Senator Lindsey Graham, Ranking Member
Questions for the Record
Ms. Monica Ramirez Almadani
Nominee to be United States District Judge for the Central District of California

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 with this statement. "A judge must respect and comply with the law," not his or her independent value judgements, and "should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Code of Conduct for United States Judges, Canon 2(A). If confirmed as a district judge, I would set aside any personal views or opinions and objectively, fairly, and faithfully apply the law to the facts of each case.

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 this statement or its context, but it is not an appropriate approach for a lower court judge to ignore or otherwise dismiss binding precedent of the Supreme Court. If confirmed as a district judge, I would fully and faithfully apply all Supreme Court and Ninth Circuit precedent without reservation.

3. **Please define the term "living constitution."**

   Response: I do not have a personal definition of the term "living constitution." It is not a term that I have used to describe the Constitution. As Chief Justice Marshall stated in *McCullough v. Maryland*, 17 U.S. 316, 415 (1819), the Constitution is "intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs."

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 this statement or its context. The Supreme Court has instructed that the Constitution's "meaning is fixed," but that it "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: The Supreme Court has described "basic" or "historical" facts as those involving "questions of who did what, when or where, how or why." *U.S. Bank N.A. v. Village at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018) (citing *Thomas v. Keohane*, 516 U.S. 99, 111 (1995)). To determine whether something is a question of fact subject to clear error review or a question of law subject to *de novo* review, courts consider "the nature of the question" and "whether answering [the question] entails primarily legal or factual work." *Id.* at 966–67. If confirmed, I would always carefully research Supreme Court and Ninth Circuit precedent to ensure that I am properly considering how certain questions have been resolved in other cases or areas of law. *See, e.g., Miller v. Fenton*, 474 U.S. 104, 115 (1985) ("For several reasons we think that it would be inappropriate to abandon the Court's longstanding position that the ultimate question of the admissibility of a confession merits treatment as a legal inquiry requiring plenary federal review.").

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 held in *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 272-73 (1964), that "[w]here judicial officers are involved, . . . that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision." *Id.* (citing *Bridges* v. *California*, 314 U.S. 2520 (1941)). As the Court explained, "[t]his is true even though the utterance contains half-truths and misinformation." *Id.* (citations and internal quotations omitted). "Such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice." *Id.* Separately, I am aware that Congress recently passed and the President signed into law the Daniel Anderl Judicial Security and Privacy Act, which ensures that personally identifiable information of federal judges and their families are kept private, in order to protect the safety of judges. Please also see my response to Question 10.

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: If confirmed as a district judge, my approach would be to fully and faithfully comply with all sentencing laws. Pursuant to 18 U.S.C. § 3553(a), the only factors a federal district court considers in sentencing an individual defendant are the following: "(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed – (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford deterrence to criminal conduct; (C) to protect the public from further crimes; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range," as well as (5) "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct[.]"

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: There is not one Supreme Court or Ninth Circuit decision from the last 50 years that is a typical example of my judicial philosophy. If I am confirmed to serve as a federal district judge, my role would be the fair administration of justice and my philosophy would be simple: recognizing the limits of judicial power, I would approach every case with an open mind, giving all parties a full opportunity to present their case and be heard, ultimately reviewing only those facts and issues properly before me, researching and reviewing the applicable law, methodically applying the law to the relevant facts, and issuing clear rulings that make the holding and the underlying rationale clear for the benefit of the litigants and the public.

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: Please see my response to Question 8.

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

    Response: 18 U.S.C. § 1507 prohibits "pickets or parades" or the "use [of] any sound-truck or similar device" or "any other demonstration" in or near courthouses or buildings or residences occupied by judges, jurors, witnesses, or court officers if the person engaging in the conduct has "the intent of interfering, obstructing, or impeding the administration of justice," or "the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty[.]"

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

    Response: In *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court held that a state statute modeled on 18 U.S.C. § 1507 was constitutional on its face. As a judicial nominee bound by Canon 3 of the Code of Conduct for United States Judges, it would be inappropriate for me to comment on whether 18 U.S.C. § 1507 is constitutional on its face, as that issue could come before me as a district judge.

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 "fighting words" are words "likely to provoke the average person to retaliation, and thereby cause a breach of the peace." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 574 (1942); *see also Texas v. Johnson*, 491 U.S. 397, 409 (1989) (suggesting that fighting words must amount to "an invitation to exchange fisticuffs").

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

Response: The Supreme Court defined "true threats" in *Virginia v. Black*, 538 U.S. 343, 359 (2003), as "encompass[ing] those 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."

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?**
    b. **Was *Loving v. Virginia* correctly decided?**
    c. **Was *Griswold v. Connecticut* correctly decided?**
    d. **Was *Roe v. Wade* correctly decided?**
    e. **Was *Planned Parenthood v. Casey* correctly decided?**
    f. **Was *Gonzales v. Carhart* correctly decided?**
    g. **Was *District of Columbia v. Heller* correctly decided?**
    h. **Was *McDonald v. City of Chicago* correctly decided?**
    i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
    j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**
    k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response to all subparts: Like prior judicial nominees, I believe that I can comment on the correctness of *Brown v. Board of Education* and *Loving v. Virginia*, because they are so widely accepted and issues of *de jure* racial segregation are unlikely to come before me as a judge. However, in general, pursuant to Canon 3(A)(6) of the Code of Conduct for United States Judges, it would be improper for me as a judicial nominee to comment on whether any Supreme Court case was "correctly" decided because it would suggest that I have personal views or would apply certain precedents only because I agree with them, which would not be the case. If I am confirmed, I would fully and faithfully apply all binding Supreme Court and Ninth Circuit 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 fully and faithfully apply the Supreme Court's precedents interpreting the Second Amendment, including *District of Columbia v. Heller*, 554 U.S. 570 (2008) (invalidating a District of Columbia law prohibiting possession of handguns in one's home and requiring that lawfully possessed guns in one's home be disassembled or bound by a trigger lock); *McDonald v. City of Chicago*, 561 U.S. 742 (2010) (holding that the Second Amendment right to keep and bear arms for the purpose of self-defense applies to the states through the Fourteenth Amendment); and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (invalidating a New York law prohibiting the carrying of handguns outside the home without a government license issued only upon showing of "special need"). In *Bruen*, the Court explained that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct," and that regulations of that conduct that are "consistent with this Nation's historical tradition of firearm regulation" are permissible. *Id.* at 2126.

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 the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: In the summer of 2021, I had a short telephone conversation with Nan Aron from the Alliance for Justice about the judicial nominations process in general. I did not speak with Ms. Aron or anyone else associated with the Alliance for Justice at any other point, including during the selection process for my nomination.

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: Please see my response to Question 18(a).

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: In March 2022, the Statewide Chair of Senator Dianne Feinstein's Judicial Advisory Process contacted me to discuss a vacancy on the United States District Court for the Central District of California. On August 3, 2022, I spoke with officials from the White House Counsel's Office regarding a possible nomination to that court. Since that time, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 21, 2022, the President announced his intent to nominate me. On January 23, 2023, my nomination was submitted to the Senate.

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: Please see my response to Question 21.

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

    Response: The Department of Justice's Office of Legal Policy (OLP) sent me these questions on February 22, 2023. I reviewed the questions, conducted some research, and drafted my responses. OLP provided limited feedback on my draft. I then finalized and submitted my responses.

Senator Mike Lee
Questions for the Record
Monica Almadani, Nominee to the United States District Court for the Central District of California

1. How would you describe your judicial philosophy?

Response: If I am confirmed to serve as a federal district judge, my role would be the fair administration of justice and my philosophy would be simple: recognizing the limits of judicial power, I would approach every case with an open mind, giving all parties a full opportunity to present their case and be heard, ultimately reviewing only those facts and issues properly before me, researching and reviewing the applicable law, methodically applying the law to the relevant facts, and issuing clear rulings that make the holding and the underlying rationale clear for the benefit of the litigants and the public.

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

Response: I would follow Supreme Court and Ninth Circuit guidance and start with the text of the statute, which is the best evidence of its meaning. *See Bostock v. Clayton*, 140 S. Ct. 1731, 1737 (2020) ("When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit."). I would also review Supreme Court and Ninth Circuit precedent to ensure that I am interpreting the text of the statute consistent with any binding precedent. If the text is ambiguous or unclear and there is no precedent interpreting the statute, then I would look to decisions from other Circuits as persuasive authority. If the issue is truly a matter of first impression, then I would turn to canons of construction to interpret the text of the statute.

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

Response: If confirmed as a district judge for the Central District of California, I would start by reviewing existing Supreme Court and Ninth Circuit precedents interpreting or applying the constitutional provision. If those precedents resolve the issue, then I would fully and faithfully apply them to the case before me. In the unusual circumstance that neither the Supreme Court nor the Ninth Circuit has interpreted the constitutional provision at issue, I would look to decisions from other Circuits as persuasive authority. In addition, I would review and apply the method of constitutional interpretation that the Supreme Court or the Ninth Circuit has used or instructed lower courts to use in interpreting analogous constitutional provisions.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008), the Supreme Court explained that, in interpreting the Constitution, courts are "guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary way as distinguished from technical meaning." The text of the Constitution is therefore essential in interpreting the Constitution, and the Supreme Court has instructed that certain constitutional provisions must be interpreted primarily based on the text and the original meaning at the time of enactment. *See, e.g., id.*; *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022). If confirmed as a district judge, I would fully and faithfully apply all Supreme Court precedent, including the methods of constitutional interpretation prescribed by the Court.

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

Response: Please see my responses to Questions 2-4.

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: Please see my responses to Questions 2-4.

6. What are the constitutional requirements for standing?

Response: Article III of the United States Constitution requires for standing the presence of an actual dispute between adverse parties that is capable of judicial resolution, and not hypothetical. Specifically, three elements must be met: (1) an injury in fact; (2) causation; and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

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 recognized in *McCullough v. Maryland*, 17 U.S. 316, 324 (1819), that Congress pursuant to the Necessary and Proper Clause of Article I, Section 8 of the United States Constitution has implied powers to implement the Constitution's express powers to create a functional national government.

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 constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (internal quotation and citation omitted). Accordingly, if confirmed as a district judge, I would follow

Supreme Court and Ninth Circuit precedent and determine whether the law falls within one of Congress's enumerated powers. *See id.* at 535 ("If no enumerated power authorizes Congress to pass a certain law, that law may not be enacted, even if it would not violate any of the express prohibitions in the Bill of Rights or elsewhere in the Constitution.").

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

Response: The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment protects certain rights not expressly enumerated in the Constitution but that are "objectively, deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotations and citations omitted). The Court has held that these rights include "the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, [and] to bodily integrity." *Id.* at 720 (internal citations omitted). The Court has also held that the Due Process Clause does not protect the right to physician-assisted suicide, *id*., or the right to abortion, *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

10. What rights are protected under substantive due process?

Response: Please see my response to Question 9.

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 has held that substantive due process does not protect the right to abortion, *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022), or the economic rights at stake in *Lochner v. New York*. *See Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963) (recognizing that "[t]he doctrine that prevailed in *Lochner* . . . and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded."). If confirmed as a district judge, I would be bound by and would fully and faithfully follow these precedents, as well as other Supreme Court or Ninth Circuit precedents on substantive due process.

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

Response: The Supreme Court has held that Congress's power under the Commerce Clause is limited to regulating "the use of the channels of interstate commerce," "the instrumentalities of interstate commerce, or the persons or things in interstate commerce," and "those 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 stated that certain indicia—such as having "been subjected to discrimination" or "exhibit[ing] obvious, immutable, or distinguishing characteristics that define them as a discrete group"—qualify a particular group as a "suspect class." *Lyng v. Castillo*, 477 U.S. 635, 638 (1986).

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

Response: Checks and balances and separation of powers are essential aspects of the Constitution's structure. As the Supreme Court explained in *Morrison v. Olson*, 487 U.S. 654 (1988), "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as 'a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.'" *Id.* at 693 (quoting *Buckley v. Valeo*, 424 U.S. 1, 122 (1976)).

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 start by reviewing existing Supreme Court and Ninth Circuit precedents to determine whether the action taken by one branch violates the Constitution. If those precedents do not resolve the issue, then I would review and interpret the relevant constitutional provision, applying the method of constitutional interpretation that the Supreme Court or the Ninth Circuit has used or instructed lower courts to use in interpreting that provision as described in my answer to Question 3.

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

Response: Judges are required to be objective and impartial, not to share the feelings of the parties or anyone before the court. Indeed, a judge "shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . ." Code of Conduct for United States Judges, Canon 3(C)(1).

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

Response: Both results are against the law, so neither is worse or better.

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: I have not studied the Supreme Court's history of invalidating federal statutes to form an opinion on these issues. If confirmed as a judge, however, I would fully and faithfully apply all precedent from the Supreme Court and the Ninth Circuit.

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

Response: "Judicial review" refers to the power of the judiciary to review the constitutionality of actions taken by the legislative and executive branches of the federal government. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). According to Black's Law Dictionary (11th ed. 2019), the term "judicial supremacy" refers to "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

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: Article VI of the Constitution provides that "Senators and Representatives" and "the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States shall be bound by Oath or Affirmation, to support [the] Constitution." In *Cooper v. Aaron*, 385 U.S. 1, 6 (1958), the Supreme Court rejected the argument that "there is no duty on state officials to obey federal court orders resting on this Court's considered interpretation of the United States Constitution."

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 role of the judge is to decide individual cases fairly and impartially, methodically applying the law to the relevant facts and issuing clear rulings that make the holding and the underlying rationale clear for the benefit of the litigants and the public. If confirmed as a district judge, my role would be limited to that function.

22. As a district 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: The duty of a lower court judge in the Central District of California is to fully and faithfully apply all precedent from the Supreme Court and the Ninth Circuit. Lower court judges are duty-bound to apply binding precedent without questioning its correctness.

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: The defendant's group identity or identities should play no role in sentencing. If confirmed as a judge, I would fully and faithfully comply with all sentencing laws. Pursuant to 18 U.S.C. § 3553(a), the only factors a federal district court considers in sentencing an individual defendant are the following: "(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed – (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford deterrence to criminal conduct; (C) to protect the public from further crimes; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range," as well as (5) "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct[.]"

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 the Biden Administration's definition or use of the word "equity." Black's Law Dictionary defines "equity" as "fairness; impartiality; evenhanded dealing" or "the body of principles constituting what is fair and right." 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 "equality" differently than "equity." It defines "equality" as "the quality, state, or condition of being equal," or "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 Fourteenth Amendment bars any State from "deny[ing] to any person within its jurisdiction the equal protection of the laws." I am not aware that the Supreme Court or any court has interpreted the Fourteenth Amendment's Equal Protection Clause to guarantee "equity" as defined in Question 24.

27. How do you define "systemic racism?"

Response: I do not have a personal definition of "systemic racism," but I understand the term to refer generally to patterns or practices within a system, institution, or organization that perpetuate discrimination based on race or other factors. If cases alleging this form of discrimination come before me as a judge, I would fully and faithfully apply all Supreme Court and Ninth Circuit precedents pertaining to claims of racial discrimination.

28. How do you define "critical race theory?"

Response: I do not have a personal definition of "critical race theory." According to Black's Law Dictionary (11th ed. 2019), the term "critical race theory" refers to "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities."

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

Response: Please see my response to Questions 27 and 28.

Senator Josh Hawley
Questions for the Record

Monica Almadani
Nominee, U.S. Court of Appeals for the Central District of California

1. **Do you believe that state and local law enforcement is often or generally characterized by racial bias?**

   Response: As a judicial nominee, it would be inappropriate for me to comment on the role of state and local law enforcement, as cases involving allegations of racial discrimination and bias, including by law enforcement officials, could come before me as a judge. If confirmed, I would fully and faithfully apply all Supreme Court and Ninth Circuit precedent to the specific facts of each case.

   a. **If so, do you believe that racial bias tangibly affects the ability of state and local police officers to neutrally enforce the law?**

      Response: Please see response to Question 1.

   b. **Do you believe it tangibly affects their ability to accurately recall and recount events surrounding encounters with racial minorities?**

      Response: Please see response to Question 1.

2. **Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?**

   Response: No.

   a. **If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.**

      Response: Please see my response to Question 2.

3. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

   Response: The Supreme Court has instructed that certain constitutional provisions must be interpreted primarily based on the text and the original meaning at the time of enactment. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 576 (2008); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022). If confirmed as a district judge, I would fully and faithfully apply all binding precedent, including the methods of constitutional interpretation prescribed by the Supreme Court and the Ninth Circuit.

4. **Do you consider legislative history when interpreting legal texts?**

Response: When interpreting a statute, I would start with the text, which the Supreme Court has determined is the best evidence of its meaning. *See Bostock v. Clayton*, 140 S. Ct. 1731, 1737 (2020) ("When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit."). I would also review Supreme Court and Ninth Circuit precedent to ensure that I am interpreting the text of the statute consistent with any binding precedent. If the text is ambiguous or unclear and there is no precedent interpreting the statute, then I would look to decisions from other Circuits as persuasive authority. If the issue is truly a matter of first impression, then I would turn to canons of construction to interpret the text of the statute. I would also follow Supreme Court and Ninth Circuit precedent regarding the propriety of considering legislative history. *See, e.g., Milner v. Dep't of the Navy*, 562 U.S. 562, 572 (2011) (finding that, where the text of a statute is ambiguous, "clear evidence of congressional intent may illuminate ambiguous text"); *Garcia v. United States*, 469 U.S. 70, 76 (1984) (recognizing that "only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language").

   a. **If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?**

      Response: The Supreme Court has held that contemporaneous official committee reports are more authoritative than comments from individual members or casual comments from floor debates. *See Garcia v. United States*, 469 U.S. 70, 76 (1984). I would follow this precedent.

   b. **When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?**

      Response: The United States Constitution is a domestic document, and I am not aware of any case where the Supreme Court has relied on foreign law to interpret the provisions of the Constitution. If this issue arises, I would follow Supreme Court and Ninth Circuit precedent.

5. **Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?**

Response: The Supreme Court has held that two legal requirements must be met to establish that an execution protocol violates the Eighth Amendment: (1) the petitioner "must establish that the State's method of execution presents a 'substantial risk of serious harm'—severe pain over and above death itself," and (2) the petitioner "'must identify an alternative [method] that is feasible, readily implemented, and in fact significantly reduce[s]' the risk of harm involved." *Nance v. Ward*, 142 S. Ct. 2214,

2220 (2022) (quoting *Glossip v. Gross*, 576 U.S. 863, 877 (2015)) (alterations in original).

6. Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?

Response: Yes; please see my response to Question 5.

7. Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?

Response: No. The Supreme Court held in *District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52, 67-74 (2009), that no such procedural or substantive due process right to DNA analysis exists in the habeas context.

8. Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?

Response: No.

9. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: The Free Exercise Clause of the First Amendment protects the right to practice one's religion freely. If state governmental action is facially neutral, it is subject to rational basis scrutiny unless it is not generally applicable, in which case it is subject to strict scrutiny. The Supreme Court explained in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021) (internal quotations and citation omitted), that "[a] law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions," or "if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *See also Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (per curiam).

In addition, even if state governmental action is facially neutral, it is subject to strict scrutiny if its enactment or enforcement was motivated by religious animus on the government's part. For example, in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1729-31 (2018), the Court found that state civil rights

commissioners had been openly hostile in public meetings and thus the application of a facially neutral public-accommodations law violated the Free Exercise Clause.

10. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: Please see my response to Question 9.

11. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: According to the Ninth Circuit, "'[r]eligious' beliefs [] are those that stem from a person's 'moral, ethical, or religious beliefs about what is right and wrong' and are 'held with the strength of traditional religious convictions.'" *United States v. Ward*, 989 F.2d 1015, 1018 (9th Cir. 1992) (quoting *Welsh v. United States*, 398 U.S. 333, 340 (1970)). *See also Jones v. Slade*, 23 F.4th 1124, 1145 (9th Cir. 2022) ("The Free Exercise Clause does not require plaintiffs to prove the centrality or consistency of their religious practice").

12. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the right to keep and bear arms is an individual right belonging to individual persons, not a collective right that belongs only to a group such as a militia. *See also McDonald v. City of Chicago*, 561 U.S. 742 (2010) (holding that the Second Amendment right to keep and bear arms for the purpose of self-defense applies to the states through the Fourteenth Amendment).

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

13. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: Justice Holmes dissented in *Lochner v. New York*, 198 U.S. 45, 75 (1905), stating that:

> This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious or if you like as tyrannical as this, and which equally with this interfere with the liberty to contract.

I agree with the principle that it is the duty of judges to decide cases based on existing law and the merits of each case regardless of personal theories or views.

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: In *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963), the Supreme Court recognized that "[t]he doctrine that prevailed in *Lochner* . . . and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." If confirmed as a district judge, I would fully and faithfully follow this precedent.

14. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: In *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), the Supreme Court stated that "*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—'has no place in law under the Constitution.'" *Id.* at 2423 (citation omitted). Reading the entire sentence together, I understand the phrase to mean that history has revealed the incorrectness of the decision. *See id*. ("The forcible relocation of U.S. citizens to concentration camps, solely and explicitly on the basis of race, is objectively unlawful and outside the scope of Presidential authority.").

15. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

Response: I am unaware of any such opinions. Moreover, under Canon 3 of the Code of Conduct for United States Judges, it would be improper for me as a judicial nominee to comment on whether any Supreme Court opinions are no longer good law, particularly when they have not been formally overruled. If I am confirmed, I would fully and faithfully apply all binding Supreme Court precedents.

a. If so, what are they?

Response: Please see my response to Question 15.

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: Please see my response to Question 15.

16. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: I believe Judge Learned Hand's estimates pertained to the aluminum market specifically. *See id.* My understanding is that neither the Supreme Court nor the Ninth Circuit have held that there are fixed numbers applicable to all situations, although the Ninth Circuit has found that "[c]ourts generally require a 65% market share to establish a prima facie case of market power." *See Image Tech. Servs., Inc. v. Eastman Kodak Co.*, 125 F.3d 1195, 1206 (9th Cir. 1997).

b. If not, please explain why you disagree with Judge Learned Hand.

Response: Please see my response to Question 16(a).

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: Please see my response to Question 16(a).

17. Please describe your understanding of the "federal common law."

Response: The Supreme Court has held that "there is 'no federal general common law,'" and that "[j]udicial lawmaking in the form of federal common law plays a necessarily modest role under a Constitution that vests the federal government's 'legislative Powers' in Congress and reserves most other regulatory authority to the

States." *Rodriguez v. FDIC*, 140 S. Ct. 713, 717 (2020) (citing *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938)).

18. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: The Supreme Court has determined that, with respect to state constitutional provisions, "the views of the state's highest court with respect to state law are binding on the federal courts." *Wainwright v. Goode*, 464 U.S. 78, 84 (1983). If confirmed as a district court judge, I would be bound by and would faithfully and impartially follow all precedent from a state's highest court with respect to any questions arising under that state's constitution.

a. Do you believe that identical texts should be interpreted identically?

Response: Please see my response to Question 18.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Please see my response to Question 18.

19. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: Like prior judicial nominees, I believe that I can comment on the correctness of *Brown v. Board of Education* because it is so widely accepted and issues of *de jure* racial segregation are unlikely to come before me as a judge. However, in general, pursuant to Canon 3(A)(6) of the Code of Conduct for United States Judges, it would be improper for me as a judicial nominee to comment on whether any Supreme Court case was "correctly" decided because it would suggest that I have personal views or would apply certain precedents only because I agree with them, which would not be the case. If I am confirmed, I would fully and faithfully apply all binding Supreme Court and Ninth Circuit precedent.

20. Do federal courts have the legal authority to issue nationwide injunctions?

Response: Article III, Section 2 of the United States Constitution confers upon all federal courts the power to decide cases "in law and equity." *See, e.g., Smith v.* Davis, 953 F.3d 582, 590 (9th Cir. 2020) ("Because equity requires a court to deal with the case before it, complete with its unique circumstances and characteristics, courts must take a flexible approach in applying equitable principles. The Supreme Court has been clear in this requirement, stating 'exercise of a court's equity powers . . . . must be made on a case-by-case basis.'") (quoting *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964)). In addition, under Federal Rule of Civil Procedure 65, federal courts have the authority

to issue injunctions and restraining orders where the requirements for injunctive relief are satisfied. *See* Fed. R. Civ. P. 65. However, the Supreme Court has held that an "injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course," *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010), and "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

a. If so, what is the source of that authority?

Response: Please see my response to Question 20.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: Please see my response to Question 20.

21. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: Please see my response to Question 20.

22. What is your understanding of the role of federalism in our constitutional system?

Response: Federalism is an essential part of our constitutional system. The Tenth Amendment of the Constitution provides that powers not delegated to the federal government or denied to the states by the Constitution are reserved to the states or the people.

23. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: A federal court should or must abstain from resolving a pending legal question in deference to adjudication by a state court under several circumstances. The *Pullman* doctrine, for example, allows a federal judge to stay a case challenging the constitutionality of a state law if the state law's meaning is unclear and the state's own courts have not had an opportunity to resolve the ambiguity, but only if there is a realistic chance that the state courts will construe the law to either make federal review unnecessary or reduce the likelihood that the state law will be held unconstitutional. The *Younger* doctrine is a judge-made rule that directly prohibits a federal court from ruling on the constitutionality of a state law in a narrow range of cases where there is a pending state proceeding in which the federal plaintiff could raise that constitutional challenge. *Colorado River* abstention applies where there is parallel state and federal litigation, and requires abstention only in exceptional circumstances. *Burford* abstention refers to cases where state agency action is involved and federal courts defer to state courts to review those decisions under certain circumstances. Finally, under the *Rooker-*

Feldman doctrine, a federal court must abstain in cases involving a party that has already lost in state court and is seeking relief in federal court from the alleged injury caused by the state court judgment.

24. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: Damages and injunctive relief provide different forms of relief and the propriety of awarding one or the other depends upon the facts and circumstances of any particular case. As a general manner, damages are usually awarded in the form of money for past harm, and injunctive relief is in the form of a court order to stop certain action or harm in the moment and prospectively.

25. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment protects certain rights not expressly enumerated in the Constitution but that are "objectively, deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotations and citations omitted). The Court has held that these rights include "the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, [and] to bodily integrity." *Id.* at 720 (internal citations omitted). The Court has also held that the Due Process Clause does not protect the right to physician-assisted suicide, *id*., or the right to abortion, *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

26. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: Please see my response to Question 9.

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: In *Lee v. Weisman*, 505 U.S. 577, 591 (1992), the Supreme Court held that the "Free Exercise Clause embraces a freedom of conscience and worship that has close parallels in the speech provisions of the First Amendment . . ."

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: Please see my response to Question 9.

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: Please see my responses to Questions 9 and 11.

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: The Religious Freedom Restoration Act (RFRA) "applies to all Federal law, and the implementation of that law, whether statutory or otherwise. RFRA also permits Congress to exclude statutes from RFRA's protections." *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) (internal quotation and citations omitted).

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

27. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: To my knowledge, the Supreme Court has never put a numerical figure on the "beyond a reasonable doubt" standard. It has found that the "beyond a reasonable doubt standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course." *Victor v. Nebraska*, 511 U.S. 1, 5 (1994).

28. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

Response: The Supreme Court has suggested that a circuit split on the underlying issue might show that fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedent. *See White v. Woodall*, 572 U.S. 415, 422 n.3 (2014).

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

Response: I am not aware of a Supreme Court addressing this precise issue. Should an issue of this nature come before me, I would review and apply Supreme Court and Ninth Circuit precedent.

c. If you disagree with either of these statements, please explain why and provide examples.

Response: Please see my responses to Questions 28(a) and (b).

29. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

Response: Ninth Circuit Rule 36-3 provides that "[u]published dispositions and orders of this Court are not precedent, except when relevant under the doctrine of law of the case or rules of claim preclusion or issue preclusion."

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

Response: If confirmed as a district judge, I would be duty-bound to follow Ninth Circuit Rule 36-3.

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

Response: Please see my responses to Questions 29 and 29(a).

c. If confirmed, would you treat unpublished decisions as precedential?

Response: Please see my responses to Questions 29 and 29(a).

d. If not, how is this consistent with the rule of law?

Response: Please see my responses to Questions 29 and 29(a).

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

Response: Please see my responses to Questions 29 and 29(a).

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

Response: No, but I would follow and apply Ninth Circuit Rule 36-3.

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: No, but I would follow and apply Ninth Circuit Rule 36-3.

30. In your legal career:

a. How many cases have you tried as first chair?

Response: I have tried three cases to verdict. I was co-lead counsel in two of the cases, and sole lead counsel in the other case.

b. How many have you tried as second chair?

Response: Please see my response to Question 30(a).

c. How many depositions have you taken?

Response: I cannot recall with precision how many depositions I have taken, but I would estimate less than 10.

d. How many depositions have you defended?

Response: I cannot recall with precision how many depositions I have defended, but I would estimate less than 10.

e. How many cases have you argued before a federal appellate court?

Response: I have argued three cases before the Ninth Circuit Court of Appeals.

f. How many cases have you argued before a state appellate court?

Response: None.

g. How many times have you appeared before a federal agency, and in what capacity?

Response: In my role as Visiting Assistant Clinical Professor at the University of California, Irvine School of Law, I appeared approximately 10-12 times before the Executive Office of Immigration Review (EOIR), either as counsel for an individual client or as a supervisor and second chair to Clinic students who were certified to appear before the EOIR on behalf of the Clinic's clients.

h. How many dispositive motions have you argued before trial courts?

Response: I cannot recall with precision how many dispositive motions I have argued, but I would estimate approximately four or five.

i. How many evidentiary motions have you argued before trial courts?

Response: I cannot recall with precision how many evidentiary motions I have argued, but I would estimate approximately 15-20.

31. If any of your previous jobs required you to track billable hours:

a. What is the maximum number of hours that you billed in a single year?

Response: To the best of my recollection, the maximum number of hours I billed in a single year were approximately 2,200 hours.

b. What portion of these were dedicated to pro bono work?

Response: To the best of my recollection, during my time in private practice, I averaged less than 300 hours of pro bono work per year.

32. Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."

a. What do you understand this statement to mean?

Response: I am not familiar with this quote or the context in which it was made, but I understand this statement to mean that a judge who always likes the result he or she reaches is likely not fairly and faithfully following or applying existing law, but rather deciding cases based on his or her desired outcomes. Failure to set aside personal views and to be neutral, fair, and impartial violates a judge's judicial oath and duties.

33. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

Response: I understand this statement to mean that judges are not legislators or policymakers. Their job is to follow and apply existing law fully, fairly, and impartially to the facts of each case.

b. Do you agree or disagree with this statement?

Response: I agree that it is the duty and job of a judge to apply the law fully, fairly, and impartially. If confirmed, I would abide by this duty and faithfully follow all Supreme Court and Ninth Circuit precedent without reservation.

34. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

Response: I am not familiar with this quote or the context in which it was made. I assume that Justice Holmes meant the job of a judge is to apply the law fairly and impartially, not to make value judgements about what is just or not.

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: I agree that it is the duty and job of a judge to apply the law fairly and impartially without making value judgements. If confirmed, I would abide by this duty and faithfully follow all Supreme Court and Ninth Circuit precedent without reservation.

35. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

Response: To the best of my recollection, only once have I taken a position in litigation that a state statute was unconstitutional.

a. If yes, please provide appropriate citations.

Response: *Lopez-Valenzuela et al. v. Maricopa County et al.*, 2:08-cv-00660 (D. Ariz.).

36. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: No.

37. What were the last three books you read?

Response: *One Hundred Years of Solitude* by Gabriel Garcia Marquez; *The Hunger Games* by Suzanne Collins; and *The Kite Runner* by Khaled Hosseini.

38. Do you believe America is a systemically racist country?

Response: As a judicial nominee, it would be inappropriate for me to comment on policy matters, such as whether racial discrimination exists in America. If confirmed, I would fully and faithfully apply binding precedent of the Supreme Court and the Ninth Circuit in all cases, including those that pertain to claims of racial discrimination. Moreover, I would treat all parties and anyone who comes before the court fairly and equally regardless of race.

39. What case or legal representation are you most proud of?

Response: There is not one case or legal representation of which I am most proud. I have had a professionally diverse legal career, representing a broad range of individual, government, and corporate clients in civil and criminal matters at both the trial and appellate level. I have learned a great deal from every case.

40. Have you ever taken a position in litigation that conflicted with your personal views?

Response: Yes.

a. How did you handle the situation?

Response: As an advocate, I represented my client's interests zealously without regard to any personal views as required by my ethical and legal obligations.

b. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

41. What three law professors' works do you read most often?

Response: I do not read any law professors' works with any frequency. Even as a clinical law professor, I read case law most often.

42. Which of the Federalist Papers has most shaped your views of the law?

Response: I cannot say that any single Federalist Paper has most shaped my views of the law.

43. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: Over the course of my legal education and legal career, many judicial opinions have changed my understanding of the state of the law or the nature or scope of specific constitutional provisions, statutes, and precedent.

44. Do you believe that an unborn child is a human being?

Response: In *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2261 (2022), the Supreme Court stated that its "opinion [was] not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth." The Court explained that "[t]he dissent, by contrast, would impose on the people a particular theory about when the rights of personhood begin," but "[n]othing in the Constitution or in our Nation's legal traditions authorizes the Court to adopt that 'theory of life.'" *Id.* If confirmed and cases involving regulations on the preservation of prenatal life, or the legally cognizable interests or rights of unborn children, were to come before me as a judge, I would fully and faithfully apply the *Dobbs* decision and any other binding Supreme Court or Ninth Circuit precedent.

45. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: No.

46. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade,* 410 U.S. 113 (1973)?

Response: No.

b. The Supreme Court's substantive due process precedents?

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

47. Do you currently hold any shares in the following companies:

a. Apple?

Response: No.

b. Amazon?

Response: No.

c. Google?

Response: No.

d. Facebook?

Response: No.

e. Twitter?

Response: No.

48. Have you ever authored or edited a brief that was filed in court without your name on the brief?

Response: I do not recall ever authoring a brief that was filed in court without my name on it. Throughout my legal career, often in a supervisory capacity, I have reviewed and edited colleagues' or law students' briefs in matters where I was not counsel.

a. If so, please identify those cases with appropriate citation.

Response: Please see my response to Question 49. I am unable to provide citations because I have not kept track of briefs I helped edit or review over the course of my career.

49. Have you ever confessed error to a court?

Response: To the best of my recollection, I have never confessed error to a court.

a. If so, please describe the circumstances.

Response: Please see my response to Question 50.

50. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: I understand the Senate's constitutional duty, enshrined in Article II, Section 2 of the Constitution, to confirm the President's judicial appointments. I also understand that, when testifying before the Senate Judiciary Committee, I took an oath to be truthful and forthcoming in my testimony. To protect the integrity of the judiciary, I understand to be bound as well by the Code of Conduct for United States Judges, which prohibits judges and judicial nominees from making any statements "on the merits of a matter pending or impending in any court." Code of Conduct for United States Judges, Canon 3(A)(6).

Nomination of Monica Ramirez Almadani
to be United States District Judge for the Central District of California
Questions for the Record
Submitted February 22, 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 judicial nominee subject to Canon 3(A)(6) of the Code of Conduct for United States Judges, it would be improper for me to comment on whether any Supreme Court case was "rightly" decided because it would suggest that I have personal views or would apply certain precedents only because I agree with them, which would not be the case. If I am confirmed to serve as a federal district judge, I would fully and faithfully apply all binding Supreme Court and Ninth Circuit precedents, including *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the right to keep and bear arms is an individual right belonging to individual persons, not a collective right that belongs only to a group such as a militia. *See also McDonald v. City of Chicago*, 561 U.S. 742 (2010) (holding that the Second Amendment right to keep and bear arms for the purpose of self-defense applies to the states through the Fourteenth Amendment).

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: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that the Second Amendment—in addition to "protect[ing] the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-

defense"—"protect[s] an individual's right to carry a handgun for self-defense outside the home." *Id.* at 2122.

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: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court considered "a variety of historical sources from the late 1200s to the early 1900s" that had been identified by the government. *Id.* at 2135. The Court found that "the historical record compiled by respondents d[id] not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense." *Id.* at 2138. I would rely on Supreme Court and Ninth Circuit precedent to determine whether "historical tradition" is consistent with any firearm regulation that may come before me as a judge.

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. Federal judges are bound by federal sentencing laws and must faithfully follow 18 U.S.C. § 3553(a) when determining the proper sentence in an individual case.

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

Response: Both the Supreme Court and the Ninth Circuit have recognized that finality and predictability are important in federal criminal sentencing. *See, e.g., Johnson v. United States*, 544 U.S. 295, 309 (2005) ("[T]he United States has an interest in the finality of sentences imposed by its own courts."); *United States v. Matthews*, 278 F.3d 880, 886 (9th Cir. 2002) (noting that "predictability and consistency" are goals in sentencing).

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

Response: This issue is currently pending before the Supreme Court in *United States v. Texas*, No. 22-58, in which state plaintiffs have challenged the Department of Homeland Security's immigration-enforcement guidelines. To protect the integrity of the judiciary, I am bound by Canon 3(A)(6) of the Code of Conduct for United States Judges, which prohibits judges and judicial nominees from making any statements "on the merits of a matter pending or impending in any court." If confirmed, I would fully and faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: The Citizenship Clause 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 and of the State wherein they reside." U.S. Const., amend. XIV, § 1.

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: To my knowledge, under existing Supreme Court precedent, the United States-born children of foreign diplomats are not United States citizens because they are not born "subject to the jurisdiction" of the United States. *See United States v. Wong Kim Ark,* 169 U.S. 649, 682 (1898).

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

Response: Several different immigration and criminal laws may be implicated under this hypothetical scenario. If an issue of this nature were to come before me, I would carefully research and apply the relevant criminal and civil immigration laws, including 8 U.S.C. § 1324(a)(1)(A)(iii) (making it an offense for any person who – "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation") and 8 U.S.C. § 1324(a)(1)(A)(iv) (making it an offense for any person who – "encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law").

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

Response: Please see my response to Question 11.

13. You represented the City of Los Angeles in *City of Los Angeles v. Barr*, 929 F.3d 1163 (9th Cir. 2019). In that case, Los Angeles did not receive a Justice Department grant because the city refused to certify in its grant application that Los Angeles would allow Homeland Security personnel access to city jails to meet with immigrants, or notify DHS before releasing immigrants from criminal custody. Los Angeles claimed in that case that there is no "empirical evidence establishing that cooperation between state and local authorities and federal authority on illegal immigration addresses crime or public safety issues." The court disagreed with you. Do you still believe that there is no connection between illegal immigration and "crime or public safety issues"?

Response: As a judicial nominee, it would be improper for me to comment on policy matters. I represented the City of Los Angeles for a short period of time at the commencement of the *City of Los Angeles v. Barr* case. I did not author or argue any motions in the case, and my representation and involvement in the case ended in 2018, well before the case was resolved and before I became a judicial nominee. If confirmed, I would fully and faithfully apply Supreme Court and Ninth Circuit precedent to the facts of each case without reservation or consideration of past advocacy positions.

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: In *West Virginia, et al. v. Environmental Protection Agency*, 597 U.S. __ (2002), the Supreme Court held that the EPA lacked authority to implement the Clean Power Plan under the Clean Air Act. Specifically, the Court held that Congress did not grant the EPA the authority to regulate greenhouse gas emissions in virtually any industry.

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: In *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022), the Supreme Court overruled *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey*, finding that the Constitution does not confer a right to abortion. The Court

reasoned that the Constitution does not mention abortion, and the right is neither deeply rooted in the nation's history nor an essential component of "ordered liberty." The Court also held that "the authority to regulate abortion must be returned to the people and their elected representatives." *Id.* at 2279.

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (per curiam), the Supreme Court held that strict scrutiny applies to government regulations that treat any comparable secular activity more favorably than religious activities.

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

Response: I understand that the Advisers Act establishes a federal fiduciary duty for investment advisers that is broad and applies to the entire adviser-client relationship.

18. 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: The Controlled Substances Act (CSA) contains the following preemption provision: "No provision of this title 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 title and that State law so that the two cannot consistently stand together." 21 U.S.C. § 903. To my knowledge, the Supreme Court has not determined the precise scope of this provision. *See Gonzales v. Oregon*, 546 U.S. 243, 251 (2006) (noting only that "[t]he CSA explicitly contemplates a role for the States in regulating controlled substances, as evidence by its preemption provision"). If an issue involving the CSA and preemption of state or local laws were to come before me, I would fully and faithfully apply all Supreme Court and Ninth Circuit precedent to the facts of the case.

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

Response: "It is well settled that the attorney-client privilege does not extend to attorney-client communications which solicit or offer advice for the commission of a crime or

fraud." *In re Grand Jury Investigation*, 974 F.2d 1068, 1071 (9th Cir. 1992) (citing *Clark v. United States*, 289 U.S. 1, 15 (1933); 8 John H. Wigmore, *Evidence* § 2298 (McNaughton Rev. 1961 and Supp. 1991)); *see United States v. Martin*, 278 F.3d 988, 1001 (9th Cir. 2002) ("The attorney-client privilege does not extend to communications made to a lawyer to further a criminal purpose."). The Supreme Court has explained that the crime-fraud exception to the attorney-client privilege "assures that the 'seal of secrecy' between lawyer and client does not extend to communications made for the purpose of getting advice for the commission of a fraud or crime." *United States v. Zolin*, 491 U.S. 554, 563-65 (1989) (citations and internal quotation marks omitted) (holding that *in camera* review of privileged information may be used to establish whether the crime-fraud exception applies). Under California law, there is also no privilege "if the lawyer reasonably believes that disclosure of any confidential communication relating to representation of a client is necessary to prevent a criminal act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual." Cal. Evidence Code § 956.5. I am not aware of any federal case interpreting this California statute. If confirmed, I would fully and faithfully apply all Supreme Court and Ninth Circuit precedent to the facts of each case.

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

Response: If an issue regarding executive privilege were to come before me as a district judge, I would carefully review and follow Supreme Court precedent and any Ninth Circuit precedent that might exist. *See, e.g., United States v. Nixon*, 418 U.S. 683 (1974) (holding that executive privilege does not shield the President from the legal duty to produce evidence in a criminal prosecution); *Nixon v. General Services Administration*, 433 U.S. 425 (1977) (holding that seizing and examining records related to a former president that are still within the control of the executive branch does not violate the separation of powers); *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2033-36 (2020) (recognizing several limitations on Congress's ability to access presidential records due to special concerns regarding the separation of powers).

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

Response: In *United States v. Taylor*, 596 U.S. __ (2022), the Supreme Court held that attempted robbery under the Hobbs Act does not qualify as a "crime of violence" under 18 U.S.C. § 924(c)(3)(A), because no element of the offense requires proof that the defendant used, attempted to use, or threatened to use force.

22. 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: The rule of law requires that court orders be followed and not ignored.

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

Response: Under the Federal Arbitration Act, "a court must hold a party to its arbitration contract just as the court would to any other kind. But a court may not devise novel rules to favor arbitration over litigation." *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708, 1713 (2022) (citing *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218-221 (1985)). As a judicial nominee, it would not be appropriate for me to share any views I may or may not have about arbitration as an alternative to litigation. My duty as a district judge, if confirmed, would be to fully and faithfully follow Supreme Court and Ninth Circuit precedent and decide only the matters that properly come before me.

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

Response: In *Kennedy v. Bremerton School District*, 597 U.S. __ (2022), the Supreme Court held that a school district violated the Free Exercise and the Free Speech Clauses of the First Amendment by disciplining an individual for engaging in a personal religious observance. The school district that employed Coach Kennedy had suspended him for praying quietly without his students during the postgame period, but the Supreme Court held that Kennedy did not offer his prayers in his official capacity and that the law did not permit the government to suppress such religious expression.

25. 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: In *Torres v. Texas Department of Public Safety*, 597 U.S. __ (2022), the Supreme Court held that the States could not invoke sovereign immunity to block private damages suits against them under the Uniformed Services Employment and Reemployment Rights Act of 1994, because Congress properly exercised its power to raise and support the Armed Forces when it authorized the Act.

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

Response: The Department of Justice's Office of Legal Policy (OLP) sent me these questions on February 22, 2023. I reviewed the questions, conducted some research, and drafted my responses. OLP provided limited feedback on my draft. I then finalized and submitted my responses.

27. 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.

Senator John Kennedy
Questions for the Record

Ms. Monica Almadani

1. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: If I am confirmed to serve as a federal district judge, my role would be the fair administration of justice and my philosophy would be simple: recognizing the limits of judicial power, I would approach every case with an open mind, giving all parties a full opportunity to present their case and be heard, ultimately reviewing only those facts and issues properly before me, researching and reviewing the applicable law, methodically applying the law to the relevant facts, and issuing clear rulings that make the holding and the underlying rationale clear for the benefit of the litigants and the public.

2. **Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

   Response: The Supreme Court has instructed that the Constitution's "meaning is fixed," but that it "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). As Chief Justice Marshall stated in *McCullough v. Maryland*, 17 U.S. 316, 415 (1819), the Constitution is "intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs."

3. **Should a judge look beyond a law's text, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

   Response: The Supreme Court has instructed lower courts that the text of the statute is the best evidence of its meaning. *See Bostock v. Clayton*, 140 S. Ct. 1731, 1737 (2020) ("When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit."); *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself.") (citation omitted).

4. **Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute?**

   Response: As explained in response to Question 3, statutory interpretation starts with the text of the statute. *See Bostock v. Clayton*, 140 S. Ct. 1731, 1737 (2020); *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019). Where the text of a statute is ambiguous, the Supreme Court has stated that "clear evidence of congressional intent may illuminate ambiguous text." *Milner v. Dep't of the Navy*, 562 U.S. 562, 572 (2011).

In contrast, the Court "will not take the opposite tack of allowing ambiguous legislative history to muddy clear statutory language." *Id.* I am not aware of any Supreme Court case finding that particular statements made by a president constitute legislative history. In *Yakima Valley Mem'l Hosp. v. Wash. State Dep't of Health*, 654 F.3d 919, 934 (9th Cir. 2011), the Ninth Circuit questioned, for example, whether a presidential signing statement could "establish an unmistakably clear *legislative* intent." *Id.* (emphasis in original). Should an issue like this come before me as a judge, I would carefully review and apply Supreme Court and Ninth Circuit precedent to the specific facts of the case.

5. **What First Amendment restrictions can the owner of a shopping center place on private property?**

Response: It depends. Certain state laws have been construed to permit individuals to exercise free speech and petition rights on the property of a privately owned shopping center to which the public is invited. *See, e.g., PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 83, 88 (1980) (upholding a state law requiring a shopping center owner to allow certain expressive activities by others on its property, but also noting that "the decision of the California Supreme Court makes it clear that the PruneYard may restrict expressive activity by adopting time, place, and manner regulations that will minimize any interference with its commercial functions"). Should an issue like this come before me as a judge, I would carefully review and apply Supreme Court and Ninth Circuit precedent, as well as relevant state law, to the specific facts of the case.

6. **Are non-citizens unlawfully present in the United States entitled to a right of privacy?**

Response: I am not aware of a Supreme Court or Ninth Circuit case specifically addressing whether non-citizens unlawfully present in the United States are entitled to a right to privacy. However, the Supreme Court has recognized that "foreign citizens *in the United States* may enjoy certain constitutional rights." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 140 S. Ct. 2082, 2086 (2020) (emphasis in original). In *United States v. Verdugo-Urquidez*, 494 U.S. 259, 270-271 (1990), the Court identified "a series of cases in which [the Court has] held that aliens enjoy certain constitutional rights. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 211-212 (1982) (illegal aliens protected by Equal Protection Clause); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953) (resident alien is a 'person' within the meaning of the Fifth Amendment); *Bridges v. Wixon*, 326 U.S. 135, 148 (1945) (resident aliens have First Amendment rights); *Russian Volunteer Fleet v. United States*, 282 U.S. 481 (1931) (Just Compensation Clause of Fifth Amendment); *Wong Wing* v. *United States*, 163 U.S. 228, 238 (1896) (resident aliens entitled to Fifth and Sixth Amendment rights); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Fourteenth Amendment protects resident aliens)."

7. **Are non-citizens unlawfully present in the United States entitled to Fourth Amendment rights during encounters with border patrol authorities or other law enforcement entities?**

Response: Under Supreme Court and Ninth Circuit precedent, the Fourth Amendment's protections against unreasonable searches and seizures apply to at least some immigration-related arrests and detentions. *See United States v. Brignon-Ponce*, 422 U.S. 873, 882 (1975) ("We are unwilling to let the Border Patrol dispense entirely with the requirement that officers must have a reasonable suspicion to justify roving-patrol stops. In the context of border area stops, the reasonableness requirement of the Fourth Amendment demands something more than the broad and unlimited discretion sought by the Government. Roads near the border carry not only aliens seeking to enter the country illegally, but a large volume of legitimate traffic as well."); *United States v. Manzo-Jurado*, 457 F.3d 928, 940 (9th Cir. 2006) (finding under the particular facts of the case that Border Patrol agents lacked reasonable suspicion to stop a group of people near the Canadian border). If questions about the constitutionality of specific encounters with border patrol or other law enforcement entities were to come before me as a judge, I would fully and faithfully apply all Supreme Court and Ninth Circuit precedent to the specific facts of each case.

8. At what point is a human life entitled to equal protection of the law under the Constitution?

Response: In *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2261 (2022), the Supreme Court stated that its "opinion [was] not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth." The Court explained that "[t]he dissent, by contrast, would impose on the people a particular theory about when the rights of personhood begin," but "[n]othing in the Constitution or in our Nation's legal traditions authorizes the Court to adopt that 'theory of life.'" *Id.* If confirmed and cases involving regulations on the preservation of prenatal life or the legally cognizable interests or rights of unborn children were to come before me as a judge, I would fully and faithfully apply the *Dobbs* decision and any other binding Supreme Court or Ninth Circuit precedent.

9. A federal district court judge in Washington, DC recently suggested that the Thirteenth Amendment may provide a basis for the right to abortion in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health*.

a. Do you agree?

Response: If confirmed, I would fully and faithfully apply *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). In *Dobbs*, the Supreme Court overruled *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey*, finding that the Constitution does not confer a right to abortion. The Court reasoned that the Constitution does not mention abortion, and the right is neither deeply rooted in the nation's history nor an essential component of "ordered liberty." The Court also held that "the authority to regulate abortion must be returned to the people and their elected representatives." *Id.* at 2279.

b. Is it ever appropriate for a lower court judge to imply the existence of a constitutional right despite the existence of controlling precedent to the contrary?

Response: Please see my response to Question 9(a).

10. Is there ever an appropriate circumstance in which a district court judge ignores or circumvents precedent set by the circuit court within which it sits or the U.S. Supreme Court?

Response: No, a district judge must never ignore or otherwise circumvent binding precedent of the Supreme Court or the circuit court within which it sits. If confirmed as a district judge, I would fully and faithfully apply all Supreme Court and Ninth Circuit precedent.

11. Are state laws that require voters to present identification in order to cast a ballot illegitimate, draconian, or racist?

Response: As a judicial nominee, it would be inappropriate for me to comment on this question, as cases involving voter identification laws could come before me as a judge. If confirmed, I would fully and faithfully apply all relevant Supreme Court and Ninth Circuit precedent, including *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008) (upholding the constitutionality of an Indiana state law requiring all voters who cast a ballot in person to present a photo ID issued by the United States or the State of Indiana).

12. Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.

Response: I would fully and faithfully follow the Supreme Court's precedents interpreting the Second Amendment, including *District of Columbia v. Heller*, 554 U.S. 570 (2008) (invalidating a District of Columbia law prohibiting possession of handguns in one's home and requiring that lawfully possessed guns in one's home be disassembled or bound by a trigger lock); *McDonald v. City of Chicago*, 561 U.S. 742 (2010) (holding that the Second Amendment right to keep and bear arms for the purpose of self-defense applies to the states through the Fourteenth Amendment); and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (invalidating a New York law prohibiting the carrying of handguns outside the home without a government license issued only upon showing of "special need"). In *Bruen*, the Court explained that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct," and that regulations of that conduct that are "consistent with this Nation's historical tradition of firearm regulation" are permissible. *Id.* at 2126.

13. The Supreme Court relies on a list of factors to determine whether overturning precedent is prudent in the context of stare decisis.

a. How many factors are necessary to provide a special justification for overturning precedent?

Response: The Supreme Court has held that overruling a constitutional decision "is not a step that should be taken lightly" and provided a framework for deciding when a precedent should be overruled. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2264 (2022) (citing *Janus v, State, County, and Municipal Employees*, 138 S. Ct. 2448 (slip. op., 34-35) (2018)). In *Janus*, the Court found that five factors were the most important in that case in overruling precedent. *Janus*, 138 S. Ct. at 2478-79. In *Dobbs*, the Court similarly identified five factors that "weigh[ed] strongly" in favor of overruling precedent in that case. *Dobbs*, 142 S. Ct. at 2265.

b. Is one factor alone ever sufficient?

Response: The Supreme Court has not said whether one factor alone is ever sufficient. In *Janus*, the Court determined that the following factors were "most important" in deciding whether to overrule a past decision: (1) "the quality of [the precedent's] reasoning"; (2) "the workability of the precedent in question"; (3) the decision's consistency with other related decisions; (4) developments in the law, "both factual and legal [that] have . . . eroded the decision's underpinnings and left it an outlier among . . . cases"; and (5) reliance on the decision. *Janus*, 138 S. Ct. at 2478-86 (internal citations and quotations omitted). In *Dobbs*, the Court also considered (1) the nature of the Court's error; (2) the quality of the reasoning; (3) the workability of the precedent; (4) the effect on other areas of law; and (5) reliance interests. *See Dobbs*, 142 S. Ct. at 2237-38.

14. Please explain the difference between judicial review and judicial supremacy.

Response: "Judicial review" refers to the power of the judiciary to review the constitutionality of actions taken by the legislative and executive branches of the federal government. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). According to Black's Law Dictionary (11th ed. 2019), the term "judicial supremacy" refers to "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states."

15. Does the Ninth Amendment protect individual rights or does it provide structural protection applicable to the people?

Response: The Ninth Amendment provides that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." I am not aware of any Supreme Court case interpreting the Ninth Amendment as securing

individual rights. The Ninth Circuit previously explained that the Ninth Amendment "has not been interpreted as independently securing any constitutional rights for purposes of making out a constitutional violation." *Schowengerdt v. United States*, 944 F.2d 483, 490 (9th Cir. 1991) (citing *Strandberg v. City of Helena*, 791 F.2d 744 (9th Cir. 1986)). If confirmed and presented with a question involving the Ninth Amendment, I would fully and faithfully apply all relevant Supreme Court and Ninth Circuit precedent to the facts of each case.

16. Under former U.S. Supreme Court Justice Stephen Breyer's view of 'active liberty', is the Ninth Amendment evolving?

Response: I am not familiar with former U.S. Supreme Court Justice Stephen Breyer's view of "active liberty." Please see my response to Question 2.

17. Are the Bill of Rights informative for understanding the meaning of the Ninth Amendment or should it be interpreted independently of the other amendments?

Response: As a judicial nominee, it would be inappropriate for me to comment on this question, as cases involving the meaning of the Ninth Amendment could come before me as a judge. If confirmed, I would fully and faithfully apply all relevant Supreme Court and Ninth Circuit precedent.

18. Is Founding-era history useful for understanding the meaning of the Ninth Amendment?

Response: Please see my response to Question 17.

19. The First, Second, Fourth, Ninth, and Tenth Amendments reference "the people."

a. Who is included within the meaning of *'the people'*?

Response: The Supreme Court explained in *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008), that "in all six other provisions of the Constitution that mention 'the people,' the term unambiguously refers to all members of the political community, not an unspecified subset." The Court went on to quote *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990), in which the Court had previously stated that "'the people' protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *Heller*, 554 U.S. at 580.

b. Is the term's meaning consistent in each amendment?

Response: Please see my responses to Questions 19(a) and 20.

20. Does 'the people' capture non-citizens or illegal immigrants within the meaning of any amendment?

Response: It depends on the particular amendment and whether the Supreme Court has interpreted the term "the people" in the amendment to include non-citizens, including those unlawfully present. *See, e.g., United States v. Verdugo-Urquidez*, 494 U.S. 259, 270-271 (1990) (holding that the Fourth Amendment does not apply to the search and seizure by United States agents of property owned by a nonresident alien and located in a foreign country); *Plyler v. Doe*, 457 U.S. 202, 211-212 (1982) (finding that, though not citizens of the United States, immigrants unlawfully present in the United States, as well as their children, are "people" for purposes of the Equal Protection Clause); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953) ("From a constitutional point of view, [petitioner] is entitled to due process without regard to whether or not, for immigration purposes, he is to be created as an entrant alien . . ."); *Bridges v. Wixon*, 326 U.S. 135, 148 (1945) ("Freedom of speech and of press is accorded aliens residing in this country.") (citing *Bridges v. California*, 314 U.S. 252 (1941)); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("conclud[ing] that all persons within the territory of the United States are entitled to the protection guaranteed by [the Fifth and Sixth Amendments]"); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (concluding that the Fourteenth Amendment extends to all persons within the territorial jurisdiction of the United States). If an issue of this nature were to come before me as a judge, I would fully and faithfully apply all relevant Supreme Court and Ninth Circuit precedent to the facts of each case.

21. In *Washington v. Glucksberg,* 521 U.S. 702 (1997), the Supreme Court determined that the right to assisted suicide is not a fundamental liberty interest protected by the Fourteenth Amendment since its practice has been offensive to our national traditions and practices. Do evolving social standards of acceptance for practices like assisted suicide suggest that the meaning of the Due Process Clause changes over time?

Response: The Supreme Court has instructed that the Constitution's "meaning is fixed," but that it "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).

22. Could the Privileges or Immunities Clause within the Fourteenth Amendment a source of unenumerated rights?

Response: As a judicial nominee, it would be inappropriate for me to comment on this question, as cases involving the scope of the Privileges and Immunities Clause within the Fourteenth Amendment could come before me as a judge. If confirmed, I would fully and faithfully apply all relevant Supreme Court and Ninth Circuit precedent.

23. Is the right to terminate a pregnancy among the 'privileges or immunities' of citizenship?

Response: As a judicial nominee, it would be inappropriate for me to comment on this question, as cases involving abortion or the privileges or immunities citizenship clause could come before me as a judge. If confirmed, I would fully and faithfully apply all relevant Supreme Court and Ninth Circuit precedent, including *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

24. What is the original holding of *Chevron*? How have subsequent cases changed the *Chevron* doctrine?

Response: The Supreme Court held in *Chevron* that judicial deference is appropriate where the agency's interpretation of a statutory term was reasonable, so long as Congress had not spoken directly to the precise question at issue. Subsequent cases have made clear that for there to be judicial deference to agency action or interpretation, the agency's interpretation must be reasonable and reached through formal proceedings with the force of law, such as adjudications or notice and comment rulemaking. *See, e.g., United States v. Mead Corp.*, 533 U.S. 218, 230 (2001) ("It is fair to assume generally that Congress contemplates administrative action with the effect of law when it provides for a relatively formal administrative procedure tending to foster the fairness and deliberation that should underlie a pronouncement of such force."); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 220-21 (2016) ("A premise of *Chevron* is that when Congress grants an agency the authority to administer a statute by issuing regulations with the force of law, it presumes the agency will use that authority to resolve ambiguities in the statutory scheme. . . . When Congress authorizes an agency to proceed through notice-and-comment rulemaking, that relatively formal administrative procedure is a very good indicator that Congress intended the regulation to carry the force of law, so *Chevron* should apply. . . . But where a proper challenge is raised to the agency procedures, and those procedures are defective, a court should not accord *Chevron* deference to the agency interpretation.") (internal quotations and citations omitted).

25. How does the judicial branch decide when an agency exercised more authority than Congress delegated or otherwise exercised its rulemaking powers?

Response: Please see my response to Question 24. In addition, the Administrative Procedure Act governs the process by which federal agencies develop and issue regulations, as well as addresses other agency actions and provides standards for judicial review if a person has been adversely affected or aggrieved by an agency action.

26. How does the Constitution limit the powers of Congress? Please provide examples.

Response: Article I, Section 9 of the United States Constitution limits Congress's power to suspend habeas corpus, pass bills of attainder or ex post facto laws, favor one state

over another, tax any state's exports to another, take public money without appropriation, or grant titles of nobility.

27. Please describe the modern understanding and limits of the Commerce Clause.

Response: The Supreme Court has held that Congress's power under the Commerce Clause is limited to regulating "the use of the channels of interstate commerce," "the instrumentalities of interstate commerce, or the persons or things in interstate commerce," and "those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

28. Please provide an example of activity Congress cannot regulate under the Commerce Clause.

Response: Please see my response to Question 27. As an example, Congress cannot regulate firearms in local schools under the Commerce Clause. *See United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

29. **Should Due Process in the Fourteenth Amendment and Fifth Amendment be interpreted differently? Please explain.**

Response: I am not aware of any decision where the Supreme Court has interpreted these clauses differently. In fact, Justice Frankfurter in his concurring opinion in *Malinski v. New York*, 324 U.S. 401, 415 (1945), stated the following: "Of course the Due Process Clause of the Fourteenth Amendment has the same meaning. To suppose that 'due process of law' meant one thing in the Fifth Amendment and another in the Fourteenth is too frivolous to require elaborate rejection."

30. In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?

Response: The Supreme Court recognized in *Gundy v. United States*, 139 S. Ct. 2116, 2129 (2019), that "a delegation is constitutional so long as Congress has set out an intelligible principle to guide the delegee's exercise of authority. Or in a related formulation, the Court has stated that a delegation is permissible if Congress has made clear to the delegee the general policy he must pursue and the boundaries of [his] authority." *Id.* (internal citations and quotations omitted). If confirmed and presented with a question of this nature, I would fully and faithfully research and apply Supreme Court and Ninth Circuit precedent to the specific facts of the case.

31. Please describe how courts determine whether an agency's action violated the Major Questions doctrine.

Response: In *West Virginia, et al. v. Environmental Protection Agency*, 142 S. Ct. 2587 (2002), the Supreme Court explained that "our precedent teaches that there are 'extraordinary cases' that call for a different approach—cases in which the 'history and the breadth of the authority that [the agency] has asserted,' and the 'economic and political significance' of that assertion, provide a 'reason to hesitate before concluding that Congress' meant to confer such authority." *Id*. (citing and quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159-160 (2000)). This body of law is known as the "major questions doctrine," and the agency must point to "clear congressional authorization for the authority it claims." *West Virginia*, 142 S. Ct. at 2595 (internal quotation and citation omitted). In *West Virginia*, the Court found that the EPA had violated the major questions doctrine because it lacked authority to implement the Clean Power Plan under the Clean Air Act.

32. Please describe your understanding and limits of the anti-commandeering doctrine.

Response: The Tenth Amendment provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." According to the Supreme Court, "[t]he anti-commandeering doctrine may sound arcane, but it is simply the expression of a fundamental structural decision incorporated into the Constitution, *i.e.*, the decision to withhold from Congress the power to issue orders directly to the States." *Murphy v. NCAA*, 138 S. Ct. 1461, 1475 (2018). In *Printz v. United States*, 521 U.S. 898, 935 (1997), the Court held that Congress may not "circumvent" the prohibition on commandeering a state's regulatory processes "by conscripting the State's officers directly." More recently, in *Murphy*, 138 S. Ct. at 1481 (2018), the Court held that Congress cannot command a state legislature to refrain from enacting a law.

33. Does the meaning of 'cruel and unusual change over time? Why or why not?

Response: The Supreme Court held in *Roper v. Simmons*, 543 U.S. 551, 560-61 (2005), that "[t]he prohibition against 'cruel and unusual punishments,' like other expansive language in the Constitution, must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design." Moreover, "[t]o implement this framework[,] [the Court] has established the propriety and affirmed the necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual." *Id.* (citing *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958)).

34. Is the death penalty constitutional?

Response: The Supreme Court has ruled that the death penalty does not, under all circumstances, violate the Eighth Amendment's ban on cruel and unusual punishment. *See, e.g., Gregg v. Georgia*, 428 U.S. 153 (1976).

35. Can Congress require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress if prosecutorial discretion belongs to the executive branch?

Response: To my knowledge, the Supreme Court has not addressed the issue of whether Congress can require a federal prosecutor to convene a grand jury for someone charged with criminal contempt of Congress. As a judicial nominee, it would be inappropriate for me to comment on this question, as cases involving criminal contempt charges by Congress or prosecutorial discretion could come before me as a judge. If confirmed, I would fully and faithfully apply all relevant Supreme Court and Ninth Circuit precedent.

36. Please describe which presidential aides, if any, are entitled to "absolute immunity" from congressional subpoenas.

Response: To my knowledge, the Supreme Court has not addressed the issue of whether certain presidential aides are entitled to "absolute immunity" from congressional subpoenas. As a judicial nominee, it would be inappropriate for me to comment on this question, as cases involving the absolute immunity of presidential aides could come before me as a judge. If confirmed, I would fully and faithfully apply all relevant Supreme Court and Ninth Circuit precedent.

37. Do private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment?

Response: To my knowledge, the Supreme Court has not addressed the issue of whether private social media companies create any type of forum that protects speech against restrictions in the context of the First Amendment. As a judicial nominee, it would be inappropriate for me to comment on this question, as cases involving social media companies and free speech could come before me as a judge. If confirmed, I would fully and faithfully apply all relevant Supreme Court and Ninth Circuit precedent.

38. How does the Supremacy Clause interact with the Adequate and Independent State grounds doctrine?

Response: The Supremacy Clause provides that the United States Constitution and federal law are the "supreme Law of the Land" and "Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding." U.S. Const., Art. VI. Under the adequate and independent state grounds doctrine, the Supreme Court will refuse to hear a case from a state court if the state court judgment is overturned on adequate and independent non-federal grounds, as opposed to federal grounds.

39. Please explain why the Fifth Amendment's Due Process Clause does not require the federal government to provide notice and a hearing to an individual before their name is added to the no-fly list.

Response: The Ninth Circuit held in *Kashem v. Barr*, 941 F.3d 358, 389 (9th Cir. 2019), that "[t]here may be No Fly List cases in which due process would require some type of live hearing or some opportunity to cross-examine witnesses. That determination will require weighing the potential value of a hearing to the DHS TRIP complainant — considering the extent to which the No Fly List determination turned on credibility assessments and disputed facts — against the considerable burden on the government, considering the nature and extent of the threat to national security." If confirmed, I would fully and faithfully apply all binding precedent of the Supreme Court and Ninth Circuit, including *Kashem v. Barr*.

40. What's the textual source of the different standards of review for determining whether state laws or regulations violate constitutional rights?

Response: Supreme Court decisions are the primarily textual source of the different standards of review for determining the constitutionality of state laws or regulations.

41. Please describe the legal basis that allows federal courts to issue universal injunctions.

Response: Article III, Section 2 of the United States Constitution confers upon all federal courts the power to decide cases "in law and equity." *See, e.g., Smith v.* Davis, 953 F.3d 582, 590 (9th Cir. 2020) ("Because equity requires a court to deal with the case before it, complete with its unique circumstances and characteristics, courts must take a flexible approach in applying equitable principles. The Supreme Court has been clear in this requirement, stating 'exercise of a court's equity powers . . . . must be made on a case-by-case basis.'") (quoting *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964)). In addition, under Federal Rule of Civil Procedure 65, federal courts have the authority to issue injunctions and restraining orders where the requirements for injunctive relief are satisfied. *See* Fed. R. Civ. P. 65. However, the Supreme Court has held that an "injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course," *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010), and "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).