

Senator Lindsey Graham, Ranking Member
Questions for the Record
Mr. Christopher Charles Fonzzone Nominee to be Assistant Attorney General

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 do not agree with this statement. Legal judgments should be based on the law, including relevant constitutional and statutory provisions and applicable precedent.

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 believe that federal judges should faithfully apply the law, including relevant constitutional and statutory provisions and applicable precedent.

3. You did work for Communist China’s Ministry of Commerce and for Huawei after you held positions on the National Security Council and Department of Defense.
 - a. Do you agree Communist China is a geopolitical adversary of the United States?
 - b. Do you think it shows good judgment for a U.S. national security official to work for America’s geopolitical adversary?
 - c. Would you have worked for the Soviet Union during the Cold War in a similar set of circumstances?

RESPONSE: My private practice was principally focused on helping clients understand and comply with U.S. law. This includes the limited work I did for the Ministry of Commerce and Huawei. This work has not affected my ability to serve in my current role and provide objective legal advice as the General Counsel in the Office of the Director of National Intelligence.

4. From 2019 through 2020, you advised the Hong Kong Trade Development Council on privacy law.
 - a. Were you aware the Trade Development Council is a statutory body of the Hong Kong government?
 - b. Did the Hong Kong government’s imprisonment of pro-democracy leaders, such as Jimmy Lai, cause you to question your decision to engage in legal work on their behalf during this time?

RESPONSE: My legal work in private practice on behalf of that client was limited to contributing, at the request of a law firm partner, to the U.S. section of a quarterly report on global privacy developments.

5. Do you consider a law student’s public endorsement of or praise for an organization listed as a “Foreign Terrorist Organization,” such as Hamas or the Popular Front for the Liberation of Palestine, to be disqualifying for a job at the Office of Legal Counsel? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a “no.”

RESPONSE: I do not condone the endorsement of any group designated as a foreign terrorist organization by the United States. Personnel decisions at the Department of Justice should be made consistent with civil service laws and Department policies. If an individual seeks to apply to work in the Office of Legal Counsel, the Department of Justice will ensure that all conditions of employment that are consistent with the Department’s official hiring policies and requirements are met, including applicable background and security clearance checks.

6. In the aftermath of the brutal terrorist attack on Israel on October 7, 2023 the president of New York University’s student bar association wrote “Israel bears full responsibility for this tremendous loss of life. This regime of state-sanctioned violence created the conditions that made resistance necessary.” Would you consider such a statement to be disqualifying for a job at the Office of Legal Counsel? Please provide a yes or no answer. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer. Failure to provide a yes or no answer will be construed as a “no.”

RESPONSE: I do not condone the endorsement of any group designated as a foreign terrorist organization by the United States. Personnel decisions at the Department of Justice should be made consistent with civil service laws and Department policies. If an individual seeks to apply to work in the Office of Legal Counsel, the Department of Justice will ensure that all conditions of employment that are consistent with the Department’s official hiring policies and requirements are met, including applicable background and security clearance checks.

7. Legally, who can the U.S. detain in Guantanamo Bay?
 - a. Could the United States detain a Hamas or Hezbollah terrorist in Guantanamo Bay for committing an act of terror against Americans?

RESPONSE: Questions of whom the United States may detain at Guantanamo Bay are context and fact dependent. If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

8. In a concurrence in the denial of rehearing en banc in *Al-Bihani v. Obama* then-Judge Kavanaugh wrote: “international-law norms are not domestic U.S. law in the absence of action by the political branches to codify those norms.” Is this a correct statement of law?

RESPONSE: Questions concerning the incorporation of international law into domestic law may come before the Office of Legal Counsel. Among OLC’s best practices is

ensuring that opinions are thoroughly discussed by multiple attorneys, and I would not want to bypass that process by expressing a view here. If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

9. 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: 28 U.S.C. § 2254 – “The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in 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.”

10. 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: 28 U.S.C. § 2255 – “A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon 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 sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.”

11. 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: As described in the Supreme Court’s majority opinion, in 2014, Students for Fair Admissions (SFFA) filed separate lawsuits against Harvard College (“Harvard”) and the University of North Carolina (“UNC”), “arguing that their race-based admissions programs violate, respectively, Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment” of the Constitution. See *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199; *Students for Fair Admissions, Inc. v. University of North Carolina et al.*, No. 21-707, 600 U.S. __ (2023) (slip op. at 6). The Court’s opinion stated that “[u]niversity programs must comply with strict scrutiny, they may never use race as a stereotype or negative, and—at some point—they must end. Respondents’ admissions systems—however well intentioned and implemented in good faith—fail each of these criteria.” *Id.* at 22. The Court concluded that the UNC and Harvard programs “must therefore be invalidated under the Equal Protection Clause of the Fourteenth Amendment.” *Id.*

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

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

RESPONSE: Yes. In my current role as General Counsel at the Office of the Director of National Intelligence (ODNI), I play a role in hiring decisions for ODNI's Office of General Counsel. In prior roles, I have also participated in the process for recruiting and hiring, such as interviewing candidates or attending recruiting events.

13. 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

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

RESPONSE: No, although I have of course tried to ensure that openings for which I am hiring receive as broad a range of strong applications as possible, consistent with relevant law, including the Constitution.

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

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

RESPONSE: Between 2017 and 2021, I worked at a large, global law firm that maintains a number of diversity-focused programs and projects. Agencies I have served with during my time in government have also had some such programs. Beyond that, to the best of my knowledge, the answer to this question is otherwise no.

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

RESPONSE: Yes, under current U.S. Supreme Court precedent, government classifications on the basis of race are subject to strict scrutiny.

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

RESPONSE: In *303 Creative LLC v. Elenis*, the U.S. Supreme Court held that the First

Amendment of the U.S. Constitution prohibits the state of Colorado from forcing a wedding website designer to create expressive websites with messages she disagrees with. 600 U.S. ___ (2023) (slip op. at 6–26).

18. 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, this is an important statement of First Amendment principles. This passage from *Barnette* has been quoted favorably in recent decisions of the Supreme Court. See, e.g., *303 Creative LLC v. Elenis*, 600 U.S. 570, 584-85 (2023); *Janus v. AFSCME*, 138 S. Ct. 2448, 2463 (2018). If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent, and not my own personal preferences.

19. 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: Government regulation of speech is content-based if it “‘target[s] speech based on its communicative content’—that is, if it ‘applies to particular speech because of the topic discussed or the idea or message expressed.’” *City of Austin, Tx. v. Reagan Nat’l Advert., LLC*, 142 S. Ct. 1464, 1471 (2022) (quoting *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015)). One key question is “whether a regulation of speech ‘on its face’ draws distinctions based on the message a speaker conveys.” *Reed*, 576 U.S. at 163 (quoting *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 563 (2011)).

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

RESPONSE: “True threats are ‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’” *Counterman v. Colorado*, 143 S. Ct. 2106, 2114 (2023) (quoting *Virginia v. Black*, 538 U.S. 343, 359 (2003)). Where true threats form the basis of a criminal prosecution, the First Amendment requires “proof that the defendant had some subjective understanding of the threatening nature of his statements,” *id.* at 2111, and the recklessness standard applies, *id.* at 2113.

21. Under Supreme Court and 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: A fact is “something that actually exists; an aspect of reality” or “[a]n actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation.” *Fact*, *Black’s Law Dictionary* (11th ed. 2019)

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

RESPONSE: Congress has required federal sentencing judges to consider each of the above listed purposes in making a sentencing decision under 18 U.S.C. § 3553(a). If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

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

RESPONSE: I have not had the occasion to consider this question in depth. If confirmed, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

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

RESPONSE: The provision noted in the question, 18 USC § 1507, imposes a fine, imprisonment of up to one year, or both against “[w]hoever, 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.”

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

RESPONSE: I cannot express an opinion as to whether 18 U.S.C. § 1507 is constitutional on its face as this issue may come before the Office of Legal Counsel. If confirmed and asked to provide a legal opinion about this law, I would carefully study the legal code, the Constitution, and all relevant judicial precedent.

26. Is it ever appropriate to consider foreign law in constitutional interpretation? If yes, please describe in which circumstances such consideration would be appropriate.

RESPONSE: Foreign law is not binding on U.S. constitutional interpretation, although it may have some relevance depending on the particular clause and question at issue. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008) (studying English historical materials and concluding that by “the time of the founding, the right to have arms had become fundamental for English subjects”). If confirmed and presented with a constitutional question, I will provide guidance based on traditional sources of constitutional meaning, including the text of the Constitution, the historical record illuminating the text’s meaning, the Constitution’s structure and purpose, and judicial and Executive Branch precedents interpreting relevant constitutional provisions.

27. 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: Regarding questions a and b, the unconstitutionality of laws requiring racial segregation is well-settled. Regarding questions c through m, these opinions potentially involve issues that are or could be subject to further litigation. If confirmed, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

28. 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?
- 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?
- 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: Regarding questions a and b, no, not to my knowledge. Regarding question c, Christopher Kang and I worked in the White House Counsel’s Office at the same time, in approximately 2014–15. Beyond that, I do not believe I have had contact with any of the other individuals listed.

29. 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?
 - 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?
 - 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, not to my knowledge.

30. 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?
 - 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.
 - 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.
 - 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, not to my knowledge.

31. 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?
 - b. Are you currently in contact with anyone associated with the Open Society Foundations?
 - c. Have you ever been in contact with anyone associated with the Open Society Foundations?

RESPONSE: With respect to question c, during my time in government, I have occasionally participated in meetings with civil society groups to discuss issues relevant to my work, such as legal issues related to counterterrorism or government surveillance. I believe representatives from the Open Society Foundations have been present at some of these meetings, alongside other groups. I am not currently in contact with anyone associated with the Open Society Foundations, to my knowledge.

32. 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?
 - 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?
 - 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, not to my knowledge.

33. Please describe the selection process that led to your nomination to be Assistant Attorney General, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

RESPONSE: On or about June 16, 2023, the White House began communicating with me about my interest in serving in the Office of Legal Counsel at the Justice Department. From late June until I was nominated on September 5, 2023, I was in contact with officials from the Department of Justice, the White House Counsel’s Office, and the White House Office of Presidential Personnel regarding my potential nomination and the nomination process. Since my nomination on September 5, 2023, I have been working with attorneys at the Justice Department to advance my nomination.

34. 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, not to my knowledge.

35. 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, not to my knowledge.

36. 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, not to my knowledge.

37. 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, not to my knowledge.

38. 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, not to my knowledge.

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

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

RESPONSE: No.

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

RESPONSE: On or about June 16, 2023, the White House began communicating with me about my interest in serving in the Office of Legal Counsel at the Justice Department. From late June until I was nominated on September 5, 2023, I was in contact with officials from the Department of Justice the White House Counsel's Office, and the White House Office of Presidential Personnel regarding my potential nomination and the nomination process. Since my nomination on September 5, 2023, I have been working with attorneys at the Justice Department to advance my nomination.

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

RESPONSE: After the Department of Justice received these questions on November 8, 2023, I worked with Department attorneys to answer the questions and finalized answers on November 13, 2023.

Senate Judiciary Committee

Nominations Hearing

November 1, 2023

Questions for the Record

Senator Amy Klobuchar

For Christopher Charles Fonzone, nominee to serve as Assistant Attorney General, Office of Legal Counsel

You previously served as an attorney-advisor at the Office of Legal Counsel (OLC). You have also served in various legal capacities in the executive branch including as a Deputy Assistant and Counsel at the White House Counsel's Office, Legal Advisor to the National Security Council, and most recently as General Counsel in the Office of the Director of National Intelligence (ODNI).

- How have your experiences both as an attorney-advisor at OLC and as an executive branch attorney who relies on OLC opinions shaped your views on the role of OLC?

RESPONSE: I have seen firsthand the importance of the Office of Legal Counsel's unique mission. Earlier in my career, I had the privilege of serving as an attorney advisor in the office. While doing so, I was able to observe how the office sought to advance the rule of law and contribute to the important work of the country by carefully deliberating over difficult legal questions and providing officials across the executive branch with candid, independent, and principled legal advice.

The importance of OLC's mission became even more apparent to me later in my career. As the legal advisor to the National Security Council and now as the general counsel of the Office of the Director of National Intelligence, I have often confronted difficult legal questions that have significant implications for the intelligence officers, service members, and diplomats who are doing difficult and often dangerous jobs far away from home and who are committed to protecting the nation in a manner consistent with the Constitution and the laws of our country.

I have always endeavored to provide my clients with the most timely, practical, and sound counsel that I can on these questions. But I've also

learned that it is precisely in these circumstances—when you are facing difficult legal issues and the stakes are high—that it’s most necessary and helpful to be able to pick up the phone and seek advice from an Office that is simply dedicated to providing its best view of the law.

Senator Peter Welch
Senate Judiciary Committee
Written Questions for Chris Fonzone
Hearing on “Nominations”
November 1, 2023

Please find below questions submitted for the record to you following your appearance at the June 13, 2023, Senate Judiciary Committee hearing on “Oversight of Section 702 of the Foreign Intelligence Surveillance Act and Related Surveillance Authorities.” As of November 1st, 2023, the Committee has not yet received responses. Please provide responses, pursuant to the original instructions, reproduced below, as soon as possible. In addition, please detail all steps you have personally taken to provide the Committee with answers to the questions below since your receipt of the questions in June.

Where you are unable to answer a question completely because the answer is classified or for any other reason, please answer as much of the question as possible in the public record. Further, please explain why you cannot provide complete information publicly, to the extent possible, and indicate where you will follow up with the complete answer separately in a closed setting.

1. Please provide the total costs incurred by your agency in support of FISA Section 702 collection, storage, and searching for each of the last five years.
2. Please provide the total number of personnel and contractors in your agency who perform oversight and compliance duties to ensure the lawful conduct of activities under FISA Section 702, along with the total related budget, for each of the last five years.
3. Except pursuant to a warrant, are personnel or contractors of your agency authorized to conduct a U.S. person query of data collected under FISA Section 702 to search for evidence of a crime committed by an American, in the absence of any evidence of a connection to crime that transcends national boundaries?
4. Has your agency purchased, received, or otherwise come into possession of commercial datasets that contain the location information of Americans or communications of Americans, including related metadata, within the last five years?
 - a. If yes, has your agency intentionally accessed that information related to Americans in any manner except pursuant to a court order?
 - b. Please provide copies of all written policies that govern obtaining, retaining, or using commercial datasets containing information of Americans.

5. Please provide the complete demographic breakdown of the targets of U.S. person queries of data collected under FISA Section 702 for the last five years. This information should include, but is not limited to, age, gender, sex, race, ethnicity, economic class, residence, nationality, and country of origin. To the extent that this information is only partially tracked by your agency, please provide the information available and provide copies of written policies that govern the collection and analysis of this demographic data.
6. Does your agency currently deploy any AI tools across the database of information collected under FISA Section 702, and does your agency have any plans to do so within the next five years?
7. How does your agency define “intentional misconduct” and “negligence” in the context of agency personnel or contractors conducting improper U.S. personal queries of FISA Section 702 data?
 - a. Please provide copies of all related written policies.

RESPONSE 1-7: It is my understanding that the Office of the Director of National Intelligence is in the process of responding to these questions for the record for the Committee’s June 12, 2023, hearing entitled “Oversight of Section 702 of the Foreign Intelligence Surveillance Act.” If confirmed and then asked to provide a legal opinion on any of these subjects, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

Sen. Grassley’s Written Questions for Charles Fonzzone, to be Assistant Attorney General, Office of Legal Counsel, U.S. Senate Judiciary Committee Hearing “Nominations,” November 1, 2023

1. The job of the Office of Legal Counsel is to interpret the law and provide impartial legal advice. If the law conflicts with your personal policy preferences on an issue that requires your legal counsel, what analytical process do you follow to ensure that your counsel conforms with the law?
2. If the law conflicts with the policy preferences of the presidential administration on an issue that requires your legal counsel, what process do you follow to ensure that your counsel conforms with the law?

RESPONSE 1-2: If confirmed and then asked to provide a legal opinion on any subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent, and not my own personal preferences or the policy preferences of the administration. I will adhere to the best practices of the Office of Legal Counsel that are designed to ensure that the Office’s advice is clear, accurate, thoroughly researched, and soundly reasoned.

3. I’ve raised concerns about an erroneous opinion issued by the Office of Legal Counsel which claimed that individual members of Congress are not constitutionally authorized to request information from the Executive Branch. That opinion was later walked back by the Trump Administration after my pressure. However, to better understand where you stand, I’m asking your thoughts on the matter. The opinion created a false distinction between oversight and what it called “non-oversight” requests. It relegated requests from non-chairman and individual members of Congress to the same status as Freedom of Information Act requests. I believe this position was inconsistent with the Constitution, which does not even mention committee chairman. Each member of Congress is a duly elected constitutional officer with the authority to conduct oversight and request information from the Executive Branch.

* Do you agree with me that every member of Congress is a constitutional officer with the authority to conduct oversight?

RESPONSE: Every member of Congress is a constitutional officer and may seek and receive information from the Executive Branch.

* Do you agree that it is the responsibility of the executive branch to answer all congressional inquiries, regardless of whether the member making the request is a committee chairman or not?

RESPONSE: The Attorney General has stated that members of Congress are entitled to responses to their letters. I agree with the Attorney General, and my understanding is that the policy of the Department of Justice is to respond to requests for information made by any member of Congress as fully as possible, consistent with the law, longstanding Department policies, and the Department's litigation, law enforcement, and national security responsibilities.

4. When the Justice Department seeks information relating to Members of Congress and staff, including specifically phone data, what legal standard does the government have to satisfy in order to compel that information? With respect to that standard, please describe whether – and why – you believe it satisfies constitutional requirements. In your answer, please also describe (1) whether you believe the Justice Department manual provides sufficient safeguards and procedures for obtaining congressional information, and (2) if not, what changes should be made.

RESPONSE: While I am not currently serving in the Department of Justice and have never served as a prosecutor, I understand that the Department is guided by principles of federal prosecution to ensure that federal prosecutors are even-handed in the fair and faithful execution of the law, while scrupulously protective of the rights of individuals involved in criminal investigations. *See Justice Manual § 9.27.001.* It is important that the Department holds all persons, including public officials, accountable under federal law, while ensuring consistency of approach and appropriate respect for a co-equal branch of government. For certain categories of sensitive investigative steps and matters—including those involving Members of Congress—the Department has long recognized the need to establish additional protocols to ensure that they are handled with uniformity and consistency across the Department. It is my understanding that the Department recently reviewed its policies and procedures for these cases and identified several necessary clarifications, which are being codified in the Justice Manual.

Senator Mike Lee
Questions for the Record
Christopher Charles Fonzone, Nominee for Assistant Attorney General,
Office of Legal Counsel, U.S. Department of Justice

1. Before you worked in the Office of the Director of National Intelligence, you worked for the State Department, the National Security Council, the Department of Justice, and the Department of Defense. While maintaining a position at the State Department, you began a relationship with three Chinese organizations with substantial ties to the Chinese Communist Party—Huawei, the Ministry of Commerce of the People’s Republic of China, and the Hong Kong Trade Development Council.

Did these Chinese entities seek your assistance because of your extensive experience in sensitive government organizations? Did you provide the Chinese Communist Party—either directly or through one of its subsidiaries—with information to bolster China’s surveillance capabilities?

2. From 2019 to 2020, you advised the Hong Kong Trade Development Council (“HKTDC”) during the height of the pro-democracy protests in Hong Kong. The HKTDC is staffed by Beijing loyalists. Pro-CCP politicians in Hong Kong cooperated with Beijing to institute brutal anti-democracy police tactics, employing advanced facial recognition techniques and other technological suppression measures. You testified to a congressional committee that you contributed to a quarterly report on “global privacy developments provided to [HKTDC].” Are you confident that your involvement with HKTDC did not contribute to the anti-democratic suppression efforts of the CCP?
3. Subsequent to your work for those Chinese organizations, you worked for the Office of the Director of National Intelligence. You are currently nominated to the Department of Justice’ Office of Legal Counsel. If approached by another Chinese entity seeking to capitalize on your vast knowledge, would you do any type of work—consulting or otherwise—for that organization while employed by the United States Federal Government?

RESPONSE 1-3: My private practice was principally focused on helping clients understand how to comply with U.S. law. This includes the limited work I did for the clients with ties to China mentioned in the question. This work has not affected my ability to serve in my current role and provide objective legal advice as the General Counsel in the Office of the Director of National Intelligence.

Furthermore, in the course of the nomination process, I have consulted with Executive Branch Ethics Officials, who in turn, consulted with the Office of Government Ethics to identify potential conflicts of interest, including conflicts based on my prior work for clients. If confirmed, I will continue to consult with these ethics officials to ensure that potential conflicts with any former clients will

be resolved in the manner required by the conflicts of interest statutes, standards of conduct regulations, and the terms of the Ethics Agreement that I have executed. Moreover, if confirmed and consistent with existing law, I would not take on outside employment for any entity while serving as the Assistant Attorney General for the Office of Legal Counsel.

SENATOR TED CRUZ

U.S. Senate Committee on the Judiciary

Questions for the Record for Christopher Charles Fonzone, nominated to be Assistant Attorney General, Office of Legal Counsel, Department of Justice.

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. Are OLC opinions treated as binding interpretations of law?

RESPONSE: OLC exercises delegated authority from the Attorney General's to provide the President and executive agencies with advice on questions of law. Pursuant to this delegation, OLC provides controlling advice to Executive Branch officials on questions of law.

2. Unless a subsequent OLC opinion repudiates an OLC opinion, is that opinion treated as essentially executive branch precedent?

RESPONSE: OLC provides controlling advice to Executive Branch officials on questions of law. An OLC opinion is therefore controlling on the questions addressed unless withdrawn.

3. There are two OLC memos, one from 1973¹ and the other 2000² that conclude that a sitting president is immune from indictment. In keeping with these memos, can Attorney General Garland constitutionally authorize a special counsel to prosecute President Biden for violations of federal law?

RESPONSE: OLC's referenced 1973 and 2000 memoranda have not been withdrawn and remain controlling advice to the Executive Branch.

4. If you are confirmed to lead OLC, will you commit to this Committee to

¹ Memorandum from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, Re: Amenability of the President, Vice President and other Civil Officers to Federal Criminal Prosecution while in Office (Sept. 24, 1973) (concluding all federal civil officers except the President are subject to indictment and criminal prosecution while still in office; the President is uniquely immune from such process). Available at <https://irp.fas.org/agency/doj/olc/092473.pdf>.

² *A Sitting President's Amenability to Indictment and Criminal Prosecution*, 24 Op. O.L.C. 222 (2000). Available at <https://www.justice.gov/file/19351/download>.

releasing any OLC memos, guidance, opinions, or related documents concerning Attorney General Garland requesting a new opinion?

RESPONSE: It is longstanding OLC practice not to announce what questions the Office is considering. If confirmed, however, I am committed to working to provide the Committee with appropriate information it needs to conduct oversight of the Department, including OLC, consistent with Executive Branch confidentiality interests.

5. When the DOJ indicated Huawei was indicted bank fraud, wire fraud, conspiracy to defraud the United States, and theft of trade secrets, among other crimes, Christopher Wray said “The prosperity that drives our economic security is inherently linked to our national security. And the immense influence that the Chinese government holds over Chinese corporations like Huawei, represents a threat to both. As Americans, we should all be concerned by the potential for any company beholden to a foreign government—especially one that doesn’t share our values—to burrow into the American telecommunications market.” Do you agree or disagree with Director Wray’s statement?

RESPONSE: I agree with Director Wray and many others in Congress and the Executive Branch who have expressed concerns over the risks posed by Chinese companies.

6. During your November 1, 2023 nomination hearing, you described your involvement with Huawei as “a small amount of work at the request of other partners.” Further, you testified that the work focused on privacy and cybersecurity. As a partner at Sidley in 2018, why not decline to work for a company that everyone seems to acknowledge is controlled by the Chinese Communist Party?

RESPONSE: My limited work with this client was done at the firm’s request and it has not affected my ability to serve in my current role and provide objective legal advice as the General Counsel in the Office of the Director of National Intelligence.

7. While in law school you wrote a case note arguing for an Establishment

Clause test for jury deliberations. You based this on the idea that an Establishment Clause test would better shield defendants from the “unpredictable impact of religion in the jury room than the common law prejudice inquiry.” Would the position you advanced comport with *Kennedy v. Bremerton School District*?

RESPONSE: The case note referenced is one that I wrote while in law school. My views as an attorney have developed significantly since then, and there have also been a number of intervening Establishment Clause precedents. If confirmed and asked to provide a legal opinion about this issue, I would study carefully the Constitution, the text of any applicable laws, and judicial precedent, and provide the best advice possible.

Senator Josh Hawley
Questions for the Record

Christopher Charles Fonzone
Nominee, Assistant Attorney General, Office of Legal Counsel

- 1. You indicated in your testimony that you advised the Hong Kong Trade Development Council on “issues of privacy and cybersecurity” during the pro-democracy protests of 2019 and 2020. Did that advice concern surveillance activities conducted in Hong Kong?**
- 2. Did it concern surveillance conducted in China?**
- 3. Did you advise the Hong Kong Trade Development Council on the privacy rights of United States citizens?**
- 4. Did you advise the Hong Kong Trade Development Council on cybersecurity issues relevant to United States citizens?**
- 5. Did you at any point urge the Hong Kong Trade Development Council to condemn the brutal crackdown against pro-democracy protestors?**

RESPONSE 1-5: My private practice was principally focused on helping clients understand and comply with U.S. law. This includes the limited work I did for clients with ties to China, including the client discussed in the question; specifically, my legal work in private practice on behalf of that client was limited to contributing, at the request of a law firm partner, to the U.S. section of a quarterly report on global privacy developments.

- 6. Have you ever worked on a legal case or representation in which you opposed a party’s religious liberty claim?**
 - 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: No, not to my knowledge.

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

RESPONSE: When interpreting the Constitution, the Supreme Court has considered the original public meaning of the Constitution’s text. If confirmed and presented with a constitutional question, I will provide guidance based on traditional sources of constitutional meaning, including the text of the Constitution, the historical record illuminating the text’s meaning, the Constitution’s structure and purpose, and judicial

and Executive Branch precedents interpreting relevant constitutional provisions.

- 8. Do you consider legislative history when interpreting legal texts?**
- 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?**
 - 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 Supreme Court has indicated that it may be appropriate to consider legislative history as a guide in interpreting ambiguous statutory text. *See Bostock v. Clayton Cnty., Georgia*, 140 S.Ct. 1731, 1749 (2020). Foreign law is not binding on U.S. constitutional interpretation, although it may have some relevance depending on the particular clause and question at issue. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (studying English historical materials and concluding that by “the time of the founding, the right to have arms had become fundamental for English subjects”). If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

- 9. 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: I have not been nominated for a role in the judicial branch.

- 10. 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: In my career, I have not had the occasion to consider this question in depth. Moreover, OLC’s best practices include ensuring that the Office’s opinions are thoroughly discussed by multiple attorneys, and I would not want to bypass that process by expressing a view here. If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

- 11. 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: I have not been nominated for a role in the judicial branch.

- 12. 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: I have not been nominated for a role in the judicial branch.

- 13. 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: I have not been nominated for a role in the judicial branch.

- 14. 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: I have not been nominated for a role in the judicial branch.

- 15. 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: I have not been nominated for a role in the judicial branch.

- 16. 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)?**
- 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: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects "an individual right to keep and bear arms." *Id.* at 595. I have not issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law, but, if confirmed and presented with a question related to the Second Amendment, I would work to ensure any OLC opinion offers the best view of the law consistent with *Heller* and other relevant precedents.

- 17. 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).**
- What do you believe Justice Holmes meant by that statement, and do you agree with it?**
 - Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?**

RESPONSE: *Lochner* has been overruled. *West Coast Hotel v. Parrish*, 300 U.S. 397 (1937). If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

- 18. 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*, the Supreme Court stated that it was making “express what is already obvious: *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.” 138 S. Ct. 2392, 2423 (2018) (citation and quotation marks omitted). If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

- 19. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?**
- If so, what are they?**
 - With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?**

RESPONSE: In my career, I have not had the occasion to consider this question in depth. Moreover, OLC’s best practices include ensuring that the Office’s opinions are thoroughly discussed by multiple attorneys, and I would not want to bypass that process by expressing a view here. I do, however, commit that, if I am confirmed, I will seek to provide guidance based on the best view of the law, based on, among other things, applicable Supreme Court and other judicial precedent, and not my own personal preferences.

- 20. 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).**
- Do you agree with Judge Learned Hand?**
 - If not, please explain why you disagree with Judge Learned Hand.**

- 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: In my career, I have not had the occasion to consider this question in depth. Moreover, OLC's best practices include ensuring that the Office's opinions are thoroughly discussed by multiple attorneys, such that I would not want to bypass that process by expressing a view here. If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

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

RESPONSE: It is my understanding that Federal common law exists in two general categories. *See generally Erie v. Tompkins*, 304 U.S. 64 (1938). First, where Congress has given the federal courts power to develop substantive law. *Id.* Second, where a federal rule of decision is needed to protect uniquely federal interests. *Id.*

- 22. 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?**
- a. **Do you believe that identical texts should be interpreted identically?**
 - b. **Do you believe that the federal provision provides a floor but that the state provision provides greater protections?**

RESPONSE: In my career, I have not had the occasion to consider this question in depth. Moreover, OLC's best practices include ensuring that the Office's opinions are thoroughly discussed by multiple attorneys, such that I would not want to bypass that process by expressing a view here. If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

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

RESPONSE: Yes, the unconstitutionality of laws requiring racial segregation is well-settled.

- 24. Do federal courts have the legal authority to issue nationwide injunctions?**
- a. **If so, what is the source of that authority?**
 - b. **In what circumstances, if any, is it appropriate for courts to exercise this authority?**

25. 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 24-25: Injunctions are a form of equitable relief, a court ordered remedy providing relief other than money damages. Nationwide injunctions usually refer to an injunction against the government that prevents the government from implementing a challenged law or regulation. If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

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

RESPONSE: The Supreme Court has said that “federalism secures to citizens the liberties that derive from the diffusion of sovereign power.” *Bond v. United States*, 564 U.S. 211, 221 (2010) (quoting *New York v. United States*, 505 U.S. 144, 181 (1992)). If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

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

RESPONSE: The Supreme Court has established several abstention doctrines, such as *Younger* abstention. See *Younger v. Harris*, 401 U.S. 37 (1971). If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

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

RESPONSE: In my career, I have not had the occasion to consider this issue in depth. Moreover, OLC’s best practices include ensuring that the Office’s opinions are thoroughly discussed by multiple attorneys, such that I would not want to bypass that process by expressing a view here. If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

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

RESPONSE: The Supreme Court has stated that its precedents have recognized certain fundamental rights protected by the Fifth and Fourteenth Amendments as a matter of substantive due process. See, e.g. *Dobbs v. Jackson’s Women’s Health Org.*, 142 S. Ct. 2228, 2257 (2022). If confirmed and then asked to provide a legal opinion on this

subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

- 30. 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?**
 - b. **Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?**
 - c. **What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?**
 - d. **Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?**
 - 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?**
 - 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: Religious freedom is a founding principle of the United States. If confirmed, I will seek to ensure that all Department of Justice guidance, including any guidance on this subject, is consistent with relevant constitutional and statutory provisions and with applicable precedent.

- 31. 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: In my career, I have not had the occasion to consider this issue in depth. Moreover, OLC’s best practices include ensuring that the Office’s opinions are thoroughly discussed by multiple attorneys, such that I would not want to bypass that process by expressing a view here. If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

- 32. 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”?**
- 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”?**
- c. If you disagree with either of these statements, please explain why and provide examples.**

RESPONSE: In my career, I have not had the occasion to consider this issue in depth. Moreover, OLC’s best practices include ensuring that the Office’s opinions are thoroughly discussed by multiple attorneys, such that I would not want to bypass that process by expressing a view here. If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

33. 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.

- a. Do you believe it is appropriate for courts to issue “unpublished” decisions?**
- b. If yes, please explain if and how you believe this practice is consistent with the rule of law.**
- c. If confirmed, would you treat unpublished decisions as precedential?**
- d. If not, how is this consistent with the rule of law?**
- e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?**
- 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.**
- 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: In my career, I have not had the occasion to consider this issue in depth, and litigants do not appear before the Office of Legal Counsel. Moreover, OLC’s best practices include ensuring that the Office’s opinions are thoroughly discussed by multiple attorneys, such that I would not want to bypass that process by expressing a view here. If confirmed and then asked to provide a legal opinion on this subject, I will provide guidance based on the law, Constitution, and applicable judicial precedent.

34. In your legal career:

- a. How many cases have you tried as first chair?**
- b. How many have you tried as second chair?**

- c. **How many depositions have you taken?**
- d. **How many depositions have you defended?**
- e. **How many cases have you argued before a federal appellate court?**
- f. **How many cases have you argued before a state appellate court?**
- g. **How many times have you appeared before a federal agency, and in what capacity?**
- h. **How many dispositive motions have you argued before trial courts?**
- i. **How many evidentiary motions have you argued before trial courts?**

RESPONSE: My legal career has been primarily focused on regulatory and advisory work. As such, while I have frequently provided advice and counsel on issues related to disputes and litigation, by, for example, discussing matters within my areas of expertise, reviewing filings, and participating in moot arguments, the majority of my legal work has not directly involved litigation. As such, to the best of my recollection, I have not done any of the activities listed above, with the exception of arguing one case before a federal appellate court.

- 35. 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?**
 - b. **What portion of these were dedicated to pro bono work?**

RESPONSE: The majority of my legal career has been spent in government, where I have not had to track billable hours. Between November 2017 and June 2021, however, I worked at Sidley Austin LLP and did track my time. I cannot recall the exact number of hours I billed during my time at Sidley, but I believe the maximum number of hours that I billed in a single year (including client billables, pro bono work, and other administrative matter) was approximately 2,700–2,800. I also do not recall precisely how many pro bono hours I billed that year, although my estimate would be around 100.

- 36. 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 understand this statement to mean that judges who make decisions based upon the law, Constitution, and applicable judicial precedent must sometimes make decisions with which they do not personally agree.

- 37. 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?**
 - b. **Do you agree or disagree with this statement?**

RESPONSE: I understand this statement to mean that it is not a judge’s duty to create constitutional provisions and statutes, and that their job is to construe the constitutionality and substance of the law. I agree with this statement.

38. 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?

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

RESPONSE: I understand this statement to mean that a judge’s duty is to apply the law without regard to the judge’s personal sense of seeking justice.

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

a. If yes, please provide appropriate citations.

RESPONSE: To the best of my knowledge, no.

40. 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.

41. What were the last three books you read?

RESPONSE: The MANIAC, Benjamin Labatut

Fidelity and Constraint, Lawrence Lessig

The Big Sleep, Raymond Chandler

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

RESPONSE: I do not believe America is systemically racist.

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

RESPONSE: As I noted in response to Question #34, my legal career has been primarily focused on regulatory and advisory work and not litigation. As such, most of my career has not focused on particular matters, but rather providing counsel to my clients about the range of issues that confront them. To that end, the thing I am most proud of is that I have been able to spend a large part of my career in a variety of roles—at the Departments of Justice and Defense, the National Security Council, and now the Office of the Director of National Intelligence—where I have been able to provide advice that

has hopefully been useful to the national security professionals—intelligence officers, service members, and diplomats—who are doing difficult and often dangerous jobs far away from home and who are committed to protecting the nation in a manner consistent with the Constitution and the laws of our country.

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

a. How did you handle the situation?

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

RESPONSE: The rule of law is best served when decisionmakers receive thoughtful, frank, and independent legal advice, without the influence of personal views. If confirmed, I will adhere to the best practices of the Office that are designed to promote answers that reflect the best view of the law, without regard to my personal policy preferences, the policy preferences of the administration, or any other improper biases.

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

RESPONSE: Throughout my legal career, I have frequently consulted the works of a wide range of legal scholars, such that it is difficult to select just three whose work I read most often. In my current job as General Counsel of the Office of Director of National Intelligence, the scholars I consult most frequently are those who write in the field of national security law or on topics relevant to intelligence activities.

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

RESPONSE: If I had to pick one, it would be Federalist 51, in which Madison emphasizes the importance of the separation of powers and having the three branches of government check and balance each other. During my career in government, I have seen the genius of this construct in action as I have advised clients on inter-branch relations.

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

RESPONSE: Judge Learned Hand famously said that “the spirit of liberty is the spirit which is not too sure that it is right.” Consistent with this, I find that judicial opinions and legal scholarship frequently shape my views. For example, I remember that Jack Goldsmith’s books *The Terror Presidency* and *Power and Constraint* informed my understanding of the constraints under which the Executive Branch operates when conducting national security activities.

48. Do you now or have you ever owned a firearm?

RESPONSE: No.

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

RESPONSE: If confirmed and asked to render a legal opinion, I would follow the law, including Supreme Court precedent, such as *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ____ (2022).

50. 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: Yes. I previously testified under oath before Congress before on the following occasions:

Oversight of Section 702 of the Foreign Intelligence Surveillance Act and Related Surveillance Authorities Before the S. Judiciary Comm., 118th Cong. (June 13, 2023), <https://www.judiciary.senate.gov/oversight-of-section-702-of-the-foreign-intelligence-surveillance-act-and-related-surveillance-authorities>.

Nomination of Christopher C. Fonzone to be the General Counsel of the Office of the Director of National Intelligence Before the S. Select Intelligence Committee, 117th Cong. (May 18, 2021), <https://www.intelligence.senate.gov/hearings/open-hearing-nomination-christopher-c-fonzone-be-general-counsel-office-director-national>.

- 51. 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)?
 - b. The Supreme Court's substantive due process precedents?
 - c. Systemic racism?
 - d. Critical race theory?

RESPONSE: No.

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

- a. Apple? – No.
- b. Amazon? – No.
- c. Google? – No.
- d. Facebook? – No.
- e. Twitter? – No.

- 53. Have you ever authored or edited a brief that was filed in court without your name on the brief?**
- a. If so, please identify those cases with appropriate citation.**

RESPONSE: As noted in my response to Question #34, although my legal career has been primarily focused on regulatory and advisory work, I have frequently been asked to review litigation filings within my areas of expertise and focus, and I cannot recall all of the instances when I have done so.

- 54. Have you ever confessed error to a court?**
- a. If so, please describe the circumstances.**

RESPONSE: I cannot recall ever having confessed error to a court.

- 55. 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: Nominees who appear before Senate Judiciary Committee must swear an oath that the testimony they are about to give will be the truth, the whole truth, and nothing but the truth, so help them God. On November 1, 2023, I swore that oath, and I abided by it.

Questions from Senator Thom Tillis
for Charles Fonzzone, nominee to be Assistant
Attorney General for the Office of Legal Counsel

1. Do you agree that statutes should be interpreted as drafted by Congress, not as desired by federal bureaucrats?

RESPONSE: I agree that, if confirmed and asked to interpret a statute, I would seek to provide thoughtful, frank, and independent legal advice, consistent with OLC's best practices and based on the best view of the law, and that advice should never be written merely to justify the policy preferences of the President or other officials.

2. I am concerned that DOJ has gone beyond the scope of Bipartisan Safer Communities Act (BSCA) in several areas – for example, the hunter and archery programs. Can you commit to ensuring that congressional intent is given proper weight in opinions by the Office of Legal Counsel?

RESPONSE: As I noted in response to Question #1, if confirmed and asked to interpret a statute, I would seek to provide thoughtful, frank, and independent legal advice, consistent with OLC's best practices. These best practices include conducting thorough and thoughtful analysis of every question presented to OLC—including appropriate consideration of legislative intent—and ensuring OLC opinions represent the best view of the law. Complying with these best practices is essential to the integrity and credibility of the office.