Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Shanlyn Alohakeao Souza Park
Nominee to be a United States District Judge for the District of Hawaii

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. Judges are bound to decide constitutional issues based on the text of the law or Constitutional provision at issue as well as binding precedent. A judge's independent value judgments are irrelevant to the interpretation and application of the law.

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

   Response: I am not familiar with Judge Reinhardt's comment or the context in which he made the comment. If Judge Reinhardt meant that a lower court judge should try to sneak through opinions that might depart from Supreme Court precedent, then I disagree. If confirmed, I would faithfully apply Supreme Court and Ninth Circuit precedent.

3. **Please describe the relevant law governing when a federal court may entertain and grant a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court.**

   Response: Pursuant to 28 U.S.C. § 2254, a federal court shall entertain an application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that (i) the applicant has exhausted the remedies available in the courts of the State, or there is an absence of available State corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

4. **Please describe the relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence.**

   Response: Pursuant to 28 U.S.C. § 2255, a person in custody under a sentence of federal court may seek relief from the sentence on the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without

jurisdiction to impose such a sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.

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

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

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

   Response: Yes.

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

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

   2021 – present
   22nd Division, First Circuit Court State of Hawaii.
   Law Clerk (2021 – 2023)
   Court Clerk (2023)
   Judicial Assistant (2021)

   I also participated in the hiring and application review process while I was employed at the Office of the Federal Public Defender. Although I did not make the ultimate hiring decisions, I participated in the review of applications and interviews of applicants for various assistant federal defender positions.

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

Response: No.

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

   Response: No.

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

   Response: No.

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

   Response: Not applicable.

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

    Response: Yes. *See Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995).

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

    Response: In that case, the Supreme Court held that the First Amendment prohibits Colorado from forcing a website designer to create expressive designs communicating messages with which the designer disagrees. *303 Creative LLC v. Elenis*, 600 U.S. 570, 143 S. Ct. 2298 (2023)

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

Is this a correct statement of the law?

Response: Yes, *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) is binding Supreme Court precedent and was cited in the recent Supreme Court decision, *303 Creative LLC v. Elenis*, 600 U.S. 570, 585, 143 S. Ct. 2298, 2311 (2023).

13. **How would you determine whether a law that regulates speech is "content-based" or "content-neutral"? What are some of the key questions that would inform your analysis?**

Response: The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." U.S. Const., Amdt. 1. A law that regulates speech is "content based if a law applies to a particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). The Supreme Court has supplied the key questions to this analysis. The first step is to determine "whether the law is content neutral on its face," which must be decided "'before turning to the law's justification or purpose.'" *Id*. at 165-166. *Reed* also sets out how courts should evaluate regulations to determine whether they are content-neutral or content-based, with considerations such as whether the law "cannot be justified without reference to the content of the regulated speech, or that were adopted by the government because of disagreement with the message [the speech] conveys." *Id*. at 164 (internal citations omitted). If the court determines the regulation "imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny." *Id*. at 171.

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

Response: Speech that is a true threat of violence lies outside the bounds of the First Amendment's protection. *See Virginia v. Black*, 538 U.S. 343, 359 (2003); *United States v. Bagdasarian*, 652 F.3d 1113, 1116 (2011). In *Counterman v. Colorado*, 143 S. Ct. 2106, 2113 (2023) the Supreme Court held that in a criminal prosecution, the government "must prove in true-threats cases that the defendant had some understanding of his statements' threatening character," and "that a recklessness standard" of *mens rea* is sufficient.

15. **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: In *U.S. Bank National Association ex rel. CWCapital Asset Management. LLC v. Village at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018), the Supreme Court stated that

when making a finding of a "basic" or "historical" fact, a court must address the questions of who did what, when or where, how or why. The distinction between a question of fact and a question of law is not always clear and there is no set "rule or principle that will unerringly distinguish a factual finding from a legal conclusion." *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982). To distinguish between the two, courts determine whether the question requires "expound[ing] on the law, particularly by amplifying or elaborating on a broad legal standard." *U.S. Bank Nat'l Ass'n*, 138 S. Ct. at 966. If so, it is a legal question. *See id*. If, on the other hand, the question implicates "case-specific factual issues" that require the weighing of evidence and credibility judgments, it is a question of fact. *See id*. This distinction is important because, among other reasons, the characterization of a question as one of fact or law determines the standard of review that applies. *See id*. at 962.

16. **Which of the four primary purposes of sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important?**

Response: At sentencing, a judge is required to consider all of the sentencing factors enumerated in Section 3553(a)(2) so that the sentence imposed reflects the seriousness of the offense behavior, promotes respect for the law and provides just punishment. The statute also directs a sentencing judge to consider whether the sentence "affords adequate deterrence to criminal conduct" and "protects the public from further crimes of the defendant." The statute does not assign any purpose greater weight than the others. If confirmed, I will follow the factors set forth in Section 3553(a)(2) and the United States Sentencing Guidelines before imposing a sentence.

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

Response: As a sitting state court judge and a judicial nominee, it is not appropriate for me to comment on the quality of Supreme Court decisions. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting state court judge and a judicial nominee, it is not appropriate for me to comment on the quality of Ninth Circuit decisions. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: Title 18 USC § 1507 makes it a crime to engage in picketing or parading without authorization. Specifically, Section 1507 states:

> Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both.
>
> Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

20. **Is 18 U.S.C. § 1507 constitutional?**

Response: I am unware of any precedent that discusses the constitutionality of 18 U.S.C. § 1507. However, the Supreme Court has upheld as constitutional a state statute modeled after 18 U.S.C. § 1507. *See Cox v. Louisiana*, 379 U.S. 559, 564 (1965).

21. **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?**
l. **Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?**
m. **Was *303 Creative LLC v. Elenis* correctly decided?**

Response: The Supreme Court cases listed above are binding precedent, with the exception of *Roe v. Wade* and *Planned Parenthood v. Casey,* as those decisions were overruled by *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). If confirmed, I will faithfully apply binding Supreme Court and Ninth Circuit precedent. However, as the constitutionality of de jure racial segregation in schools

and interracial marriage are not likely to ever come before the court again, I believe it is permissible as a state court judge and judicial nominee to state my opinion is that *Brown v. Board of Education* and *Loving v. Virginia* were correctly decided.

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

Response: I would apply the Supreme Court precedent in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), which held that, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 2126. It is then the government's burden to "demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id*. The Supreme Court explained that "courts can use analogies to [] historical regulations" in determining whether modern regulations are constitutionally permissible. *Id.* at 2133. In doing so, the Supreme Court directed lower courts to evaluate "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified[.]" *Id*. at 2133 (citations omitted). Currently, as a state court judge and if confirmed, I would faithfully apply the legal standard set forth in *Bruen*.

23. **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.

24. **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: No.

25. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**

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

    Response: No.

    b. **Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**

    Response: No.

    c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No.

    d. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's**

known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

26. **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.

27. **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.

28. **Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).**

Response: On March 15, 2023, U.S. Senators Brian Schatz and Mazie K. Hirono announced the formation of a Federal Judicial Selection Commission to make recommendations on candidates to fill potential vacancies on the United States District Court, District of Hawaii.

On March 29, 2023, I submitted my application and was interviewed by the Commission on April 24, 2023. On May 2, 2023, I received notice from the Commission that my application would be forwarded to the Hawai'i senators for consideration. On May 23, 2023, I was interviewed by Senator Schatz, and on May 24, 2023, I was interviewed by Senator Hirono. On June 23, 2023, I learned that my name was forwarded for consideration to the White House. On June 26, 2023, I interviewed with attorneys from the White House Counsel's Office. Since July 1, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 6, 2023, the President announced his intent to nominate me.

29. **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.

30. **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.

31. **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.

32. **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.

33. **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.

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

Response: No. The decision about which cases to list was entirely my own, as was the substance and description of the cases listed.

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

Response: Not applicable.

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

Response: On June 26, 2023, I interviewed with attorneys from the White House Counsel's Office. Since July 1, 2023, I have been in contact with officials from the Office of Legal Policy ("OLP") at the Department of Justice concerning the background check and vetting process.

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

Response: After reviewing the questions I received on October 11, 2023, I drafted my responses. I also reviewed guidance provided by the Department of Justice, Office of Legal Policy, which mostly addressed the format for preparing responses but also provided limited feedback on substance. I then finalized and submitted my responses.

Senate Judiciary Committee
Nominations Hearing
October 4, 2023
Questions for the Record
Senator Amy Klobuchar

Shanlyn A.S. Park, nominee to be U.S. District Court Judge for the District of Hawaii

Since 2021, you have served as a judge for the First Circuit in the State of Hawaii. In this capacity, you have presided over 21 criminal jury trials and have issued more than 100 written opinions.

- **How has your experience as a state court judge prepared you to serve as a federal district court judge?**

  Response: I am currently assigned to a felony criminal calendar, and before that, the misdemeanor domestic violence calendar. I am (and was) involved in all aspects of case resolution from pretrial matters (discovery disputes, motions practice) to conducting jury and bench trials, drafting opinions, accepting and adjudicating guilty pleas and sentencing – all of which are also handled by federal district court judges. From these experiences, I have learned how to work effectively with court staff and other agencies involved in the criminal justice system. My experience has also provided key lessons on effective case and courtroom management, including communications with litigants and jurors, the need for concise instructions, rulings and orders. I believe all of these experiences have prepared me to serve as a federal court judge

- **What are some of the most valuable lessons that you learned while serving on the bench?**

  Response: The most valuable lessons that I have learned while serving on the bench are: to treat everyone, from the parties and counsel to court staff to jurors, with respect; to always be prepared; and to make timely, clear and concise rulings. Further, it is important that I maintain a balance between control of the courtroom and the proceedings, and humility about the significant responsibility entrusted to me.

Senator Mike Lee
Questions for the Record
Shanlyn A. S. Park, Nominee to the United States District Court for the District of Hawaii

1. How would you describe your judicial philosophy?

Response: As a state court judge, my philosophy is to approach every case with an open mind; recognize that every case is extremely important for the litigants involved; thoroughly review the record and, research the applicable law; understand the issues raised and listen to the legal arguments; fully and faithfully apply the law in an impartial manner; and provide my rulings timely, clearly and concisely so the parties have a full understanding of my decision.

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

Response: When deciding a case that turned on the interpretation of a federal statute, I would begin with the plain statutory text and any binding precedent of the Supreme Court or the Ninth Circuit. If the plain text is unambiguous then the inquiry ends there. However, if the text is ambiguous and there was no binding precedent, I would consider the canons of construction and interpretive methods as directed by the Supreme Court and Ninth Circuit. If there is no Supreme Court or Ninth Circuit opinions, opinions from other federal courts of appeal may also be reviewed to determine whether those opinions would be persuasive.

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

Response: In the rare instance that I was confronted with a constitutional issue of first impression that had not yet been interpreted by the Supreme Court or the Ninth Circuit, I would first look at the text of the constitutional provision. I would interpret the text in manner consistent with the methods of interpretation that the Supreme Court has used. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *Crawford v. Washington*, 541 U.S. 36 (2004), the Supreme Court looked to the original public meaning of the Second Amendment and the Sixth Amendment, respectively. If confirmed, I would faithfully apply that interpretative method to the case before me.

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

Response: The Supreme Court has directed lower courts to interpret the Constitution or statutes in accord with the ordinary public meaning of its terms at the time of enactment. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) and *New York State Rifle Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (interpreting the Second Amendment under the original public meaning); *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020) ("This Court normally interprets a statute in

accord with the ordinary public meaning of its terms at the time of its enactment."); *Ashcroft v. Am. C.L. Union*, 535 U.S. 564, 574 (2002) (applying contemporary community standards when assessing obscenity under the First Amendment). If confirmed, I would faithfully apply that method to the case before me.

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: The plain text of the statute is the first and primary source of statutory interpretation. If the plain text is unambiguous the inquiry ends. However, if the text is ambiguous and there is no binding precedent, I would consider the canons of construction and interpretive methods as directed by the Supreme Court and Ninth Circuit. If there is no Supreme Court or Ninth Circuit opinions, opinions from other federal courts of appeal may also be reviewed to determine whether those opinions are persuasive.

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

Response: The Supreme Court precedent indicates that you interpret the Constitution or statute in accord with the ordinary public meaning of its terms at the time of enactment. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) and *New York State Rifle Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (interpreting the Second Amendment under the original public meaning); *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."); *Ashcroft v. Am. C.L. Union*, 535 U.S. 564, 574 (2002) (applying contemporary community standards when assessing obscenity under the First Amendment). If confirmed, I would faithfully apply binding precedent when interpreting statutory or constitutional provisions, including any precedent regarding the role of plain meaning in interpreting a particular provision.

7. What are the constitutional requirements for standing?

Response: The Supreme Court has held that Article III standing requires an injury in fact that is: (i) concrete and particularized, not conjectural or hypothetical; (ii) fairly traceable to the defendant's challenged conduct; and (iii) likely redressable by a favorable decision. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992).

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

Response: Article I, Section 8, Clause 18 of the U.S. Constitution states Congress has the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in

the Government of the United States, or in any Department or Officer thereof." The Supreme Court in *McCulloch v. Maryland*, 17 U.S. 316, 324 (1819) also held that Congress is authorized to pass all laws necessary and proper to carry into execution the powers conferred on it.

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

Response: In *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566, 2598 (2012), the Supreme Court held that "questions of constitutionality of action taken by Congress does not depend on recitals of power which it undertakes to exercise."

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

Response: Yes. In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court established a test to determine whether unenumerated rights are protected by the Constitution and held that the Fifth and Fourteenth Amendments protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," and are "implicit in the concept of ordered liberty." *Id.*at 720-21 (internal quotation marks omitted). The Supreme Court has also determined that several unenumerated rights are protected; these include: the right to marry (*Loving v. Virgina*, 388 U.S. 1 (1967)), the right to obtain contraceptives (*Griswold v. Connecticut*, 381 U.S. 479 (1965)), and the right to make decisions about the education and upbringing of one's children (*Meyer v. Nebraska*, 262 U.S. 390 (1923)).

11. What rights are protected under substantive due process?

Response: The Supreme Court has interpreted substantive due process to include, among others, the following fundamental rights: the right to privacy, specifically a right to contraceptives, *Griswold v. Connecticut*, 381 U.S. 479 (1965); the right to marry a person of a different race, *Loving v. Virginia*, 388 U.S. 1 (1967); and the right to marry an individual of the same sex, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

12. If you believe substantive due process protects some personal rights such as a right to contraceptives, 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: In *Lochner v. New York*, 198 U.S. 45 (1905), the Supreme Court held that a New York statute that prescribed maximum working hours for bakers violated the bakers' right to freedom of contract under the Fourteenth Amendment of the Constitution. In 1937, the *Lochner* decision was overturned by the Supreme Court in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), where the Supreme Court

upheld the constitutionality of a state minimum wage legislation and ruled that the state may use its police powers to restrict the individual freedom to contract. As a sitting court judge and a judicial nominee it would be inappropriate for me to comment on an abstract legal issue or a hypothetical dispute that could be the subject of future litigation before me. *See, e.g.*, Code of Conduct for United States Judges, Canon 3(A)(6) and Hawaii Revised Code of Judicial Conduct, Canon 2. As a judge, I am duty-bound to fully and faithfully follow the law, which I have done and will continue to do.

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

Response: In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court held that Congress does not have the power under the Commerce Clause to regulate activity that does not substantially affect interstate commerce. In *Lopez*, the Court identified three categories where Congress may regulate: (i) the channels of commerce, (ii) the instrumentalities of commerce, and (iii) activities that substantially affects interstate commerce. *Id.* at 558-59.

14. What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?

Response: The Supreme Court has designated race, religion, national origin, and alienage as suspect classes subject to strict scrutiny. *See, e.g., City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). However, this is not an inclusive list. The Supreme Court has described "traditional indicia of suspectness" to include groups that "possess an immutable characteristic determined solely by the accident of birth" or are "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (internal quotation marks and citations omitted).

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

Response: The Supreme Court has stated that checks and balances and separation of powers plays a vital role in our Constitution's structure. *See Buckley v. Valeo,* 424 U.S. 1, 121 (1976) (*per curiam*). It is a self-executing safeguard against the encroachment or aggrandizement of one branch of government at the expense of the other. *See Morrison v. Olson*, 487 U.S. 654, 693 (1988).

16. 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: As a sitting state court judge, I apply binding precedent and would continue to do so if confirmed. I would decide this case as I would decide all cases

that come before me -- consider the legal arguments of the parties, research binding precedent for guidance, including how to decide a case in which one branch assumed an authority not granted to it by the text of the Constitution. The Supreme Court has previously decided cases in which a branch exceeded its constitutional authority, such as *Marbury v. Madison*, 5 U.S. 137 (1803) (Congress); and *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (President).

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

Response: As a sitting state court judge, I must decide cases based upon the facts and the applicable law. Empathy plays no role in a judge's determination of a case.

18. Which is worse; invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Neither is appropriate and both are contrary to law.

19. 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 trends discussed in this question and do not have an opinion on this issue. Currently, as a sitting state court judge, I am required to faithfully apply binding Supreme Court.

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

Response: Black's Law Dictionary defines "judicial review" as "[a] court's power to review the actions of other branches or levels of government." Black's Law Dictionary (11th ed. 2019). "Judicial supremacy" is defined as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, especially U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." *Id.*

21. 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: As a sitting judge and judicial nominee, it is inappropriate for me to comment on how elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions. The Supreme Court has held that elected officials must follow duly rendered judicial decisions. *See, e.g., Cooper v. Aaron*, 358 U.S. 1, 18 (1958) ("the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."). Moreover, Article VI of the Constitution requires all elected officials to swear an oath to support the Constitution.

22. 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: As a sitting state court judge, I must decide the cases and controversies that are brought before me and apply the law in an impartial and fair manner. A judge's role is to not make or execute laws. I understand the limited role of the judiciary and fully and faithfully apply the law to the limited issues properly before me in an impartial manner in every case.

23. 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: Stare decisis requires a district court judge to follow binding court precedent regardless of whether the Constitutional underpinnings of that precedent are "questionable." It is not the province of a lower court judge to extend or limit precedent; rather, it the province and duty of a lower court judge to follow that precedent. Respect for precedent gives the law consistency and makes interpretations of the law more predictable.

24. 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: An individual defendant's race, gender, nationality, sexual orientation or gender identity do not play a role in a judge's sentencing analysis pursuant to 18 USC § 3533. Additionally, in 28 USC § 994 (d)(11), Congress specifically prohibited the

United States Sentencing Commission from basing any guidelines or policy statements based on race, sex, national origin, creed, and socioeconomic status of offenders.

25. 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 statement in question. According to Black's Law Dictionary, "equity" is defined as "[f]airness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019).

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

Response: I am not aware of any Supreme Court or Ninth Circuit precedent that explains the difference between "equity" and "equality." As stated in my response to Question 25, Black's Law Dictionary, "equity" is defined as "[f]airness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019). "Equality" is defined as "[t]he quality, state, or condition of being equal; esp., likeness in power or political status." *Id.*

27. 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's Equal Protection Clause provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. I am not aware of any Supreme Court or Ninth Circuit binding authority that addresses whether "equity" is guaranteed under the Fourteenth Amendment's Equal Protection Clause.

28. How do you define "systemic racism?"

Response: I am not aware of any Supreme Court or Ninth Circuit precedent that defines "systemic racism." Black's Law Dictionary defines "racism" as, inter alia, "[t]he assumption of lower intelligence and importance given to a person because of their racial characteristics." Black's Law Dictionary (11th ed. 2019).

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

Response: I am not aware of any Supreme Court or Ninth Circuit precedent that defines "critical race theory." Black's Law Dictionary defines "critical race theory"

as "[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." Black's Law Dictionary (11th ed. 2019).

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

Response: Please see responses to Questions 28 and 29.

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

Questions for the Record for Shanlyn Alohakeao Souza Park, nominated to be United States District Judge for the District of Hawaii

I. Directions

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

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

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

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

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

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

II. Questions

1. **Is racial discrimination wrong?**

   Response: Yes. The Fourteenth Amendment and federal statutes prohibit discrimination on the basis of race.

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

   Response: As a state court judge and as a judicial nominee, it is not appropriate for me to comment on matters that could come before me as it may be viewed as prejudging a matter. *See* Code of Conduct for United States Judges, Canon 3(A) and Hawaii Revised Code of Judicial Conduct, Canon 2. However, the Supreme Court in *Washington v. Glucksberg*, 521 U.S. 702 (1997), held that the Fifth and Fourteenth Amendments protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," and are "implicit in the concept of ordered liberty." *Id.*at 720-21 (internal quotation marks omitted). If confirmed, I would faithfully apply the *Glucksberg* test and binding Supreme Court and Ninth Circuit precedent to a case involving unremunerated rights in the Constitution.

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

   Response: As a state court judge, my philosophy is to approach every case with an open mind; recognize that every case is extremely important for the litigants involved; thoroughly review the record, research the applicable law, understand the issues raised and listen to the legal arguments, and fully and faithfully apply the law in an impartial manner and provide my rulings in a clear manner so that the parties understand my decision. I have not studied the judicial philosophies of Justices Warren, Burger, Rehnquist and Roberts to determine which Justice's philosophy is most analogous.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines "originalism" as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted" and, more specifically, as "the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect." I do not characterize myself with any labels.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." The Supreme Court recently observed, "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Association, Inc. v. Bruen,* 142 S. Ct. 2111, 2132 (2022). I do not characterize myself with any labels.

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

Response: If presented with a constitutional issue of first impression that had not yet been interpreted by the Supreme Court or the Ninth Circuit, I would first look at the text of the constitutional provision. I would interpret the text in manner consistent with the methods of interpretation that the Supreme Court has used. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *Crawford v. Washington,* 541 U.S. 36 (2004), the Supreme Court looked to the original public meaning of the Second Amendment and the Sixth Amendment, respectively. If confirmed, I would faithfully apply that interpretative method to the case before me.

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

Response: Supreme Court precedent instructs that you interpret the Constitution or statute in accord with the ordinary public meaning of its terms at the time of enactment. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) and *New York State Rifle Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (interpreting the Second Amendment under the original public meaning); *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."); *Ashcroft v. Am. C.L. Union*, 535 U.S. 564, 574 (2002) (applying contemporary community standards when assessing obscenity under the First Amendment). If confirmed, I would faithfully apply that method to the case before me.

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

Response: Absent amendment, the Constitution does not change, rather it endures as society changes.

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

Response: Yes, it is binding precedent.

a. **Was it correctly decided?**

Response: As a state court judge and a judicial nominee, it is not appropriate for me to comment on whether a Supreme Court case was correctly decided, as there will likely be litigated matters arising from the decision that could possibly come before me as a judge. If confirmed, I will faithfully apply binding Supreme Court and Ninth Circuit precedent, including *Dobbs*.

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

Response: Yes, it is binding precedent.

a. **Was it correctly decided?**

Response: As a state court judge and a judicial nominee, it is not appropriate for me to comment on whether a Supreme Court case was correctly decided, as there will likely be litigated matters arising from the decision that could possibly come before me as a judge. If confirmed, I will faithfully apply binding Supreme Court and Ninth Circuit precedent, including *Bruen*.

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

Response: Yes, it is binding precedent.

a. **Was it correctly decided?**

Response: Yes. The constitutionality of racial segregation in schools is not likely to ever come before the court again, so I believe it is permissible as a state court judge and judicial nominee to state my opinion that this case was correctly decided.

12. **Is the Supreme Court's ruling in *Students for Fair Admissions v. Harvard* settled law?**

Response: Yes, it is binding precedent.

a. **Was it correctly decided?**

Response: As a state court judge and a judicial nominee, it is not appropriate for me to comment on whether a Supreme Court case was correctly decided, as there will likely be litigated matters arising from the decision that could possibly come before me as a judge. If confirmed, I will faithfully apply binding Supreme Court and Ninth Circuit precedent, including *Students for Fair Admissions.*

13. **Is the Supreme Court's ruling in *Gibbons v. Ogden* settled law?**

Response: Yes, it is binding precedent.

a. **Was it correctly decided?**

Response: As a state court judge and a judicial nominee, it is not appropriate for me to comment on whether a Supreme Court case was correctly decided, as there will likely be litigated matters arising from the decision that could possibly come before me as a judge. If confirmed, I will faithfully apply binding Supreme Court and Ninth Circuit precedent, including *Gibbons*.

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

Response: 18 U.S.C. § 3142(e) states the types of offenses that trigger a presumption in favor of pretrial detention and includes offense that have a statutory maximum term of imprisonment of ten years or more, certain firearm offenses, certain offenses involving minor victims, offenses that involve slavery and human trafficking, and federal criminal terrorism.

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

Response: The statute does not provide any policy rationales underlying the presumption and I am not aware of any Supreme Court or Ninth Circuit cases that explain the policy rationale.

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

Response: Yes. In *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023), the Supreme Court held that a state may not compel a small business operated by an observant owner to create expressive speech that would violate the owner's sincerely held religious belief.

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

Response: The Free Exercise Clause of the First Amendment bars government departure from neutrality on matters of religion. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n,* 138 S. Ct. 1719 (2018). In *Masterpiece Cakeshop,* the Supreme Court reaffirmed that states have a duty "not to base laws or regulations on hostility to a religion or religious viewpoint." *Id.* at 1731. Any time a law or regulation "treat[s] any comparable secular activity more favorably than religious exercise," strict scrutiny is

triggered. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (*per curiam*). To satisfy strict scrutiny, the state must carry its burden of showing that the challenged law or regulation "furthers 'interests of the highest order' by means 'narrowly tailored in pursuit of those interests.'" *Id*. at 1298 (citation omitted).

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

Response: In *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020), New York Gov. Andrew Cuomo was enjoined from enforcing an executive order relating to religious services during the COVID-19 pandemic. In a *per curiam* opinion, the Supreme Court held that the applicants were entitled to a preliminary injunction pending appeal because (i) they showed they were likely to prevail on their First Amendment free exercise claims, given that secular businesses were not subject to the same restrictions (*id*. at 66); (ii) the loss of First Amendment freedom constitutes an irreparable injury (*id*. at 67); and (iii) the government had not shown the relief would harm the public as it did not claim attendance at the applicants' worship services had resulted in the spread of disease. *See id*. at 68.

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

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Supreme Court granted injunctive relief against a California regulation that had the effect of restricting at-home Bible studies and prayer meetings by limiting all gatherings in private homes to no more than three households at a time. In a *per curiam* opinion, the Supreme Court held that California's regulation on private gatherings was not facially neutral because it treated comparable secular activity more favorably than religious activity and therefore triggered strict scrutiny under the Free Exercise clause. *Id.*at 1296. The Court noted that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* The Court also concluded that even if the government withdraws or modifies a restriction during the course of litigation, it does not moot the case if the plaintiffs remain under a constant threat the government will reinstate the restriction. *Id.* at 1297.

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

Response: Yes. *See e.g., Kennedy v. Bremerton School Dist.,* 142 S. Ct. 2407 (2022).

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the shop and its owner sought review of the Colorado Civil Rights Commission's decision and issuance of a cease and desist order, in a proceeding arising from the shop's refusal to sell a wedding cake to a same-sex couple, requiring the shop and owner not to violate the Colorado Anti–Discrimination Act by discriminating against potential customers because of their sexual orientation. The Supreme Court held that the Commission did not comply with the Free Exercise Clause's requirement of religious neutrality.

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

Response: Yes. In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014), the Supreme Court stated that so long as religious beliefs are sincere, they are protected, even if they are not based on teachings of the faith tradition to which they belong.

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

Response: In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014), the Supreme Court held that the "Court's 'narrow function . . . is to determine' whether the plaintiffs' asserted religious belief reflects 'an honest conviction.'" *Id*. at 725 (quoting *Thomas v. Review Bd. of Ind. Employ. Sec. Div.*, 450 U.S. 707, 716 (1981)).

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

Response: See response to Question 21a.

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

Response: I do not know the official position of the Catholic Church on whether abortion is acceptable and morally righteous.

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

Response: In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that the "ministerial exception," grounded in the First Amendment's Religion Clauses, barred the teachers' employment discrimination claims. *Id.* at 2060. Religious institutions do not enjoy a general immunity from secular laws, but the First Amendment does protect their autonomy with respect to internal management decisions that are essential to the institution's central mission. *Id.*

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

Response: In *Fulton v. City of Philadelphia, Pa.*, 141 S. Ct. 1868 (2021), the Supreme Court held that the refusal of Philadelphia to contract with Catholic Social Services ("CSS") for the provision of foster care services unless CSS agreed to certify same-sex couples as foster parents violates the Free Exercise Clause of the First Amendment.

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

Response: In *Carson as next friend of O. C. v. Makin*, 142 S. Ct. 1987 (2022), the Supreme Court held that Maine's "nonsectarian" requirement for its otherwise generally available tuition assistance payments violated the First Amendment's Free Exercise Clause.

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

Response: In *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court held that Bremerton School District's discipline of high school football coach Joseph Kennedy for praying after football games violated Kennedy's rights to free exercise and free speech under the First Amendment.

26. **Explain your understanding of Justice Gorsuch's concurrence in the U.S. Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.**

Response: In Justice Gorsuch's concurrence in *Mast v. Fillmore County*, *Minnesota* 141 S. Ct. 2430 (2021), he wrote that the lower courts misapplied the Religious Land Use and Institutionalized Persons Act because the statute requires the application of "strict scrutiny." *See* 42 U.S.C. § 2000cc(a)(1). Justice Gorsuch's concurrence emphasized that the strict scrutiny analysis must be "precise," and the exemptions afforded other groups should be carefully considered. *Mast*, 141 S. Ct. at 2432. Justice

Gorsuch stressed that "neither the Amish nor anyone else should have to choose between their farms or their faith." *Id.* at 2434.

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

Response: As a sitting court judge and judicial nominee, I am generally precluded from expressing an opinion regarding an issue that could come before me. *See* Code of Conduct for United States Judges, Canon 3(A) and Hawaii Revised Code of Judicial Conduct, Canon 2. If I am confirmed, I would fully and faithfully apply any binding Supreme Court and Ninth Circuit precedent to any such issue that is properly raised in a case pending before me.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: While political appointments are the prerogative of the person vested with the authority to make the appointment, such appointments are still subject to the Constitution and relevant statutes. As a sitting court judge and judicial nominee, I am generally precluded from expressing an opinion regarding an issue that could come before me. *See* Code of Conduct for United States Judges, Canon 3(A) and Hawaii Revised Code of Judicial Conduct, Canon 2. If I am confirmed, I would faithfully apply any binding Supreme Court and Ninth Circuit precedent to any such issue that is properly raised in a case pending before me.

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

Response: In *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 539 (2015), the Supreme Court held that disparate impact claims are cognizable under certain federal anti-discrimination laws. However, I am not aware of any Supreme Court or Ninth Circuit precedent that address subconscious racial discrimination. If I am confirmed, I would faithfully apply any binding Supreme Court and Ninth Circuit precedent to any such issue that is properly raised in a case pending before me.

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

Response: The number of justices on the U.S. Supreme Court is a question for policymakers. If confirmed, I will be bound by Supreme Court precedent regardless of the number of justices on the Court.

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

Response. No.

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

Response: The Supreme Court has held that the Second Amendment protects an individual's right to bear arms for self-defense, both in one's home and in public. *See District of Columbia v. Heller*, 554 U.S. 50 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010); *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

36. **What kinds of restrictions on the Right to Bear Arms do you understand to be**

prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?

Response: In *District of Columbia v. Heller*, 554 U. S. 570 (2008), and *McDonald v. Chicago*, 561 U. S. 742 (2010), the Supreme Court held that the Second and Fourteenth Amendments protect an individual's right to keep and bear arms for self-defense. Under *Heller*, when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct, and to justify a firearm regulation the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation. In *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111, 2126 (2022), the Supreme Court explained "that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. *Id.* Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. *Id.* Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.*

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

Response: Yes. *See District of Columbia v. Heller*, 554 U.S. 570, 602 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010); *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111, 2156 (2022).

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

Response: No. *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

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

Response: No. *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

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

Response: Pursuant to Article II of the Constitution, the President is vested with executive power to faithfully enforce laws. The Supreme Court has recognized that the executive branch retains broad discretion with respect to enforcement decisions. *See Wayte v. United States*, 470 U.S. 598, 607 (1985). As a sitting state court judge and judicial nominee, I am generally precluded from expressing an opinion regarding an issue that could come before me. *See* Code of Conduct for United States Judges, Canon 3(A) and Hawaii Revised Code of Judicial Conduct, Canon 2. If I am confirmed, I

would faithfully apply any binding Supreme Court and Ninth Circuit precedent to any such issue that is properly raised in a case pending before me.

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

Response: Black's Law Dictionary defines both terms. Prosecutorial discretion is defined as "[a] prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." Black's Law Dictionary (11th ed. 2019). Administrative rule" is defined as "[a]n officially promulgated agency regulation that has the force of law[,]" and defines administrative "rulemaking" as "[t]he process used by an administrative agency to formulate, amend, or repeal a rule or regulation." *Id.*

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

Response: No. The Federal Death Penalty Act is codified in 18 U.S.C. § 3591. The President does not have the authority to unilaterally amend the criminal code.

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

Response: In *Alabama Association of Realtors*, 141 S. Ct. 2485 (2021), the Supreme Court vacated the nationwide moratorium of evictions that had been promulgated by the Centers for Disease Control ("CDC") during the pandemic. The Court concluded the petitioners were likely to succeed on the merits of their claim, that the CDC did not have authority under the statute, and the court would expect "Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Id.* at 2489.

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

Response: As a sitting state court judge and judicial nominee, it would not be proper for me to comment on the actions or conduct of prosecutors.

45. **How many written opinions have you issued as a judge?**

Response: I have written over 150 opinions.

46. **How many written opinions have you authored on federal or state constitutional matters?**

Response: None.

47. **During your testimony before the Hawaii Senate Judiciary Committee hearing, you mentioned that sentencing factors can allow a judge to consider concerns with respect to implicit bias.**

a. **Do you believe implicit bias exists?**

Response: Yes, as I understand implicit bias, I believe that all human beings, including me, have implicit biases that operate below the level of conscious awareness.

b. **Should judges consider any alleged implicit bias when sentencing?**

Response: Given the critical importance of exercising fairness and equality in the court system, a judge should be particularly concerned that they do not impose a sentence that is biased in any manner. A defendant's race, gender, nationality, sexual orientation, or gender identity do not play a role in a judge's sentencing analysis pursuant to 18 USC § 3533. Additionally, in 28 USC § 994 (d)(11), Congress specifically prohibited the United States Sentencing Commission from basing any guidelines or policy statements based on race, sex, national origin, creed, and socioeconomic status of offenders.

c. **Please list all the instances where you considered implicit bias when (1) sentencing a defendant, (2) determining probable cause, (3) assessing a motion to suppress, or (4) resolving family court matters.**

Response: In all of my sentencing hearings, I try to be aware of any bias that I may have so that I can set those biases aside and fairly and impartially apply the sentencing factors. I am required to impose a sentence that reflects the seriousness of the offense, promotes respect for the law, provides just punishment, affords adequate deterrence, protects the public from further crimes by the defendant and to provides the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner. To do so, I look at the nature and circumstances of the offense and the history and characteristics of a defendant. I also am required to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct as well as determine restitution to the victims. I have applied these factors in all of my sentencing hearings and have not taken into account the defendant's race, gender, nationality, sexual orientation or gender identity. Similarly, with respect to determinations of probable cause, assessing motions to suppress and resolving family court matters, I have fairly and impartially applied the law to the facts of the case without consideration to an individual defendant's race, gender, nationality, sexual orientation or gender identity.

Questions from Senator Thom Tillis
for Shanlyn Alohakeao Souza Park, nominee to the U.S. District Court for the District of Hawaii

1. **Can a judge's personal views and background benefit them in interpreting and applying the law, or would you say that they are irrelevant?**

   Response: A judge's personal views are irrelevant in interpreting and applying the law.

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

   Response: I believe impartiality is an expectation and required under Canon 3 of the Code of Conduct for United States Judges.

3. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Black's Law Dictionary defines "judicial activism" as "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (11th ed. 20019). I do not consider judicial activism to be appropriate.

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

   Response: No.

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

   Response: As a state circuit court judge, my role is to faithfully apply the law to the facts of the case before me without regard to anyone's desired outcome.

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

   Response: The Second Amendment is a fundamental right. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022). If I am confirmed, I will continue to do what I have sought to do as a state court judge, which is to faithfully apply the precedent regarding the Second Amendment fairly and impartially to the matter before me.

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

Response: While serving as a state court judge I have not considered any cases regarding qualified immunity. If I am confirmed, and subsequently presented with a case involving a qualified immunity defense, I would adhere to the binding precedent of the Supreme Court and Ninth Circuit on qualified immunity. *See, e.g. Pearson v. Callahan*, 555 U.S. 223 (2009) and *Hopson v. Alexander*, 71 F.4th 692, 697 (9th Cir. 2023). "To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Taylor v. Barkes*, 575 U.S. 822, 825 (2015) (internal quotation marks and citation omitted); *see also Mueller v. Auker*, 576 F.3d 979, 992 (9th Cir. 2009) ("Under qualified immunity, an officer will be protected from suit when he or she "makes a decision that, even if constitutionally deficient, reasonably misapprehends the law governing the circumstances.") (internal quotation marks and citation omitted).

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

Response: As a state court judge and as a judicial nominee, it is not appropriate for me to opine on the Supreme Court's or Ninth Circuit's qualified immunity jurisprudence. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: As a state court judge and as a judicial nominee, it is not appropriate for me to opine on the Supreme Court's or Ninth Circuit's qualified immunity jurisprudence. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

10. What are your thoughts regarding the importance of ensuring that all IP rights are in fact enforced?

Response: The Intellectual Property Clause found in Article 1 of the Constitution empowers Congress to grant authors and inventors exclusive rights in their writings and discoveries. U.S. Const. art. I, § 8; *see also Golan v. Holder*, 565 U.S. 302, 325 (2012) ("the Clause 'empowers Congress to determine the intellectual property regimes that, overall, in that body's judgment, will serve the ends of the Clause.'") (internal citations omitted). As a state court judge and a judicial nominee, it is not appropriate for me to opine on this issue as the issue of intellectual property rights and enforcement is being actively litigated in the courts. If confirmed, I would faithfully apply binding legal precedent from the Supreme Court, Ninth Circuit and Federal Circuit on intellectual property issues that would come before me.

11. In the context of patent litigation, in some judicial districts plaintiffs are allowed to request that their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will hear their case. What are your thoughts on this practice, which typically is referred to as "forum shopping" and/or "judge shopping?"

Response: The Supreme Court in *Alt. Marine Const. Co v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 65 (2013) stated that "forum shopping" is disfavored and could undermine the public confidence in the judicial system. I believe forum shopping and/or judge shopping undermines the trust and confidence in the judicial system. In the United States Court, District of Hawaii, for which I am nominated, civil cases are assigned by a random draw. *See* Local Rules of Practice for the United States District Court for the District of Hawaii 40.1.

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

Response: As a state court judge and judicial nominee, it is not appropriate for me to opine on the Supreme Court's patent eligibility jurisprudence. If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.