magistrate Judge, I also handled and argued a handful of cases before the United States Court of Appeals for the Fifth Circuit.

**Senator Mike Lee Questions
for the Record**

Irma Carrillo Ramirez, Nominee to be United States Circuit Judge for the Fifth Circuit

1. How would you describe your judicial philosophy?

Response: As a judge for almost 21 years, I have learned to carefully consider the issues presented by the parties, determine the applicable law, including precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and faithfully apply it to the record presented by the parties.

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

Response: I would first look to precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit regarding the meaning of the text. If there is no precedent, I would look to the plain text of the statute. If the text is unambiguous, that would end the inquiry. If the text is ambiguous, I would look to analogous precedent of the Supreme Court and the Fifth Circuit interpreting the same or similar language in other parts of the statute, as well as other sources authorized by the Supreme Court and the Fifth Circuit, including the canons of statutory construction, persuasive precedent from other courts, and authoritative legislative history. The Supreme Court has held that committee reports are “more authoritative” sources of legislative history because they “represent the considered and collective judgment of those Congressmen involved in drafting and studying the proposed legislation.” *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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

Response: I would look to precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, the plain text of the constitutional provision, and the interpretive methodology used by the Supreme Court and the Fifth Circuit for that provision or analogous provisions.

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

Response: The Supreme Court has held that the text and original meaning of a constitutional provision play an important role when interpreting the Constitution. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2127-29 (2022); see also *McDonald v. Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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: I look to precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit regarding the meaning of the text. If there is no precedent, I would look to the plain text of the statute. If the text is unambiguous, that would end the inquiry. If the text is ambiguous, I would look to analogous precedent of the Supreme Court and the Fifth Circuit interpreting the same or similar language in other parts of the statute, as well as other sources authorized by the Supreme Court and the Fifth Circuit, including the canons of statutory construction, persuasive precedent from other courts, and authoritative legislative history. The Supreme Court has held that committee reports are “more authoritative” sources of legislative history because they “represent the considered and collective judgment of those Congressmen involved in drafting and studying the proposed legislation.” *Garcia v. United States*, 469 U.S. 70, 76 (1984).

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: The Supreme Court has held that “Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them.*” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2136 (2022) (emphasis original) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008)); see also *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020).

6. What are the constitutional requirements for standing?

Response: Standing requires (1) a concrete injury; (2) traceable to the conduct of the defendant; (3) that is likely to be redressed by a favorable ruling of the court. *Massachusetts v. E.P.A.*, 549 U.S. 497, 498 (2007).

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 held the Necessary and Proper Clause in gives Congress certain implied powers that are not explicitly enumerated in the Constitution. *McCulloch v. Maryland*, 17 U.S. 316 (1819). The United States Constitution gives Congress with the power “[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” U.S. Const., art. I, § 8.

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 determination of the constitutionality of action taken by Congress does not depend on recitals of the power it undertakes to exercise. *Nat’l Fed. Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). I would look to precedent of the United States Supreme Court

and the United States Court of Appeals for the Fifth Circuit to determine whether enactment of the law was within the scope of Congress's powers and consistent with the Constitution.

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

Response: The Supreme Court has held the Constitution protects unenumerated fundamental rights that “are, objectively, deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). These rights include the rights to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999); contraception, *Eisenstadt v. Baird*, 405 U.S. 438 (1972); marry, *Loving v. Virginia*, 388 U.S. 1 (1967) and *Obergefell v. Hodges*, 576 U.S. 644 (2015); marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952); have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); and direct the education and upbringing of one’s children, *Meyer v. Nebraska*, 262 U.S. 390 (1923).

10. **What rights are protected under substantive due process?**

Response: The Supreme Court has held the Constitution protects unenumerated fundamental rights that “are, objectively, deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). These rights include the rights to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999); contraception, *Eisenstadt v. Baird*, 405 U.S. 438 (1972); marry, *Loving v. Virginia*, 388 U.S. 1 (1967) and *Obergefell v. Hodges*, 576 U.S. 644 (2015); marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952); have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); and direct the education and upbringing of one’s children, *Meyer v. Nebraska*, 262 U.S. 390 (1923).

11. **If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?**

Response: The Supreme Court held in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), that the Constitution does not protect a right to abortion, and it held in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), that the Constitution does not protect the economic rights at stake in *Lochner v. New York*. As a sitting judge and judicial nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. See Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Canons of the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

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

Response: The Supreme Court has held that the Commerce Clause grants Congress authority to regulate (1) “the use of the channels of interstate commerce,” (2) “the instrumentalities of interstate commerce, or persons or things in interstate commerce,” and (3) activities that “substantially affect interstate commerce.” *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

13. **What qualifies a particular group as a “suspect class,” such that laws affecting that group must survive strict scrutiny?**

Response: The Supreme Court has looked to whether a particular group shares “traditional indicia of suspectedness,” including whether it has an “immutable characteristic determined solely by the accident of birth” or is “saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (citations and internal quotation marks omitted).

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

Response: The Supreme Court has recognized that “[s]eparation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others... The structural principles secured by the separation of powers protect the individual as well.” *Bond v. United States*, 564 U.S. 211, 222 (2011).

15. **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: I would carefully consider the issues presented by the parties, determine the applicable law, including precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit and the plain text of the Constitution, and apply it to the record presented by the parties. I am bound to apply precedent of the Supreme Court and the Fifth Circuit, and if confirmed to serve on that court, I will continue to do so.

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

Response: Paragraph A of Canon 2 of the Code of Conduct for United States Judges provides that judges “should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Paragraph A(3) of Canon 3 provides that judges “should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity.” Paragraph A(4) of Canon 3 provides that judges “should accord to every person who has a legal interest in a proceeding, and that

person’s lawyer, the full right to be heard according to law.” I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

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

Response: Neither is worse than the other; both outcomes should be avoided. I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

18. **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: As a sitting judge and judicial nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

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

Response: Black’s Law Dictionary defines “judicial review” as 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”; it defines “judicial supremacy” as the doctrine providing 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).

20. **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: The United States Constitution requires government officials to take an oath to uphold the Constitution. U.S. Const., art. VI, § 3. Government officials are also bound to follow decisions of the United States Supreme Court that interpret the Constitution. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

21. **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: The United States Constitution limits the authority of courts to cases and controversies. Federalist 78 states that the role of the federal courts is to interpret and apply the law; it is the roles of the legislative and executive branches to make or enforce the law. I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to faithfully apply precedent.

22. **As a circuit court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: A lower court judge is bound to apply precedent of the United States Supreme Court and his or her circuit, regardless of whether the constitutional underpinnings of that precedent are “questionable” or if the precedent seems to depart from constitutional text, history, or tradition.

23. **When sentencing an individual defendant in a criminal case, what role, if any, should the defendant’s group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges’ sentencing analysis?**

Response: None.

24. **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 this statement. Black's Law Dictionary defines "equity" as "[f]airness; impartiality; evenhanded dealing" and "[t]he body of principles constituting what is fair and right; natural law." Black's Law Dictionary (11th ed. 2019).

25. Is there a difference between "equity" and "equality?" If so, what is it?

Response: Black's Law Dictionary defines "equity" as "[f]airness; impartiality; evenhanded dealing" and "[t]he body of principles constituting what is fair and right; natural law"; it defines "equality" as "[t]he quality, state, or condition of being equal; esp., likeness in power or political status." Black's Law Dictionary (11th ed. 2019).

26. 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 14th Amendment provides that, "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to apply precedent, including precedent concerning the guarantees of the Equal Protection Clause.

27. How do you define "systemic racism?"

Response: Cambridge Dictionary defines "systemic racism" as "policies and practices that exist throughout a whole society or organization and that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others based on race." Cambridge Dictionary. Merriam-Webster's Dictionary defines it "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's Dictionary (2022).

28. 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" and "[t]he body of work produced by adherents to this theory." Black's Law Dictionary (11th ed. 2019).

29. Do you distinguish "critical race theory" from "systemic racism," and if so, how?

Response: “Systemic racism” is defined as “policies and practices that exist throughout a whole society or organization and that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others based on race,” Cambridge Dictionary, or “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’s Dictionary (2022), while “critical race theory” is defined as “[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities” and “[t]he body of work produced by adherents to this theory,” Black’s Law Dictionary (11th ed. 2019).

**Nomination of Irma Carrillo Ramirez
to be United States Circuit Judge for the Fifth Circuit
Questions for the Record
Submitted May 24, 2023**

QUESTIONS FROM SENATOR COTTON

- 1. Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

Response: No.

- 2. Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

Response: As a sitting judge and nominee, I may not comment on the correctness of Supreme Court precedent. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

- 3. Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

Response: The Supreme Court has held that the Second Amendment protects an individual right to keep and bear arms for self-defense, unconnected with service in a militia. *New York Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

- 4. Has your understanding of the Second Amendment changed at all as a result of the Supreme Court’s holding in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ____ (2022)? If so, how?**

Response: The Supreme Court clarified that courts are required to assess whether modern firearms regulations are consistent with the Second Amendment’s text and historical understanding by first determining whether modern and historical regulations impose a comparable burden on the right of armed self-defense, and second, whether the regulatory burden is comparably justified. I am bound to apply precedent of the United

States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to apply precedent.

5. **In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ____ (2022), the Supreme Court ruled that, to justify a regulation restricting Second Amendment rights, “the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” How would you, as a judge, go about determining the “historical tradition” of acceptable firearm regulation in the United States?**

Response: I would carefully consider the issues presented by the parties, determine the applicable law, including precedent of the United States Supreme Court in *New York Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), and the United States Court of Appeals for the Fifth Circuit, in determining the “historical tradition” of acceptable firearm regulation in the United States.

6. **Do you believe that judges should respect Congress’s legislative choices regarding the sentencing of criminals under federal law, including the choice of whether to apply sentencing reductions retroactively?**

Response: Yes.

7. **Do you believe that finality and predictability are important in federal criminal sentencing? Why or why not?**

Response: The Supreme Court has stated that the finality of criminal judgments “is essential to both the retributive and deterrent functions of criminal law.” *Calderon v. Thompson*, 523 U.S. 538, 555 (1998); *see also Edwards v. Vannoy*, 141 S. Ct. 1547, 1554 (2021). It has also stated that the goal of the Sentencing Guidelines is to provide uniformity and predictability. *Koon v. United States*, 518 U.S. 81, 113 (1996). I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to apply precedent.

8. **Does the president have unilateral authority to categorically ignore immigration laws established by Congress?**

Response: Article II of the United States Constitution provides that “[t]he executive Power shall be vested in a President of the United States of America. U.S. Const., art. II, § 1, Cl. 1. Paragraph A(6) of Canon 3 of the Code of Conduct for United States Judges

provides that judges “should not make public comment on the merits of a matter pending or impending in any court.” This matter is currently pending before the Supreme Court in *United States v. Texas*. I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

9. What is your understanding of the Citizenship Clause of the Fourteenth Amendment?

Response: Section 1 of the Fourteenth Amendment provides that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

10. Do you believe that the Citizenship Clause of the Fourteenth Amendment contains any exceptions? If so, please describe who you believe to be excluded from birthright citizenship.

Response: Section 1 of the Fourteenth Amendment does not expressly set forth any exceptions. In *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), the Supreme Court noted that children born in the United States of foreign parents holding diplomatic office are not United States citizens because they are not born “subject to the jurisdiction” of the United States. I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to apply precedent.

11. Is it unlawful for an agent of state government to actively assist any individual in breaking federal immigration law?

Response: As a sitting judge and judicial nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

12. Is it unlawful for an agent of state government to actively shield or hide an individual from lawful federal immigration enforcement?

Response: As a sitting judge and judicial nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

13. Please describe what you believe to be the Supreme Court’s holding in *Twitter, Inc. v. Taamneh*, 598 U.S. ____ (2023).

Response: The Supreme Court unanimously held that the plaintiffs had not plausibly alleged that the defendant social media companies had aided and abetted an international terrorist organization within the meaning of 18 U.S.C. § 2333(a) by allowing its members to use their platforms to fundraise and recruit new members.

14. Please describe what you believe to be the limits of the Environmental Protection Agency’s authority according to the terms of the Supreme Court’s ruling in *West Virginia v. Environmental Protection Agency*, 597 U.S. ____ (2022).

Response: The Supreme Court held that under the major questions doctrine, statutes must not be interpreted as delegating to a federal agency the power to decide major questions absent “clear congressional authorization”, and that in Section 111(d) of the Clean Air Act, Congress did not grant the Environmental Protection Agency the authority to devise emissions caps based on its generation shifting approach.

15. Please describe what you believe to be the Supreme Court’s holding in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. ____ (2022).

Response: The Supreme Court held that the Constitution does not confer a right to abortion and returned the authority to regulate abortion to the people and their elected representatives. See 142 S. Ct. 2228, 2279.

16. Please describe what you believe to be the Supreme Court’s holding in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

Response: The Supreme Court concluded 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.”

17. Please describe your understanding of the notice requirements imposed on the Internal Revenue Service under 26 U.S.C. § 7609 in light of the Supreme Court’s recent ruling in *Polselli v. IRS*, 598 U.S. _____ (2023).

Response: The Supreme Court unanimously held that when Internal Revenue Service “has reached the stage of ‘collecting any [] liability’” that it has determined is owed by a taxpayer, notice to the taxpayer may not be required under 26 U.S.C. § 7609.

18. What is your understanding of the fiduciary duties owed by investment firms to their investors?

Response: The Supreme Court has stated that “Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisors.” *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 471 & n. 11 (1977) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-92 (1963)). In *Laird v. Integrated Resources, Inc.*, 897 F.2d 826, 834 (5th Cir. 1990), the Fifth Circuit stated that “[a]s a fiduciary, the standard of care to which an investment adviser must adhere imposes ‘an affirmative duty of “utmost good faith, and full and fair disclosure to all material facts,” as well as an affirmative obligation to “employ reasonable care to avoid misleading” his clients.’”

19. Do federal drug scheduling actions pursuant to the Controlled Substances Act preempt state or local laws that purport to ‘legalize’ substances contrary to their federal drug control status?

Response: Section 903 of the Controlled Substances Act states: “No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.” The Fifth Circuit has found that “the Act explicitly retains preemptive effect over state regulations when ‘there is a positive conflict between ... this subchapter and ... State law so that the two cannot consistently stand together.’” *United States v. Zadeh*, 820 F.3d 746, 751 & n. 13 (5th Cir. 2016). I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to apply precedent.

20. Under what circumstances, if any, do you believe that it is appropriate for courts to order attorneys to break attorney-client privilege?

Response: The Supreme Court has recognized the “crime-fraud” exception for communications in furtherance of future illegal conduct, *see United States v. Zolin*, 491 U.S. 554, 556 (1989), and the fiduciary exception, which precludes a trustee of a common law trust from asserting privilege against beneficiaries related to the execution of fiduciary obligations, *see United States v. Jicarilla Apache Nation*, 564 U.S. 162, 167 (2011). I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to apply precedent.

21. What is your understanding of the current state of the law regarding the executive privilege of the president of the United States?

Response: In *United States v. Nixon*, 418 U.S. 683, 713 (1974), the Supreme Court held that “[i]f a President concludes that compliance with a subpoena would be injurious to the public interest he may properly...invoke a claim of privilege on the return of the subpoena,” and the prosecution must then “demonstrate that the Presidential material was ‘essential to the justice of the (pending criminal) case.’” I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to apply precedent.

22. Are there any crimes for which the United States Constitution allows the death penalty?

Response: The Constitution does not expressly identify any crime for which the death penalty is allowed.

23. Please describe what you believe to be the Fifth Circuit’s holding in *NetChoice L.L.C. v. Paxton*, 49 F.4th 439 (2022).

Response: The United States Court of Appeals for the Fifth Circuit held that large social media platforms which host and transmit speech do not engage in First Amendment-protected expression by managing and arranging content, and that Texas House Bill 20, which generally prohibits them from censoring speech based on viewpoint, is constitutional because it neither compels nor obstructs the platforms’ own speech in any way.

24. Should the courts base their rulings about the U.S. Constitution and U.S. laws on the text of those documents, or should they decide cases based on how foreign governments and foreign citizens might feel about the result?

Response: Courts should base their rulings about the U.S. Constitution and U.S. laws on the text of those documents and should not decide cases based on how foreign governments and foreign citizens might feel about the result. I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to apply precedent.

25. Please describe your understanding of the doctrine of “fair use” in light of the Supreme Court’s recent holding in *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. ____ (2023).

Response: The Supreme Court held that to decide whether a particular use of a copyrighted work is “fair” for purposes of the fair use defense to copyright infringement codified in 17 U.S.C. § 107, four factors must be considered: “(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; “(2) the nature of the copyrighted work; “(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and “(4) the effect of the use upon the potential market for or value of the copyrighted work.”

26. Please describe what you believe to be the Supreme Court’s holding in *United States v. Taylor*, 596 U.S. ____ (2022).

Response: The Supreme Court held that an attempted Hobbs Act robbery does not qualify as a “crime of violence” under 18 U.S.C. § 924(c)(3)(A) because no element of the offense of attempted Hobbs Act robbery requires proof that the defendant used, attempted to use, or threatened to use force.

27. If an individual is ordered deported by our immigration courts, and the individual has exhausted all appeals, should the court’s deportation order be carried out, or ignored?

Response: Court orders should be followed. As a sitting judge and nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

28. What is your view of arbitration as a litigation alternative in civil cases?

Response: The Supreme Court has stated that “Congress adopted the Arbitration Act in an effort to counteract judicial hostility to arbitration and establish ‘a liberal federal policy favoring arbitration agreements.’” *New Prime Inc. v. Oliveira*, 193 S. Ct. 532 (2019) (quoting *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)).

29. Please describe what you believe to be the Supreme Court’s holding in *Kennedy v. Bremerton*, 597 U.S. ____ (2022).

Response: The Supreme Court held that the Free Exercise and Free Speech Clauses of the First Amendment protect individuals engaging in a personal religious observance from government reprisal, and that the Constitution neither mandates nor permits the government to suppress such religious expression.

30. Please describe what you believe to be the Supreme Court’s holding in *Torres v. Texas Department of Public Safety*, 597 U.S. ____ (2022).

Response: The Supreme Court held that the State of Texas could not assert sovereign immunity as a legal defense to a federal lawsuit brought by an employee against his employer for failing to rehire him following military deployment, as required under the Uniformed Services Employment and Reemployment Rights Act.

31. Do parents with custody of their minor children have a right to know what names and pronouns school officials use to refer to said children when at school?

Response: As a sitting judge and nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Canons of the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

32. Please describe your understanding of the application of obscenity laws to lewd and obscene materials available to children at public schools and libraries.

Response: In *Ginsburg v. New York*, 390 U.S. 629 (1968), the Supreme Court upheld the constitutionality of a state criminal statute that prohibited the sale to minors “of material defined to be obscene on the basis of its appeal to them whether or not it would be obscene to adults.” As a sitting judge and nominee, I may not comment on matters that

may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

33. Please describe your understanding of the application of obscenity laws to lewd or indecent performances targeted toward children in publicly-funded places such as public libraries.

Response: In *Ginsburg v. New York*, 390 U.S. 629 (1968), the Supreme Court upheld the constitutionality of a state criminal statute that prohibited the sale to minors “of material defined to be obscene on the basis of its appeal to them whether or not it would be obscene to adults.” As a sitting judge and nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

34. Do federal law enforcement officials have a legal duty to report alleged “disinformation” to social media providers with the intent of having the content removed or the content provider banned from the platform?

Response: As a sitting judge and nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

35. If a federal law enforcement official reports to a social media platform lawful conduct that allegedly violates private terms of service with the intent of having the individual removed from the social media platform or otherwise subjected to adverse action, does the social media platform act as a state actor for purposes of that complaint? How would you analyze such a question under the law?

Response: As a sitting judge and nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and

to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit. I would carefully consider the issues presented by the parties, determine the applicable law, including precedent of the Supreme Court and the Fifth Circuit, and apply it to the record presented by the parties.

36. Does it violate the United States Constitution for a state government to impose penalties on employers for employing illegal aliens in violation of state and federal law?

Response: As a sitting judge and nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

37. Does the United States Constitution allow universities to hold separate graduation ceremonies for graduates based on their skin color?

Response: As a sitting judge and nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

38. Based on your understanding of the law, what are the reciprocal duties and obligations of United States citizenship?

Response: The Supreme Court has stated that “[c]itizenship is membership in a political society, and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the other.” *Luria v. United States*, 231 U.S. 9, 22 (1913). It has also found a duty to render military service. *Arver v. United States*, 245 U.S. 366, 378 (1918)(“It may not be doubted that the very sonception [sic] of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need, and the right to compel it.”).

39. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.

Response: After receiving these questions from the Office of Legal Policy at the Department of Justice on May 24, 2023, I drafted my responses. The Office of Legal Policy provided feedback, and I subsequently finalized and submitted my responses.

- 40. Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please identify the department or agency with which those officials are employed.**

Response: No. After receiving these questions from the Office of Legal Policy at the Department of Justice on May 24, 2023, I drafted my responses. The Office of Legal Policy provided feedback, and I subsequently finalized and submitted my responses.

Questions from Senator Thom Tillis
for Irma Carrillo Ramirez
Nominee to be United States Circuit Court for the Fifth Circuit

- 1. Do you believe that a judge’s personal views are irrelevant when it comes to interpreting and applying the law?**

Response: Yes.

- 2. What is judicial activism? Do you consider judicial activism appropriate?**

Response: Black’s Law Dictionary defines “judicial activism” as “[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents.” Black’s Law Dictionary (11th ed. 2019). No, I do not consider judicial activism appropriate.

- 3. Do you believe impartiality is an aspiration or an expectation for a judge?**

Response: Paragraph A of Canon 2 of the Code of Conduct for United States Judges provides that judges “should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 3 provides that judges should perform the duties of the office fairly and impartially.

- 4. Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

Response: No.

- 5. Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

Response: Faithfully interpreting the law sometimes results in an outcome that may be perceived as undesirable. Judges are required to take an oath or affirm that they will “faithfully and impartially discharge and perform” their duties. *See* 28 U.S.C. § 453. As a judge for almost 21 years, I have been bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to faithfully apply precedent.

- 6. Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

Response: No.

7. What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?

Response: As a judge for almost 21 years, I have been bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to faithfully apply precedent, including *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?

Response: I would carefully consider the issues presented by the parties, determine the applicable law, including precedent of the United States Supreme Court in *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), and the United States Court of Appeals for the Fifth Circuit, and apply it to the record presented by the parties.

9. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: I carefully consider the issues presented by the parties, determine the applicable law, including precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and apply it to the record presented by the parties. The Supreme Court has held that qualified immunity protects government officials "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)); *Craig v. Martin*, 26 F. 4th 699, 704 (5th Cir. 2022) (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). I am bound to apply precedent of the Supreme Court and the Fifth Circuit, and if confirmed to serve on that court, I will continue to do so.

10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: Whether qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety is a question of policy for policy makers and experts. The Supreme Court has held that qualified immunity protects government officials "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)); *Craig v. Martin*, 26 F. 4th 699, 704 (5th Cir. 2022) (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). I am bound to apply precedent of the Supreme Court and the Fifth Circuit, and if confirmed to serve on that court, I will continue to do so.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: The proper scope of qualified immunity protections for law enforcement is a question of policy for policy makers and experts. The Supreme Court has held that qualified immunity protects government officials “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)); *Craig v. Martin*, 26 F. 4th 699, 704 (5th Cir. 2022) (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). As a judge for almost 21 years, I have been bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to do so.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court’s patent eligibility jurisprudence?

Response: As a sitting judge and nominee, I may not comment on the correctness of Supreme Court precedent. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Federal Circuit for patent cases, and if confirmed to serve on the Fifth Circuit, I will continue to abide by the Code and to apply precedent.

13. Do you believe the current patent eligibility jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court’s ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: As a sitting judge and nominee, I may not comment on the correctness of Supreme Court precedent. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Federal Circuit for patent cases, and if confirmed to serve on the Fifth Circuit, I will continue to abide by the Code and to apply precedent. I would carefully consider the issues presented by the parties, determine the applicable law, including precedent of the Supreme Court and the applicable circuit, and apply it to the record presented by the parties.

14. Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the lawfulness of a use of digital content and technologies.

a. What experience do you have with copyright law?

Response: I have managed, handled, or presided over the following cases alleging violations of copyright law:

Liccardi v. Shorr, No. 3:21-CV-2590-E (BH) (N.D. Tex.)
Liccardi v. Shorr, No. 3:21-CV-314-E (BH) (N.D. Tex.)
Wells v. Youtube, LLC, No. 3:20-CV-2849-S-BH (N.D. Tex.)
Mouse On Tha Track LLC v. Parg Mgmt. LLC, No. 3:18-CV-2980-S (N.D. Tex.)
Broad. Music, Inc. v. Tex Border Mgmt., Inc., No. 3:10-CV-2524-BH (N.D. Tex.)
S & H Indus., Inc. v. Selander, No. 3:11-CV-2988-M-BH (N.D. Tex.)
Stiff v. Stinson, No. 3:12-CV-4998-D (N.D. Tex.)
Monkey Boy Graphix, Inc. v. Anton Sport, Inc., No. 3:08-CV-657-O (N.D. Tex.)
UMG Recordings, Inc. v. Herrin, No. 3:05-CV-1903-K (N.D. Tex.)
Capitol Recs., Inc. v. Lyons, No. 3:03-CV-2018-L (N.D. Tex.)
Groden v. Allen, No. CIV.A.3:03-CV-1685-R (N.D. Tex.)

b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.

Response: In *Wells v. Youtube, LLC*, No. 3:20-CV-2849-S-BH, 2021 WL 2652966 (N.D. Tex. May 17, 2021), *report and recommendation adopted sub nom. Kandace A. Wells v. Youtube, LLC*, No. 3:20-CV-2849-S-BH, 2021 WL 2652514 (N.D. Tex. June 28, 2021), the pro se plaintiff alleged a violation of the Digital Millennium Copyright Act in her sur-reply to the defendant's motion to dismiss her claim that her image had been posted on its website in order to threaten her and that she had been harmed. I found that even if her filing was liberally construed as seeking leave to amend her complaint to add a claim under that statute, amendment would be futile based on the defendant's immunity from liability under the Communications Decency Act, 47 U.S.C. § 230. 2021 WL 2652966, at *4-5 & n. 7.

c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?

Response: I do not recall having any cases involving intermediary liability for online service providers that host unlawful content posted by users.

d. What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?

Response: The bulk of my experience with First Amendment and free speech issues for almost 21 years has been in the context of pro se prisoner litigation alleging denial of access to courts, retaliation for filing grievances, or violations of the Religious Land Use and Incarcerated Persons Act. I have also handled,

managed, or presided over cases involving intellectual property issues, including patent, trademark infringement, and copyright infringement actions.

15. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office reported that courts have conflated statutory obligations and created a “high bar” for “red flag knowledge, effectively removing it from the statute...” It also reported that courts have made the traditional common law standard for “willful blindness” harder to meet in copyright cases.

a. In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?

Response: If there is no binding precedent of the United States Supreme Court or the United States Court of Appeals for the Fifth Circuit, and the text of the statute is ambiguous, courts may consider analogous precedent of the Supreme Court and the Fifth Circuit interpreting the same or similar language in other parts of the statute, as well as other sources authorized by the Supreme Court and the Fifth Circuit, including the canons of statutory construction, persuasive precedent from other courts, and authoritative legislative history. The Supreme Court has held that committee reports are “more authoritative” sources of legislative history because they “represent the considered and collective judgment of those Congressmen involved in drafting and studying the proposed legislation.” *Garcia v. United States*, 469 U.S. 70, 76 (1984).

b. Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?

Response: If there is no binding precedent of the United States Supreme Court or the United States Court of Appeals for the Fifth Circuit, courts apply the two-step process set forth in *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984), for reviewing an agency’s interpretation of a statute it administers. If “Congress has directly spoken to the precise question at issue” and its intent is clear, that ends the matter. *Id.* at 842–43. “If Congress has not unambiguously expressed its intent”, then courts will defer to an agency’s interpretation unless it is “arbitrary, capricious, or manifestly contrary to the statute.” *Id.* at 844. An agency’s interpretation of its own regulations and administrative rules may also be entitled to deference under *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), *Auer v. Robbins*, 519 U.S. 452, 461–463 (1997), and *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).

- c. Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?**

Response: Whether awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring, remedial action, is a question of policy for policy makers and experts. I am bound to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to do so.

- 16. The scale of online copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and there was a lot less infringing material online.**

- a. How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the ascension of dominant platforms, and the proliferation of automation and algorithms?**

Response: As a sitting judge and judicial nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

- b. How can judges best interpret and apply prior judicial opinions that relied upon the then-current state of technology once that technological landscape has changed?**

Response: As a sitting judge and judicial nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

- 17. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about this practice.**

- a. Do you see “judge shopping” and “forum shopping” as a problem in litigation?**

Response: Federal judges are routinely called on to construe venue statutes and to determine motions to transfer venue. As a sitting judge and judicial nominee, I may not comment on matters that may come before me in order to avoid the appearance of pre-judging an issue. *See* Code of Conduct for United States Judges, Canon 3, A(6). I am bound to abide by Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: Judges are required to take an oath or affirm that they will “faithfully and impartially discharge and perform” their duties. *See* 28 U.S.C. § 453. In *Farens v. John Deere*, 494 U.S. 516, 527 (1990), the Supreme Court discussed the “policy against forum-shopping” articulated in *Van Dusen v. Barrack*, 376 U.S. 612 (1964).

c. Do you think it is ever appropriate for judges to engage in “forum selling” by proactively taking steps to attract a particular type of case or litigant?

Response: No. Judges are required to take an oath or affirm that they will “faithfully and impartially discharge and perform” their duties. *See* 28 U.S.C. § 453. In *Farens v. John Deere*, 494 U.S. 516, 527 (1990), the Supreme Court discussed the “policy against forum-shopping” articulated in *Van Dusen v. Barrack*, 376 U.S. 612 (1964).

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response: I commit to not engage in such conduct.

18. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: Whether it is appropriate to inquire whether procedures or rules adopted in a district have biased the administration of justice and encouraged forum shopping is a question of policy for policy makers and experts. Canon 1 of the Code of Conduct for United States Judges provides that judges “should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved.” Paragraph A of Canon 2 provides that judges “should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.

19. To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?

Response: Whether a local rule that requires all patent cases to be assigned randomly to judges across the district should be implemented to prevent the possibility of judge-shopping is a question of policy for policy makers and experts. Canon 1 of the Code of Conduct for United States Judges provides that judges “should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved.” Paragraph A of Canon 2 provides that judges “should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” I am bound to abide by the Code of Conduct and to apply precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, and if confirmed to serve on that court, I will continue to abide by the Code and to apply precedent.