Senator Lindsey Graham, Ranking Member
Questions for the Record
Ms. Sara Elizabeth Hill, nominee to be United States District Judge for the Northern District of Oklahoma

1. **Please explain whether you agree or disagree with the following statement: "The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach."**

   Response: I disagree with that statement. A district judge is bound to impartially apply the precedent established when interpreting the Constitution. Judges are not free to disregard precedent and substitute their own value judgments, which would undermine the rule of 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 unfamiliar with this response, but I disagree with the concept that lower court judges should attempt to avoid application of binding precedent from the Supreme Court. If so fortunate as to be confirmed, I would impartially apply the precedent established by the Supreme Court and the Tenth Circuit in every case.

3. **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 a disqualification for a potential clerkship in your chambers? 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: Yes. I would consider public endorsement or praise for a terrorist organization disqualifying for a potential clerkship in my chamber if I am confirmed.

4. **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." Do you consider such a statement, publicly made by a law student, to be disqualifying with regards to a potential clerkship in your chambers? 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: Yes, I consider this statement to be disqualifying regarding a potential clerkship in my chamber if I am confirmed.

5. **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: Title 28 United States Code, Section 2254 states that a "district court shall entertain an application for a 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." 28 U.S.C § 2254(a).

   To obtain habeas corpus relief a state prisoner must demonstrate that he or she has exhausted all remedies before the state court and that "there is an absence of available State corrective process." 28 U.S.C. § 2254(b)(1).

   An application for a writ of habeas corpus for a person in state custody "pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

   When reviewing a state court's decision to determine whether that decision is an unreasonable application of the Supreme Court's case law, "the ruling must be objectively unreasonable, not merely wrong; even clear error will not suffice." Virginia v. LeBlanc, 582 U.S. 91, 94 (2017).

6. **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: Title 28 United States Code, Section 2255 governs how a prisoner held under a federal sentence may seek relief from that sentence.

   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.
   28 U.S.C § 2255(a).

   A prisoner may also challenge the constitutionality of their conviction or sentence under 28 U.S.C. § 2241 in a civil action against the warden of the facility in which they are housed. These civil suits are filed in the jurisdiction where the prison is located. See 28 U.S.C. § 2241(d). "A habeas application under 28 U.S.C. § 2241 generally attacks the execution of a sentence rather than its validity." Leatherwood v. Allbaugh, 861 F.3d 1034, 1041 (10th Cir. 2017)

7. **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. President & Fellows of Harvard College and Students for Fair Admissions, Inc. v. University of North Carolina, the Supreme Court reviewed the admissions policies by both universities which considered a potential student's race during its candidate ranking and selection process. 600 U.S. 181, 191(2023). The Supreme Court held that race-based admissions programs were subject to strict scrutiny to determine whether the admissions policies violated the Fourteenth Amendment. The Court held that the goals of the policies were not sufficiently coherent to survive strict scrutiny. Id. at 214. The Court determined that the admissions policies violated the Constitution and Title VI.

8. **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: During my time as Deputy Attorney General, I assisted in making hiring decisions for staff and attorneys. As Secretary of Natural Resources, I made hiring decisions for staff involved in environmental permitting programs and GIS. As Attorney General, I made hiring decisions regarding support staff, juvenile justice, probation, and attorneys.

9. **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.

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

    Response: No.

11. **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, not to the best of my knowledge.

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.

12. **Under current Supreme Court and Tenth 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 Coll., 143 S. Ct. 2141 (2023).

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

    Response: The plaintiff in 303 Creative LLC v. Elenis was a graphic designer who wished to create wedding websites but did not want to be required to create wedding websites for same-sex couples due to her religious beliefs. She sought to enjoin the Colorado Civil Rights Commission from enforcing the Colorado Anti-Discrimination Act, which could have lodged an enforcement action against her if she refused to create such websites for same-sex couples. 303 Creative, 600 U.S. 570, 580 (2023). The Court held that the creation of a website was pure speech by the plaintiff, and the Constitution's free speech clause did not permit enforcement of a law which compelled speech. Id. at 587.

14. **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: The Supreme Court recently referenced this quote in 303 Creative LLC v. Elenis, 600 U.S. 570, 585 (2023), which indicates that the quote has a continuing value to the Justices and relevancy within their jurisprudence.

15. **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: When determining whether a law regulates speech in a way that is "content-based" or "content-neutral," I would apply binding Supreme Court and Tenth Circuit precedent, including Reed v. Town of Gilbert, 576 U.S. 155, 163-64 (2015), City of Austin v. Reagan Nat'l Advert. of Austin, LLC, 596 U.S. 61 (2022), and

StreetMediaGroup, LLC v. Stockinger, 79 F.4th 1243 (10th Cir. 2023). In Reed, the Supreme Court held that "[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." 576 U.S. at 163 (citations omitted). Pursuant to Reed, "the crucial first step in the content-neutrality analysis" is "determining whether the law is content neutral on its face." Id. at 165. If is determined that the law is neutral on its face, I would then consider "the law's justification or purpose" to determine whether it is "content-based." Id. at 166.

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

Response: The Supreme Court has held that "[t]rue threats are 'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.'" Counterman v. Colorado, 600 U.S. 66, 74 (2023). The First Amendment "requires proof that the defendant had some subjective understanding of the threatening nature of his statements," but "a mental state of recklessness is sufficient." Id. at 2111–12. The government must show "that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence." Id. But the First Amendment requires no more than a recklessness mens rea standard. Id. at 2113.

17. **Under Supreme Court and Tenth Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?**

Response: Black's Law Dictionary defines "fact" as "[s]omething that actually exists; an aspect of reality" and as "[a]n actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation." Black's Law Dictionary (11th ed. 2019). Black's Law Dictionary defines a "question of law" as "[a]n issue to be decided by the judge, concerning the application or interpretation of the law" A jury cannot decide questions of law, which are reserved for the court. Id. Questions of fact are often mixed with questions of law, requiring analysis to determine the proper standard of review. In Roberts v. Printup, 595 F.3d 1181, 1186 (10th Cir. 2010), the Court said, "[o]ur review of mixed questions of law and fact will be "under the clearly erroneous or de novo standard, depending on whether the mixed question involves primarily a factual inquiry or the consideration of legal principles." Estate of Holl v. Comm'r, 54 F.3d 648, 650 (10th Cir. 1995).

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

Response: Congress has determined that the purposes of sentencing embrace just punishment, deterrence, incapacitation and rehabilitation. 18 U.S.C. 3553(a). A sentence including a term of imprisonment may serve further all four purposes simultaneously. Because the statute does not designate any of the four primary purposes as being superior

to the others, sentencing decisions must consider them all. If confirmed, I will follow the law and apply the binding precedent from the Supreme Court and the Tenth Circuit.

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

Response: As a nominee to the district court, the Code of Conduct for United States Judges requires that I maintain the integrity and impartiality of the courts by refraining from any action that could be interpreted as prejudging issues that litigants might bring before me. See Code of Conduct for United States Judges, Canon 3, A(6). Providing personal commentary on Supreme Court decisions would conflict with that. If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

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

Response: As a nominee to the district court, the Code of Conduct for United States Judges requires that I maintain the integrity and impartiality of the courts by refraining from any action that could be interpreted as prejudging issues that litigants might bring before me. See Code of Conduct for United States Judges, Canon 3, A(6). Providing personal commentary on Tenth Circuit decisions would conflict with that. If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Tenth Circuit's decisions.

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

Response: The law states that anyone "who, 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 or imprisoned not more than one year, or both."

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

Response: The Supreme Court has held that a state law that was nearly identical to 18 U.S.C. 1507 was a "narrowly drawn statute [and] obviously a safeguard both necessary and appropriate to vindicate the State's interest in assuring justice under law." Cox v. State of La., 379 U.S. 559, 562 (1965).

To the extent this question asks for my opinion as to the constitutionality of a federal law, I must refrain from prejudging issues that litigants may bring before the courts. See Code

of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

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

Response: No. Foreign law does not provide any binding interpretation of the U.S. Constitution. If confirmed, I would apply the interpretations that the Tenth Circuit and the Supreme Court have provided for constitutional provisions.

24. **Please answer the following questions yes or no. If you would like to include an additional narrative response, you may do so, but only after a yes or no answer:**

a. **Was *Brown v. Board of Education* correctly decided?**

Response: Yes. As a nominee to the district court, the Code of Conduct for United States Judges precludes me from offering commentary regarding my personal opinion on whether Supreme Court cases were correctly decided. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions. Because the law surrounding de jure segregation in Brown v. Board of Education is well settled and unlikely to be further litigated, I am allowed under the Code of Conduct to opine that this case was correctly decided.

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

Response: Yes. As a nominee to the district court, the Code of Conduct for United States Judges precludes me from offering commentary regarding my personal opinion on whether Supreme Court cases were correctly decided. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions. Because the law surrounding interracial marriage in Loving v. Virginia is well settled and unlikely to be further litigated, I am allowed under the code of conduct to opine that this case was correctly decided.

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

Response: As a nominee to the district court, the Code of Conduct for United States Judges precludes me from offering commentary regarding my personal opinion on whether Supreme Court cases were correctly decided. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

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

Response: This case was overruled by Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022). To the extent this question asks for my opinion as to the correctness of any Supreme Court precedent, I must refrain from prejudging issues that litigants may bring before the courts. If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

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

Response: This case was overruled by Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228 (2022). To the extent this question asks for my opinion as to the correctness of any Supreme Court precedent, I must refrain from prejudging issues that litigants may bring before the courts. If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

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

Response: As a nominee to the district court, the Code of Conduct for United States Judges precludes me from offering commentary regarding my personal opinion on whether Supreme Court cases were correctly decided. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

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

Response: As a nominee to the district court, the Code of Conduct for United States Judges precludes me from offering commentary regarding my personal opinion on whether Supreme Court cases were correctly decided. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

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

Response: As a nominee to the district court, the Code of Conduct for United States Judges precludes me from offering commentary regarding my personal opinion on whether Supreme Court cases were correctly decided. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

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

Response: As a nominee to the district court, the Code of Conduct for United States Judges precludes me from offering commentary regarding my personal opinion on whether Supreme Court cases were correctly decided. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

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

Response: As a nominee to the district court, the Code of Conduct for United States Judges precludes me from offering commentary regarding my personal opinion on whether Supreme Court cases were correctly decided. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

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

Response: As a nominee to the district court, the Code of Conduct for United States Judges precludes me from offering commentary regarding my personal opinion on whether Supreme Court cases were correctly decided. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

l. **Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?**

Response: As a nominee to the district court, the Code of Conduct for United States Judges precludes me from offering commentary regarding my personal opinion on whether Supreme Court cases were correctly decided. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

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

Response: As a nominee to the district court, the Code of Conduct for United States Judges precludes me from offering commentary regarding my personal opinion on whether Supreme Court cases were correctly decided. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding

precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

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

Response: When the plain text of the Second Amendment covers an individual's conduct, the Constitution presumptively protects that conduct. It falls to the government to justify any regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111, 2129–30, (2022). 2022); see also McDonald v. City of Chicago, 561 U.S. 742, 750 (2010); D.C. v. Heller, 554 U.S. 570, 635 (2008).

26. **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? If so, who?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Demand Justice? If so, who?**

    Response: No.

27. **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? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Alliance for Justice? If so, who?**

Response: No.

28. **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.

29. **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? If so, who?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations? If so, who?**

Response: No.

30. **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? If so, who?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Fix the Court? If so, who?**

    Response: No.

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

Response: In June 2021, I contacted the office of Senator James Lankford and the Office of White House Counsel to inquire about applying for the vacancy existing in the United States District Court for the Northern District of Oklahoma. Thereafter, I was screened and interviewed by a committee established by Senator Lankford to evaluate potential judicial candidates for appointment. On April 28, 2023, I met with Senator Lankford. On August 10, 2023, I met with attorneys from the White House Counsel's Office. Since August 26, 2023, I have been in contact with officials from the Office of Legal Policy at the

Department of Justice. On October 18, 2023, the President announced his intent to nominate me to the Senate.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **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.

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?

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

Response: On August 10, 2023, I met with attorneys from the White House Counsel's Office. Since August 26, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On October 18, 2023, the President announced his intent to nominate me to the Senate.

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

Response: I received these questions from the Office of Legal Policy at the Department of Justice on November 22, 2023. I prepared my responses and submitted a draft of those responses to the Office of Legal Policy. I made additional minor revisions in response to comments from the Office of Legal Policy. I then finalized and submitted these responses.

Questions for the Record from Senator Charles E. Grassley for Sara E Hill,

Nominee to be United States District Judge for the Northern District of Oklahoma

"Nominations"

November 15, 2023

1. **In your testimony at the hearing, you stated that the Cherokee Nation has the interest of a Shareholder in Cherokee Federal, a business arm that is operated by the Nation. In 2021, Cherokee Nation Management & Consulting LLC received a $706.9 million contract to operate the Pomona Emergency Intake Site for Unaccompanied Children. 51 CNCA § 105(B)(5) (effective as of March 19, 2007) says, "the duties of the Attorney General as the chief legal officer of the Nation shall be…[t]o prepare drafts of regulations, and of contracts and other instruments in which the Cherokee Nation government is interested and to render opinions on the legal sufficiency of all contracts and other instruments in which the Cherokee Nation is interested and the best interest of the people of the Cherokee Nation are served[.]" You testified that you "did not have anything to do with those contracts."**
    a. **Please explain why you, or your office, were not involved in the preparation or review of this contract despite the legal obligations placed on the Cherokee Nation Attorney General by 51 CNCA § 105(B)(5)?**

       Response: The Attorney General represents the Cherokee Nation. When I served as Attorney General, the office reviewed and drafted instruments involving the Cherokee Nation, but the Pomona Emergency Intake Site for Unaccompanied Children was not constructed or operated by the Cherokee Nation. It was operated by Cherokee Federal, which maintains its own legal existence, has its own in-house counsel, and its own CEO separate from the Cherokee Nation. As I stated at my hearing, the Attorney General's Office had no role in the handling of this contract during my tenure.

    b. **What is the procedure for bringing a contract "in which the Cherokee Nation government is interested" to the attention of the Cherokee Nation Attorney General's Office? Who in the Attorney General's Office is supposed to handle the review of such contracts?**

       Response: When I served as Attorney General, if there was a contract issue involving the Cherokee Nation, then the Attorney General's office would work on the matter. As I stated above in response to question 1(a), the facility in Pomona, California did not involve the Cherokee Nation. The Attorney General's Office had no role in the handling of this contract during my tenure.

c. **Whose responsibility was it to bring the 2021 Cherokee Nation Management & Consulting LLC Contract for the Pomona Emergency Intake Site to the attention of the Cherokee Nation Attorney General's Office?**

Response: As I stated above in response to question 1(a), there was no one who was charged with bringing the contract to the attention of the Attorney General's office. Cherokee Federal has its own in-house legal department and is a separate legal entity from the Cherokee Nation. The Attorney General's office had no role in handling this contract during my tenure.

d. **Was the 2021 Cherokee Nation Management & Consulting LLC contract for the Pomona Emergency Intake Site brought to your office's attention? If so, by whom?**

Response: I have never seen any contract for the Pomona Emergency Intake Site.

e. **Please identify the individual at Cherokee Nation Management & Consulting LLC who was responsible for the preparation of this contract?**

Response: I do not know who would have been responsible for the preparation of this contract.

2. **You testified that you recalled "there being a bit of controversy" about the Pomona Emergency Intake Site operated by Cherokee Federal. Please elaborate on the complaints you heard.**

Response: I remember hearing at some point that an unflattering article had been written about the facility. However, I do not recall any complaints about this matter.

3. **Do you recall any complaints about this matter? If so, what were they and how did your office respond?**

Response: I do not recall any complaints about this matter.

Senator Mike Lee
Questions for the Record
Sara Elizabeth Hill, Nominee for District Court Judge for the Northern District of Oklahoma

1. How would you describe your judicial philosophy?

Response: In my view, a District Judge must impartially and fairly hear every case, and if confirmed to serve in that role, I would employ a philosophy that involves careful study of precedents and neutral application of the law to the facts before me to achieve that. First, that process would include diligently identifying the relevant law, including all precedent from the Tenth Circuit and the Supreme Court. It's critical to study the record the litigants have created and consider each side of the argument with an open mind. I would then apply the law to the facts before me. Finally, I would test the outcome reached to confirm that I have thoroughly considered all relevant facts and fairly and properly applied the relevant law. This process limits the inquiry to the facts presented by the case and provides a foundation for fair adjudication of the issues.

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

Response: I would first turn to precedent from the Tenth Circuit and the Supreme Court, to see how these courts had interpreted the statute at issue. If precedent on point exists, I would apply the Supreme Court or Tenth Circuit interpretation to the case before me. If there was no such precedent, I would consult the text directly as any plain meaning that can be ascertained is dispositive. If the statute is ambiguous, then I would look to other circuits for persuasive authority interpreting the statute, search for analogous statutes that contain similar wording, apply canons of construction appropriate under Supreme Court and Tenth Circuit precedent, and where authorized by Tenth Circuit and Supreme Court precedent, review the legislative history, such as committee reports.

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

Response: District judges in Oklahoma must defer to the interpretations that the Tenth Circuit and the Supreme Court have provided for constitutional provisions. Those are the sources that I would consult when deciding a case that turned on the interpretation of a constitutional provision. If there were no precedent in the Supreme Court or the Tenth Circuit, I would look for persuasive authority from other Circuits.

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

Response: The Supreme Court precedent has instructed that plain meaning and original meaning of the text of a constitutional provision is essential. The importance

of original meaning and plain meaning has been addressed recently by the Court in several cases involving Constitutional interpretation. See Kennedy v. Bremerton School District, 142 S. Ct. 2407 (2022); New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111 (2022).

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

Response: Please see my response to question 2.

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 has instructed that courts should normally interpret a statute in accord with the ordinary public meaning of its terms at the time of its enactment. See Bostock v. Clayton Cnty., Georgia, 140 S. Ct. 1731, 1738 (2020).

7. What are the constitutional requirements for standing?

Response: There are three Constitutional requirements necessary to establish standing. First, the plaintiff must demonstrate an injury in fact that is concrete and particularized. Next, the plaintiff's injury must be fairly traceable to the challenged action of the defendant. Finally, the injury must be redressable by a favorable judicial decision. The Supreme Court has established these three requirements as the "irreducible" constitutional minimum of standing. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992).

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

Response: The Necessary and Proper Clause in Article I of the Constitution provides Congress the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, § 8, cl. 18. See McCulloch v. Maryland, 17 U.S. 316 (1819).

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

Response: The Supreme Court has held that Congress is not required to specify the source of its enumerated power. See Nat. Fed'n of Indep. Bus. v. Sebelius, 567 U.S.

519 (2012). Congress must nonetheless have a source of power under the Constitution to enact legislation. When analyzing the Constitutionality of any statute, I will follow the precedent of the Supreme Court and the Tenth Circuit.

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

Response: The Supreme Court has held that the Constitution protects certain rights that are not expressly enumerated in the Constitution. The rights protected are those deeply rooted in the Nation's "history and tradition" and "implicit in the concept of ordered liberty." See Washington v. Glucksberg, 117 S. Ct. 2258, 2268 (1997). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit regarding rights not expressly enumerated in the Constitution. While several rights have been identified by the Supreme Court, the number and extent of rights continues to be litigated. See Griswold v. Connecticut, 381 U.S. 479 (1965); Loving v. Virginia, 388 U.S. 1 (1967); Obergefell v. Hodges, 576 U.S. 644 (2015).

11. What rights are protected under substantive due process?

Response: Substantive due process rights are protected by the due process clause of the Fifth and Fourteenth Amendments and are identified as fundamental rights "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." Washington v. Glucksberg, 521 U.S. 702, 720-21 (1997). These rights include the right to marry, and the right to have and educate children, among others. See Loving v. Virginia, 388 U.S. 1 (1967) and Obergefell v. Hodges, 576 U.S. 644 (2015); Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942); Meyer v. Nebraska, 262 U.S. 390 (1923).

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: The Supreme Court has determined the status of substantive due process rights, whether personal or economic, and those decisions are binding on the district court. The Supreme Court overturned Lochner v. New York in W. Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937). A right to marital privacy was established in Griswold v. Connecticut, 381 U.S. 479 (1965). If confirmed, I will be bound by the precedent of the Supreme Court.

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

Response: The Supreme Court has identified three broad categories of activity that Congress may regulate pursuant to the Commerce Clause. Congress may regulate the channels of interstate commerce, the instrumentalities of interstate commerce, and

activities that have a substantial relation to interstate commerce. See United States v. Lopez, 514 U.S. 549, 558 (1995).

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 identified several suspect classes such that laws affecting the group must survive strict scrutiny. Suspect classes include race and national origin and also include alienage, which the Supreme Court has referred to as the "prime example of a 'discrete and insular' minority. Graham v. Richardson, 403 U.S. 365, 372, (1971). See Sugarman v. Dougall, 413 U.S. 634, 649 (1973) and Oyama v. California, 332 U.S. 633, 646 (1948).

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

Response: The Constitutional separation of power "diffuses power the better to secure liberty." Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952). The Constitution's checks and balances "enjoins upon its branches separateness but interdependence, autonomy but reciprocity." Id. These structures ensure that the "separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch." United States v. Lopez, 514 U.S. 549, 552 (1995).

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: I would examine the text of the Constitution and the binding precedent of the Supreme Court and the Tenth Circuit and diligently and thoroughly review the record and arguments submitted by the parties. The Supreme Court has addressed many circumstances where separation of powers was implicated, including Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952) and Nixon v. United States, 506 U.S. 224, 234-35 (1993).

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

Response: There is a role for empathy and patience when judges interact with counsel and the parties who appear before the court. Demonstrating courtesy and respect for others as required by Canon 3 of the Code of Conduct for United States Judges fosters that dynamic in the courtroom. In determining the outcome of a case, it is the law and the precedent of the Supreme Court and the Tenth Circuit that must inform decision-making. Decisions should not be based on an individual judge's thoughts, opinions, or sympathies.

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

Response: Neither of these outcomes is acceptable, as judges must avoid either circumstance. If confirmed, I would be bound to apply the precedent of the Supreme Court and the Tenth Circuit.

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: District Courts hear the matters that properly come before them, and cannot refuse to hear cases that challenge the constitutionality of a statute. I do not know what factors may have led to the changes described above. If confirmed, I would be bound to apply the precedent of the Supreme Court and the Tenth Circuit.

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

Response: Black's Law Dictionary defines "judicial review" as the "court's power to review the actions of other branches or levels of government." Black's Law Dictionary (11th ed. 2019). Black's Law Dictionary defines "judicial supremacy" as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019). The Supreme Court has held that the federal courts must invalidate an act of the legislature that is repugnant to the Constitution. Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803).

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: Article VI of the Constitution makes the Constitution the "supreme Law of the Land." Since Marbury v. Madison, it has been "emphatically the province and duty of the judicial department to say what the law is." Both state and federal elected

officials are obligated to support the Constitution and cannot decide to ignore judgments by the Supreme Court. Everyone is subject to the basic principle that "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." Cooper v. Aaron, 358 U.S. 1, 18 (1958).

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: The point that Hamilton was making, in my view, was that the separation of powers in the Constitution also created an interdependency between the branches that ensured the protection of the rights and privileges of the citizenry. While judges protect the will of the people as expressed in the Constitution from being overtaken by unconstitutional acts, the people must turn to the legislature to create laws and the executive to enforce those laws. The judiciary lacks the power to perform either of those vital functions. Each branch has its own powers and its own limitations by design.

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: It is not within the power of a district court judge to substitute his or her own judgment for the judgment of the Supreme Court or the relevant Circuit Court. If confirmed, I would follow the law and precedent of the Supreme Court and the Tenth Circuit faithfully in every respect. If no precedent spoke squarely to the issue under consideration, I analyze the issue based on the reasoning followed by the Supreme Court and the Tenth Circuit in related cases.

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: The individual defendant's race, gender, nationality, sexual orientation or gender identity does not play a role in the sentencing analysis. The factors considered

in sentencing are found in 18 U.S.C. 3553(a), and if confirmed I will reference those factors.

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: Black's Law Dictionary defines "equity" as "fairness; impartiality; evenhanded dealing. Black's Law Dictionary (11th ed. 2019). The word is used in many different contexts, and I do not have a personal definition that would operate in these contexts. If I were confirmed, I would apply the precedent of the Supreme Court and the Tenth Circuit.

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

Response: Black's Law Dictionary defines "equality as "[t]he quality, state, or condition of being equal; esp., likeness in power or political status. Black's Law Dictionary (11th ed. 2019). Like the word equity defined in question 25, the word "equality" is used in many different contexts, and I do not have a personal definition that would operate in these contexts. If I were confirmed, I would apply the precedent of the Supreme Court and the Tenth Circuit.

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 guarantees equal protection. The Supreme Court has determined that "[e]qual protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made. Baxstrom v. Herold, 383 U.S. 107, 111 (1966). If I were confirmed, I would apply the precedent of the Supreme Court and the Tenth Circuit.

28. How do you define "systemic racism?"

Response: I do not have a personal definition for systemic racism. The dictionary definition of the phrase describes it as "[t]he oppression of a racial group to the

advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)." Merriam-Webster's Dictionary (2022).

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

Response: I do not have a personal definition for critical race theory. The dictionary definition of the phrase describes it 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 refer to answers above in questions 28 and 29.

31. The State of Oklahoma passed S.B. 612 on April 11, 2022, imposing criminal penalties on doctors who performed elective abortions, unless the abortion was necessary to preserve the life of a pregnant woman and her life was endangered by the pregnancy itself.

On April 28, 2022—while you were serving as Attorney General for the Cherokee Nation—you spoke to the Tribal Council Rules Committee. During that meeting, a member of the Council expressed concern that unless the criminal code in the reservation were updated, the reservation would become a "possible criminal asylum" within the state of Oklahoma, allowing people to escape the new state law.

Historically, updates to the Criminal Code of Cherokee Nation to coincide with Oklahoma State Code originated from the Attorney General's office. The councilmember asked you if you intended to follow your own precedent as Attorney General and update the criminal code to reflect the abortion law. You responded by saying, "I have no intent to update the criminal codes as it relates to [the State's abortion law]." You further stated that the abortion law "is subject to challenge once it becomes effective, so I expect, and I think everyone expects, massive constitutional challenges to that law."

How do you justify your decision to withhold updating the criminal code to reflect the law of the land in Oklahoma in anticipation of constitutional challenges? As Attorney General, are there other examples of you selectively enforcing the laws based on your political passions?

Response: In the Cherokee Nation political system, as in the United States political system, the legislative body – not the Attorney General – makes the laws. Cherokee Nation Const., Art. VI. The Tribal Council, which is the Cherokee Nation's

legislative body, has separate counsel and staff. My role as Attorney General was never to make the Cherokee Nation's laws but to enforce them. Cherokee Nation Const., Art. VII, Section 13.

While I was Attorney General, I did provide technical assistance to the legislative and executive branches of the Cherokee Nation, but only when called upon by the Speaker of the Tribal Council or the Principal Chief. I had no intent to update the criminal code as it related to any issue where neither the Tribal Council nor the Principal Chief had asked for technical assistance. Id.

My comment about the challenge expected to Oklahoma's abortion law was made so the Cherokee Nation's Tribal Council would be aware of the imminent litigation, especially if there was a desire to draft similar legislation. It would have been my obligation to defend the law, had one been passed, and I would not have hesitated to do so.

I took my oath of office as Cherokee Nation Attorney General extremely seriously and did not refuse to enforce any laws of the Cherokee Nation. Instead, I worked hard to ensure that violations of the Cherokee Nation's criminal laws were prosecuted, that victims were protected, and all people who interacted with the Cherokee Nation Attorney General's office were treated with dignity and respect.

32. If confirmed as a federal judge, would you continue to decline to uphold laws you dislike, on the presumption that they may face the specter of a possible constitutional challenge? Could you be trusted to rule in favor of litigants who disagree with your political philosophies?

Response: As stated in my response to question 31, I never declined to uphold the Cherokee Nation's laws and instead enforced the Cherokee Nation's laws consistent with my oath of office. If confirmed, I will follow the law and the precedent of the Supreme Court and the Tenth Circuit. My career reflects my commitment to the rule of law, and if confirmed I commit to treat all litigants with fairness and impartiality.

33. During your tenure as Attorney General for the Cherokee Nation, Cherokee Federal, an organization entirely under the direction of the Cherokee Nation, contracted with the Department of Health and Human Services to provide migrant care for people who entered this country illegally for a total exceeding $2 billion. These contracts are the second largest grant in HHS history. Andrew Lorenz-Strait, a former Biden Transition Team member and the figure responsible for securing those contracts with Cherokee Federal, was caught on camera calling them a "corrupt bargain," and said that "[i]t's been f*** up, but it's a boom for [his] business."**

Less than one month after the so-called "corrupt bargains" were exposed, you resigned as Attorney General. Did you know Andrew Lorenz-Strait? Did you ever work with him in any capacity?

Response: I do not know Andrew Lorenz-Straight. I never worked with him in any capacity.

For clarity, Cherokee Federal is not "under the direction of the Cherokee Nation." The Cherokee Nation owns several companies, including Cherokee Federal. However, these companies have their own legal existence, with their own executives and attorneys. They are not controlled by the Cherokee Nation.

34. Did you work with or advise Cherokee National, or any other organization that profited from those federal grants meant for migrant care?

Response: I did not work directly with Cherokee Federal on any federal grants related to migrant care. I did work for the Cherokee Nation, which owns several companies including Cherokee Federal. The Cherokee Nation receives a dividend from its businesses.

35. Did the revelation of corruption behind those multi-billion dollar contracts influence your decision to resign as Attorney General of the Cherokee Nation in any way?

Response: No. I am unaware of any corruption. My departure from the Cherokee Nation was unrelated to any events that occurred during my tenure as Attorney General.

36. In remarks you gave criticizing the Supreme Court's decision in *Oklahoma* v. *Castro-Huerta* (2022), you stated the following: "[I]f you have a non-Indian who steals a car from an Indian, that person can be prosecuted by the state. That person can also be prosecuted by the United States. They can be convicted twice for the same act and serve two sentences."

Does your statement criticizing *Castro-Huerta* reflect a misunderstanding of Double Jeopardy, or did you intentionally mischaracterize the consequences of *Castro-Huerta* to inflame passions against the current United States Supreme Court?

Response: I neither misunderstood Double Jeopardy nor did I intentionally mischaracterize the consequences of Castro-Huerta. I set out a hypothetical scenario to help a lay audience understand the change in the law.

Prior to the decision in Castro-Huerta, precedent set out that the state lacked jurisdiction over a crime committed by a non-Indian against an Indian. See Williams v. Lee, 358 U.S. 217, 220 (1959). Tribes typically lack criminal jurisdiction over non-

Indians, which left the United States as the sole sovereign capable of prosecuting the non-Indian offender for offenses against Indians in Indian country. After the Supreme Court's decision in Castro-Huerta, it was clear that both the state and the United States could prosecute such a crime in Indian country. Where before a non-Indian would only be subject to punishment by the United States, he or she now finds himself or herself subject to prosecution by both the state and the United States. Oklahoma v. Castro-Huerta, 142 S. Ct. 2486, 2504 (2022). If confirmed, I would faithfully apply Castro-Huerta and any other Supreme Court precedent.

37. **The United Keetoowah Band of Cherokee represent a significant group who reside almost entirely within the boundaries of the Northern District of Oklahoma. The UKB contacted this Committee with stern opposition to your nomination. In part, they stated that you have "gone out of your way to harm the UKB and [their] 14,000 members." They stated that "[the UKE] are certain that Ms. Hill would not be fair in any case involving the UKB that would come in front of [you], and [they] suspect that there are other Oklahoma tribes who would share [their] view."**

If you were tasked with presiding over a case involving members of the UKB, would you automatically recuse yourself from that case? If not, how would you determine which cases you would retain knowing the tribe's official opposition to your nomination? How can the UKB members be assured that they would receive a fair trial in your courtroom?

Response: There are both federal laws and Canons within the Code of Conduct for United States Judges that govern the recusal of judges. See 28 U.S.C. § 144 and 28 U.S.C. § 455.

Canon 3(C)(1) of the Code of Conduct for United States Judges governs disqualification based on conflicts of interest and provides that a judge "shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." This requires consideration of all relevant circumstances disclosed by reasonable inquiry.

An appearance of impropriety arises under Canon 2A when "reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry" would conclude that "the judge's honesty, integrity, impartiality, temperament or fitness to serve as a judge is impaired."

I commit to following the law and the Code of Conduct for United States Judges regarding recusal in any and every case that came before. Moreover, should I be confirmed I will ensure that all litigants receive a fair trial and other fair consideration in my courtroom. This applies both to UKB members and all other litigants who may appear before me.

Senator John Kennedy
Questions for the Record

Sara E. Hill

1. **Are there any circumstances under which it is justifiable to sentence a criminal defendant to death? Please explain.**

   Response: Yes. In the United States, the death penalty is constitutional. See Gregg v. Georgia, 428 U.S. 153 (1976). The decision regarding which offenses are capital offenses is within the purview of the legislature. Capital defendants, like all defendants, are entitled to the full protections guaranteed to them by the Constitution, and the courts are responsible for ensuring that those rights are protected.

2. **Except when a statutory maximum controls, when is it appropriate for a sentencing judge to impose a sentence below the range provided by the Sentencing Guidelines?**

   Response: A sentence imposed outside the guideline range and outside the Sentencing Guidelines framework is referred to as a variance. While sentences within the range provided by the Sentencing Guidelines framework enjoy a presumption of reasonableness, variances do not enjoy such a presumption. A variance is appropriate where it is reasonable. Rita v. United States, 551 U.S. 338, 354–55 (2007). In the Tenth Circuit, the strength of the evidence needed to support a variance is higher when the variance from the Sentencing Guidelines is greater. United States v. Bishop, 469 F.3d 896, 907 (10th Cir. 2006).

3. **Is the U.S. Supreme Court a legitimate institution?**

   Response: Yes.

4. **Is the current composition of the U.S. Supreme Court legitimate?**

   Response: Yes.

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

   Response: In my view, a District Judge must impartially and fairly hear every case, and if confirmed to serve in that role, I would employ a philosophy that involves careful study of precedents and neutral application of the law to the facts before me to achieve that. First, that process would include diligently identifying the relevant law, including all precedent from the Tenth Circuit and the Supreme Court. It's critical to study the record the litigants have created and consider each side of the argument with an open mind. I would then apply the law to the facts before me. Finally, I would test the outcome reached to confirm that I have thoroughly considered all relevant facts and fairly and

properly applied the relevant law. This process limits the inquiry to the facts presented by the case and provides a foundation for fair adjudication of the issues.

6. **Is originalism a legitimate method of constitutional interpretation?**

   Response: Black's Law Dictionary defines "originalism" as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specif., 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. Black's Law Dictionary (11th ed. 2019).

   Supreme Court precedent has instructed that plain meaning and original meaning of the text of a constitutional provision is essential. The importance of original meaning and plain meaning has been addressed recently by the Court in several cases involving Constitutional interpretation. See Kennedy v. Bremerton School District, 142 S. Ct. 2407 (2022); New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111 (2022).

7. **If called on to resolve a constitutional question of first impression with no applicable precedents from either the U.S. Supreme Court or the U.S. Courts of Appeals, to what sources of law would you look for guidance?**

   Response: Supreme Court precedent has instructed that plain meaning and original meaning of the text of a constitutional provision is essential. The importance of original meaning and plain meaning has been addressed recently by the Court in several cases involving Constitutional interpretation. If it were possible to determine the original public meaning from unambiguous text, then the inquiry would end.

8. **Is textualism a legitimate method of statutory interpretation?**

   Response: Black's Law Dictionary defines "textualism" as, "[t]he doctrine that the words of a governing text are of paramount concern and that what they fairly convey in their context is what the text means. Black's Law Dictionary (11th ed. 2019). If it is possible to determine the plain meaning from the text of a statute, that is dispositive. The Supreme Court has held that "in the context of an unambiguous statutory text whether a specific application was anticipated by Congress is irrelevant." Bostock v. Clayton Cnty., Georgia, 140 S. Ct. 1731, 1751 (2020) (internal quotation marks removed).

9. **When is it appropriate for a judge to look beyond textual sources when determining the meaning of a statute or provision?**

   Response: It is not appropriate to look beyond textual sources unless there is ambiguity and no relevant precedent from the Tenth Circuit and the Supreme Court aids in the interpretation of the statute. When that occurs, judges can consider the statutory context of the language by reviewing the provisions adjacent to the text under consideration.

Canons of construction may be useful in interpreting the language as well. In circumstances where the Supreme Court has indicated it is appropriate to do so, judges may also undertake a review of legislative history such as committee reports.

a. Should a judge ever look beyond textual sources when a statute's meaning is clear? Please explain.

Response: If the statute is clear, then there is no need to look beyond textual sources.

10. Does the meaning (rather than the applications) of the U.S. Constitution change over time? If yes, please explain in detail the circumstances under which the U.S. Constitution's meaning changes over time and the relevant constitutional provisions.

Response: The Constitution does not change unless it is amended. The Supreme Court has explained that the Constitution is an enduring document with a "historically fixed meaning" that "applies to new circumstances." N.Y. Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2132 (2022).

11. What is the role of legislative history in determining a statute's meaning?

Response: Different types of legislative history, such as speeches from the floor during debate and committee reports, can provide details about the circumstances surrounding the passage of a bill that may be relevant. However, the legislative history of a statute alone cannot determine a statute's meaning. The Supreme Court has stated that while "clear legislative history can illuminate ambiguous text," the Court will not allow "ambiguous legislative history to muddy clear statutory language." Azar v. Allina Health Servs., 139 S. Ct. 1804, 1814 (2019).

12. When is it appropriate for a district judge to issue a nationwide injunction? Please also explain the legal basis for nationwide injunctions and the relevant factors a district judge should consider before issuing one.

Response: Federal courts are limited by Article III to hear only cases and controversies. U.S. Const. Article II, Section 2. They also are limited to hearing cases where the parties have standing, which requires a showing of concrete injury in fact, an injury traceable to the challenged action, and that relief can be granted to remedy the plaintiff's injury. In the Tenth Circuit, the Court has stated that, "[t]he injury in fact requirement differs depending on whether the plaintiff seeks prospective or retrospective relief." Colorado Cross Disability Coal. v. Abercrombie & Fitch Co., 765 F.3d 1205, 1211 (10th Cir. 2014) (finding that disability advocate who indicated intent to return to department store could serve as representative of a nationwide class).

Federal Rule of Civil Procedure 65 generally governs injunctions. If confirmed, I would follow the binding precedent of the Supreme Court and the Tenth Circuit.

13. After the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), a federal district judge in Washington, DC suggested that the Thirteenth Amendment may provide a basis for a constitutional right to abortion.

a. Do you agree?

Response: I am unfamiliar with this suggestion. To the extent this question asks for my opinion on matters that may come before me if I am confirmed, I must refrain from prejudging issues that litigants may bring. If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit.

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

Response: All district judges are required to follow controlling precedent from the U.S. Supreme Court and any superior Circuit Court.

14. Is there ever an appropriate circumstance in which a district judge may ignore or circumvent or seek to undermine a precedent set by the circuit court under which it sits or the U.S. Supreme Court?

Response: No. All district judges are required to follow controlling precedent from the U.S. Supreme Court and any superior Circuit Court.

15. Would you faithfully apply all precedents of the U.S. Supreme Court?

Response: If confirmed, I will follow and apply all binding precedent from the Supreme Court and the Tenth Circuit.

16. Would you faithfully apply the U.S. Supreme Court's decision in *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486 (2022), including any dicta, *see Utah Republican Party v. Cox*, 892 F.3d 1066, 1079 (10th Cir. 2018)?

Response: If confirmed, I will follow and apply all binding precedent from the Supreme Court and the Tenth Circuit, including Utah Republican Party v. Cox and Castro-Huerta.

17. Please explain when it would be appropriate for you to recuse from participation in a matter involving the Cherokee Nation or the two other Cherokee tribes.

Response: There are both federal laws and Canons within the Code of Conduct for United States Judges that govern the recusal of judges. See 28 U.S.C. § 144 and 28 U.S.C. § 455. Canon 3(C)(1) of the Code of Conduct for United States Judges governs disqualification based on conflicts of interest and provides that a judge "shall disqualify himself or herself

in a proceeding in which the judge's impartiality might reasonably be questioned." This requires consideration of all relevant circumstances disclosed by reasonable inquiry. An appearance of impropriety arises under Canon 2A when "reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry" would conclude that "the judge's honesty, integrity, impartiality, temperament or fitness to serve as a judge is impaired."

I commit to follow the law and the Code of Conduct for United States Judges regarding recusal in every case.

18. Please describe the analysis you would use to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

Response: When the plain text of the Second Amendment covers an individual's conduct, the Constitution presumptively protects that conduct. It falls to the government to justify any regulation by demonstrating that the regulation is consistent with the Nation's historical tradition of firearm regulation. New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111, 2129–30, (2022); see also McDonald v. City of Chicago, 561 U.S. 742, 750 (2010); District of Columbia v. Heller, 554 U.S. 570, 635 (2008).

To demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation, the government can "use analogical reasoning … [to] identify a well-established and representative historical analogue, not a historical twin." Bruen, 142 S. Ct. 2111, 2133 (2022).

19. When should a district judge deem a previously unrecognized unenumerated right to be "fundamental" and therefore entitled to protection under the Fourteenth Amendment?

Response: Substantive due process rights are protected by the due process clause of the Fifth and Fourteenth Amendments and are identified as fundamental rights when "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." Washington v. Glucksberg, 521 U.S. 702, 720-21 (1997).

20. **Please identify any unrecognized unenumerated rights that could plausibly be worthy of fundamental status**.

Response: As a nominee to the district court, the Code of Conduct for United States Judges precludes me from offering my personal opinion on issues that may come before me if I am confirmed. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.

21. What is the difference between judicial review and judicial supremacy?

Response: Black's Law Dictionary defines "judicial review" as the "court's power to review the actions of other branches or levels of government." Black's Law Dictionary (11th ed. 2019). Black's Law Dictionary defines "judicial supremacy" as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019). The Supreme Court has held that the federal courts must invalidate an act of the legislature that is repugnant to the Constitution. Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803).

22. Should a district judge give deference to an agency's interpretation of a statute that imposes criminal penalties? Please explain in detail.

Response: Typically, a court first decides "whether Congress has directly spoken to the precise question at issue[,]" using "traditional tools of statutory construction." Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 843 (1984). When Congress has been clear, then the court gives effect to Congress clearly expressed intent. Id. at 842. But "if the statute is silent or ambiguous with respect to the specific issue," the court must proceed to determine whether the agency's interpretation is "based on a permissible construction of the statute." If it is, then the court must defer to the agency's interpretation.

I am aware that legal scholars have debated whether Congress can delegate to any agency the authority to interpret a statute that imposes criminal penalties. F. Andrew Hessick & Carissa Byrne Hessick, Nondelegation and Criminal Law, 107 Va. L. Rev. 281, 282 (2021). However, I know of no Tenth Circuit or Supreme Court precedent that resolves this issue.

Consistent with the Code of Conduct for United States Judges and the need to avoid prejudging matters that may come before me if I am confirmed, it would be inappropriate for me to comment on the deference given to an agency's interpretation of a statute that imposes criminal penalties.

23. Please describe how courts determine whether an agency's action violates the Major Questions Doctrine.

Response: The Major Questions Doctrine is implicated when an administrative agency exercises authority of such "economic and political significance" that the Court cannot conclude that Congress intended to confer such authority. W. Virginia v. Env't Prot. Agency, 142 S. Ct. 2587, 2608 (2022). To determine whether the agency has gotten too far past its conferred authority, the Court must examine the language of the statute the agency claims has empowered it. Id. at 2587, 2609 (2022). To use broad and extraordinary power, the Court requires the agency to point to "clear congressional authorization." Util. Air Regul. Grp. v. E.P.A., 573 U.S. 302, 324 (2014). If there is no

clear source of congressional authorization, the agency may have violated the Major Questions Doctrine.

24. Please identify one federal judge or justice, current or former, whose service on the bench most inspires you and explain why.

Response: I am inspired by the career of Claire Eagan, who was the first woman to sit on the federal bench in the Northern District of Oklahoma. Throughout her long career of public service, she served not only her district but also on the Foreign Intelligence Surveillance Court and in a leadership position as the chair of the Executive Committee of the Judicial Conference.

25. Please explain the doctrine of collateral estoppel.

Response: Black's Law Dictionary defines "collateral estoppel" as "1. The binding effect of a judgment as to matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based. 2. A doctrine barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one." Black's Law Dictionary (11th ed. 2019).

26. You have been nominated to serve as a federal district judge. Please list all instances in which you served as lead counsel in a federal district court case that went to final judgment.

Response: I have practiced extensively in the federal courts. That practice included a period during which I served as a Special Assistant United States Attorney in the Northern District of Oklahoma as part of the Indian country prosecution team. In addition to this, I have litigated cases in multiple District Courts and before the Tenth Circuit Court of Appeals. I have also served as counsel for amicus before the United States Supreme Court in more than a dozen cases. Federal cases in which I served as primary counsel for all or part of the matter include Cherokee Nation v. Bernhardt et al., No. 4:12-CV-493-GKF-JFJ, 2020 WL 1429946 (N.D. Okla. Mar. 24, 2020) (Frizzell, J.), vacated and remanded sub nom. Cherokee Nation v. Haaland, No. 20-5054, 2022 WL 1436699 (10th Cir. May 6, 2022) (Holmes, Rossman, JJ., Tymkovich, C.J.); Gooding v. Ketcher et al., No. 4:10-CV-131-TCK-FHM, 838 F. Supp. 2d 1231 (N.D. Okla. July 30, 2012) (Kern, J.); Oklahoma ex rel. Edmondson v. Tyson Foods, Inc., No. 4:05-CV-329-CKF-SH, 619 F. 3d 1223 (10th Cir. Sept. 21, 2010) (Tacha, Ebel, Hartz, JJ.); Cherokee Nation v. United States Department of Interior, 1:20-cv-02167 (TJK) (D.D.C.). Final judgment has been entered in Cherokee Nation v. Stitt, No. 5:19-CV-01198-D, 475 F. Supp. 3d 1277 (W.D. Okla. Sept. 23, 2020) (DeGuisti, J.). More information and detail regarding my practice in the federal courts is available in my Senate Judiciary Questionnaire.

27. You have been nominated to serve as a federal district judge. To the best of your recollection, please list all cases in which you served as lead counsel in a case tried before a jury in federal district court.

Response: I have tried approximately a dozen cases before a jury in my career. Those jury trials were juvenile cases, and the details of the cases are confidential. Typically, they involved termination of parental rights, although the Cherokee Nation's juvenile deprived code also permitted a jury trial on the initial determination of deprivation early in my career. I was sole counsel for the Cherokee Nation in all of the cases that I tried to a jury in state and tribal court. I have not tried a case before a jury in a federal district court.

28. You have been nominated to serve as a federal district judge. To the best of your recollection, please list all cases in which you presented opening or closing statements to a jury in federal district court.

Response: Please see the response to question 27.

29. To the best of your recollection, please list all instances in which you presented oral argument before a U.S. Court of Appeals panel.

Response: I have represented my client in appellate cases before the Cherokee Nation Supreme Court, the Oklahoma Court of Civil Appeals, the Kansas Court of Civil Appeals, the Oklahoma Supreme Court, and the Tenth Circuit Court of Appeals. I presented oral arguments before the Cherokee Nation Supreme Court many times, including in Olaya et al. v. Baker, No. SC-2013-05, 12 Am. Tribal Law 331 (Cherokee Sup. Ct. Nov. 10, 2014). I have not presented an oral argument before a U.S. Court of Appeals panel.

30. Please explain whether you have ever sought admission to practice before the U.S. Supreme Court and why or why not.

Response: I have never sought admission to practice before the U.S. Supreme Court. I had not had occasion to seek such admission.

a. If you have sought admission to practice before the U.S. Supreme Court and were unsuccessful, please explain the circumstances of your application or potential application and the response you received.

31. Please explain in detail why you left the position of Attorney General to engage in the solo practice of law in September 2023.

Response: After nearly twenty years at the Cherokee Nation, I felt it was time for a career change. The Cherokee Nation held elections in 2023, and I decided to step down as the new and returning elected officials were coming into office.

32. At the Committee's November 15, 2023, hearing, you indicated that you would give Senator Kennedy a copy of the materials provided to you by the White House to

prepare you for questioning. Please provide those materials or confirm how and when you will be providing them.

Response: I indicated that I had received a list of previous questions that had been asked during Senate Judiciary Committee meetings. The Department of Justice had advised me that the White House will be addressing this question under separate cover.

Questions from Senator Thom Tillis
for Sara E. Hill
Nominee to be United States District Judge for the Northern District of Oklahoma

1. **Ms. Hill, on March 12 2020, the U.S. Department of Interior (DOI) agreed to put 17 acres in Cleveland County, NC in a trust for the Catawba Nation. On May 1, 2020, as Attorney General, you and your team filed a motion to intervene in the *Eastern Band of Cherokee Indians v. United States Department of Interior* civil case.**

   The motion to intervene backed the Eastern Band of Cherokee Indians and claimed that the DOI willfully violated the National Historic Preservation Rights, National Environmental Policy Act and Administrative Procedure Act. Do you believe that the DOI got the decision right or wrong?

   Response: In my capacity as Attorney General of the Cherokee Nation, I filed a motion on behalf of my client that argued that the Department of the Interior violated the National Historic Preservation Act (NHPA), the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA) in reaching its decision to approve the land-into-trust application and a related development project for the Catawba Nation on lands historically held by the Cherokee Nation. The District Court determined that any such violations were immaterial and disposed of the case on other grounds.

2. **Can I get your commitment that you will recuse yourself from cases involving tribal issues on which you have had a degree of involvement that would create at the least the appearance of lacking impartiality?**

   Response: There are both federal laws and Canons within the Code of Conduct for United States Judges that govern the recusal of judges. See 28 U.S.C. § 144 and 28 U.S.C. § 455. Canon 3(C)(1) of the Code of Conduct for United States Judges governs disqualification based on conflicts of interest and provides that a judge "shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." This requires consideration of all relevant circumstances disclosed by reasonable inquiry. An appearance of impropriety arises under Canon 2A when "reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry" would conclude that "the judge's honesty, integrity, impartiality, temperament or fitness to serve as a judge is impaired."

   I commit to following the law and the Code of Conduct for United States Judges regarding recusal in every case.

3. **Can I get your commitment that you will recuse yourself from cases involving cases filed by the Eastern Band of Cherokee Indians?**

Response: Please refer to the response provided in question 2.

4. **Can I get your commitment that you will recuse yourself from cases involving cases filed by the Eastern Band of Cherokee Indians, including litigation to take specified lands and easements in Monroe County, Tennessee, into trust for the use and benefit of the Eastern Band of Cherokee Indians?**

   Response: Please refer to the response provided in question 2. Given that the Eastern Band of Cherokee Indians is based in the southeastern part of the United States, it is unlikely such matters would come before the Northern District of Oklahoma.

5. **Do you agree with the Eastern Band of Cherokee Indians that there should be three congressional delegates?**

   Response: During my tenure as Attorney General of the Cherokee Nation, I advocated for my client's position that the treaty right to a delegate to Congress belonged exclusively to the Cherokee Nation. In my capacity as Attorney General, I supported that position publicly in media interviews and in opinion pieces written in the local newspaper.

6. **If a case regarding a potential Cherokee delegate to Congress comes before you—would you recuse yourself?**

   Response: Yes, having considered this particular issue pursuant to the Code of Conduct for United States Judges and federal statutes governing recusal, I would recuse myself if such an issue were to come before me.

7. **Do you believe you could consider cases regarding the Lumbee Tribe of North Carolina impartially given your background, specifically relating to federal recognition?**

   Response: Yes. Moreover, I commit to following the law and the Code of Conduct regarding recusal in every case.

8. **Ms. Hill—there have been reports that the Cherokee Nation has made millions of dollars from immigration contracts to process individuals who enter the U.S. illegally, specifically unaccompanied children. As former Attorney General for the Cherokee Nation, were you involved in any of the immigration contract negotiations? If so, which ones?**

   Response: I was not involved in any immigration contract negotiations. Cherokee Federal, which I understand operated the facility in question, is a separate legal entity that has its own counsel and CEO.

9. **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 not relevant in interpreting and applying the law. A person's background in the law, including knowledge and experiences gained through legal education and career, can be helpful in applying the law. For example, a judge may be readily familiar with certain statutes and precedent based on prior experience.

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

    Response: Canon 2 of the Code of Conduct for United States Judges states that judges must perform their duties fairly, impartially, and diligently. In addition to impartiality being an expectation, it is also a requirement.

11. **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, usu. with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (11th ed. 2019). I do not find judicial activism, as that term is defined above, to be appropriate.

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

    Response: Judges should not second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome. It is the role of the political branches of government to make policy decisions.

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

    Response: I have observed that faithfully interpreting the law often leads to outcomes that may be undesirable to someone. It is very rare that all parties leave a court feeling that a desirable outcome was achieved. As a judge, I believe it's important to keep in mind the critical role the judiciary plays in our republic. The rule of law does not consider whether an outcome is desired, but instead requires fair and impartial application of the law to all parties who come before the court.

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

Response: The Supreme Cout has made it clear that the Second Amendment includes a fundamental right for citizens to keep and bear arms. If confirmed, it will be my duty to follow the Supreme Court's binding precedent, including its decisions in D.C. v. Heller, 554 U.S. 570 (2008), New York State Rifle & Pistol Association v. Bruen, 142 S. Ct. 2111 (2022), and McDonald v. Chicago, 561 U.S. 742 (2010).

15. 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: The Supreme Court has established a two-step process for resolving qualified immunity claims.

First, the court must determine whether the plaintiff has alleged sufficient facts to make out a violation of a constitutional right. Pearson v. Callahan, 555 U.S. 223, 232 (2009). If the plaintiff satisfies that step, then the court must determine whether the alleged conduct by the officer violated a clearly established constitutional right. Id. Unless both parts of the two-step process are satisfied, the officer is entitled to qualified immunity. If confirmed, I will follow the precedent of the Supreme Court and the Tenth Circuit related to qualified immunity.

16. 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: The question of whether the current qualified immunity jurisprudence provides sufficient protection for law enforcement officers is a question for policymakers to address. If confirmed, I would be bound to follow the law and the precedent of the Supreme Court and the Tenth Circuit.

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

Response: The question of the proper scope of qualified immunity for law enforcement officers is a question for policymakers to address. If confirmed, I would be bound to follow the law and the precedent of the Supreme Court and the Tenth Circuit.

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

Response: The Constitution specifically empowered Congress to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." My thoughts on the importance of enforcing IP rights are informed by the priority placed upon them by the Constitution. If

confirmed, I will faithfully apply the laws passed by Congress consistent with the precedent of the Supreme Court, the Federal Circuit, and the Tenth Circuit.

19. 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: I am unfamiliar with this practice of forum shopping for a particular judge in patent litigation. In the Northern District of Oklahoma, cases are assigned randomly so that no litigant can choose his or her own judge.

20. 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 nominee to the district court, the Code of Conduct for United States Judges precludes me from offering commentary regarding my personal opinion on whether Supreme Court cases were correctly decided. See Code of Conduct for United States Judges, Canon 3, A(6). If confirmed, I will follow and apply binding precedent from the Supreme Court and the Tenth Circuit without regard to any personal views on the Supreme Court's decisions.