Senator Lindsey Graham, Ranking Member
Questions for the Record
Mr. Ernest Gonzalez
Nominee to be United States District Judge for the Western District of Texas

1. **Are you a citizen of the United States?**

   Response: Yes.

2. **Are you currently, or have you ever been, a citizen of another country?**

   Response: No.

   a. **If yes, state countries and dates of citizenship.**

      Response: Not applicable.

   b. **If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**

      Response: Not applicable.

      i. **If not, please explain why.**

         Response: Not applicable.

3. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: No. It is not appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant oral argument.

4. **Is it appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time? If yes, please describe in which circumstances such consideration would be appropriate.**

   Response: No. It is not appropriate for a federal judge to consider an immutable characteristic of an attorney when deciding whether to grant additional oral argument time.

5. **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, it is not appropriate to consider foreign law in constitutional interpretation.

6. **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 the statement. The interpretation of the United States Constitution should be based solely on the application of the text and construing the text in accord with its original meaning. "Value judgments" should play no role in the interpretation of the Constitution.

7. **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: No. Federal judges are required to apply the law to the facts of the case. A federal judge should faithfully and impartially apply Supreme Court and Circuit precedent to the facts of the case.

8. **Do you consider a law student's public endorsement of or praise for an organization listed as a "Foreign Terrorist Organization," such as Hamas or the Popular Front for the Liberation of Palestine, to be disqualifying for a 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.

9. **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.

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

Response: 28 U.S.C. section 2255(a) provides: "a prisoner in custody under a federal sentence of a court established by 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 a 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 period."

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

    Response: The Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), held that race-based admissions "must comply with strict scrutiny, they may never use race as a stereotype or negative, and – at some point – they must end." *Id*. at 213. The Court held that the admissions systems at issue failed each of these criteria and invalidated them under the Equal Protection Clause of the Fourteenth Amendment. Specifically, the Court held that the admissions policy goals asserted were commendable, but not sufficiently coherent for purposes of strict scrutiny. The Court also determined that the admissions programs failed to articulate a meaningful connection between the means they employ and the goals they pursue. *Id*. at 214-215. The Court held that the race-based admissions systems failed to comply with the Equal Protection Clause that race may never be used as a "negative" and that it may not operate as a stereotype. *Id*. at 218. The Court's conclusion was that the programs failed to survive strict scrutiny because they use race as both a negative and as an impermissible stereotype, and they have no logical endpoint. *Id*. at 225.

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

    Response: Yes.

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

    Response: I served on the hiring committee for potential Assistant United States Attorneys at the United States Attorney's Office for the Eastern District of Texas.

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

    Response: No.

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

    Response: No.

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

    Response: No.

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

    Response: Not applicable.

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

    Response: Yes. The Supreme Court and the Fifth Circuit have held that racial classifications are analyzed by a reviewing court under strict scrutiny. "[S]uch classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interest." *Adarand Construction, Inc. v. Pena*, 515 U.S. 200, 221 (1995); See, e.g., *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023); *Fisher v. Univ. of Texas at Austin*, 758 F.3d 633 (5th Cir. 2014), aff'd, 579 U.S. 365 (2016).

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

    Response: The Supreme Court found that it would be an impermissible abridgement of the First Amendments free Speech rights for the state of Colorado, through its enforcement of Colorado Anti-Discrimination Act, to compel the owner of a limited liability company that provided website and graphic design services, and which sought to enter website business, to create speech she did not believe by forcing her to convey on wedding websites messages inconsistent with her religious belief that marriage should be reserved to unions between one man and one woman. Colorado sought to make her choose between speaking as the state demanded and not face sanctions or face sanctions for expressing her own beliefs. In Part III, the Court held that creating websites involved the creator's speech and that compelling speech the creator did not wish to provide

violated her First Amendment rights. *303 Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023).

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

    Is this a correct statement of the law?

    Response: Yes. The Supreme Court held that the Free Speech Clause of the First Amendment protects students from being forced to salute the American flag or say the Pledge of Allegiance. This case has not been overruled. To the extent this question asks for my personal opinion as to the correctness of Supreme Court precedent, as a district court nominee, I am prohibited from doing so. If confirmed as a district judge, I will faithfully apply all binding precedent of the Supreme Court to the matters that come before me.

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

    Response: If I were presented with the question of whether a law that regulates speech is "content-based" or "content-neutral," I would apply binding Supreme Court and Fifth Circuit precedent, including *Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015) and *City of Austin v. Reagan Nat'l Advert. of Austin*, LLC, 596 U.S. 61 (2022). 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.

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

    Response: True threats of violence 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. In a criminal prosecution, the government

must prove that the defendant acted recklessly, "consciously disregard[ing] a substantial and [unjustifiable] risk that the conduct would cause harm to another." *Id*. at 79.

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

Response: The Supreme Court has found that "the proper characterization of a question as one of fact or law is sometimes slippery" and often unclear. *Thompson v. Keohane*, 516 U.S. 99, 110-11 (1995). The Supreme Court has identified factual matters as "questions of who did what, when or where, how or why." E.g., *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966 (2018). The Circuit Courts of Appeal make judgments on findings of fact and conclusions of law in the context of determining the scope of appellate review. In *SEC v. Fox*, 855 F.2d 247 (5th Cir. 1988), the Fifth Circuit said, "with regard to ... determining whether mixed questions of law and fact are to be treated as questions of law or fact for purposes of appellate review, that sometimes the decision 'has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question.'" (citing *Pierce v. Underwood*, 487 U.S. 552 (1988)).

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

Response: Sentencing decisions in federal cases are governed by the factors provided in 18 U.S.C. section 3553(a). The 3553(a) factors include the nature and circumstances of the offense, the history and characteristics of the defendant, and the need for the sentence to serve various purposes, such as deterrence, protection of the public, and rehabilitation. It provides guidance to ensure that sentences are fair and appropriate. If I am confirmed as a district court judge, I will consider all the applicable factors to impose a sentence that is sufficient, but not greater than necessary to comply with the purpose of sentencing.

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

Response: As a district court judge nominee, the Code of Conduct generally precludes me from offering commentary concerning any personal opinions I might have about Supreme Court precedent because related issues could come before me, and I would not want litigants to think I had prejudged those issues. If confirmed as a district court judge, I will faithfully apply all Supreme Court and Fifth Circuit precedent without regard to any personal views I might have.

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

Response: As a district court judge nominee, the Code of Conduct precludes me from offering commentary concerning any personal opinions I might have about Fifth Circuit precedent because related issues could come before me, and I would not want litigants to think I had prejudged those issues. If confirmed as a district court judge, I will faithfully apply all Supreme Court and Fifth Circuit precedent without regard to any personal views I might have.

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

Response: Section 1507 of Title 18 provides that, "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both."

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

Response: I am unaware of any precedent of the United States Supreme Court or of the Fifth Circuit addressing the constitutionality of 18 U.S.C. § 1507. However, in *Cox v. Louisiana*, 379 U.S. 559, 561–64 (1965), the Supreme Court held that a Louisiana statute modeled after a bill pertaining to the federal judiciary, later enacted as 18 U.S.C. § 1507, was constitutionally valid on its face. As a district court nominee, the Code of Conduct precludes me from offering personal opinions I might have about the constitutionality of a federal statute because related issues could come before me, and I would not want litigants to think I had prejudged those issues. If confirmed, and if confronted with a constitutional challenge to section 1507, I will faithfully apply binding precedent.

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

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

    Response: As a nominee for the district court, the Code of Conduct generally precludes me from commenting on the correctness of Supreme Court decisions. However, because it is unlikely that the issue of racial segregation in schools will come before me, I can state that this decision was correctly decided.

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

Response: As a nominee for the district court, the Code of Conduct generally precludes me from commenting on the correctness of Supreme Court decisions. However, because it is unlikely that issues relating to miscegenation laws will come before me, I can state that that this decision was correctly decided.

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

Response: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Griswold v. Connecticut* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: The Supreme Court recently overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). *Dobbs* is binding precedent, and I will apply it fully and faithfully.

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

Response: The Supreme Court recently overruled *Planned Parenthood v. Casey* in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). *Dobbs* is binding precedent, and I will apply it fully and faithfully.

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

Response: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Gonzales v. Carhart* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *District of Columbia v. Heller* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *McDonald v. City of Chicago* and all binding Supreme Court precedent to any applicable case presented before me.

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 generally precludes me from commenting on the correctness of any opinion of any court. I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. I

am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *New York State Rifle & Pistol Association v. Bruen* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Dobbs v. Jackson Women's Health* and all binding Supreme Court precedent to any applicable case presented before me.

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 generally precludes me from commenting on the correctness of any opinion of any court. I am required to comply with the Code of Conduct and to apply precedent of the Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: As a nominee to the district court, the Code of Conduct generally precludes me from commenting on the correctness of any opinion of any court. I am required to comply with the Code of Conduct and to apply precedent of the

Supreme Court and the Fifth Circuit. In cases dealing with areas of the law that could potentially be litigated further, an opinion on those decisions would be inappropriate because it could lead a potential litigant to think that I have prejudged an issue that may be presented to the court. Consistent with past judicial nominees, I do not believe it is appropriate to opine on the correctness of this case. If confirmed as a district judge, I will faithfully apply *303 Creative LLC v. Elenis* and all binding Supreme Court precedent to any applicable case presented before me.

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

Response: The Supreme Court has held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command'". *New York State Rifle & Pistol Association, Inc. v. Bruen*, 143 S. Ct. 2111, 2126 (2022).

29. **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.

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

Response: No.

31. **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.

32. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**
    a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

    b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

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

Response: No.

33. **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.

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

Response: On May 22, 2022, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Western District of Texas. On March 17, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. On May 5, 2023, I interviewed with Senator Cornyn. On May 10, 2023, I interviewed with Senator Cruz. On August 8, 2023, I interviewed with attorneys from the White House Counsel's Office. Since October 26, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me. On January 10, 2024, the President sent my nomination to the United States Senate.

35. **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.

36. **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.

37. **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.

38. **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.

39. **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.

40. **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?**

      Response: Not applicable.

   ii. **What advice did they give?**

      Response: Not applicable.

   iii. **Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

      Response: Not applicable.

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

Response: On May 22, 2022, I submitted an application to Senators John Cornyn and Ted Cruz regarding a position on the United States District Court for the Western District of Texas. On March 17, 2023, I interviewed with the Federal Judiciary Evaluation Committee established by Senators Cornyn and Cruz. On May 5, 2023, I interviewed with Senator Cornyn. On May 10, 2023, I interviewed with Senator Cruz. On August 8, 2023, I interviewed with attorneys from the White House Counsel's Office. Since October 26, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 19, 2023, the President announced his intent to nominate me. On January 10, 2024, the President sent my nomination to the United States Senate.

42. **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 January 31, 2024. 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.

Senator Hirono Questions for the Record for the January 24, 2024, Hearing in the Senate Judiciary Committee entitled "Nominations."

QUESTIONS FOR ERNEST GONZALEZ

Sexual Harassment

As part of my responsibility as a member of this committee to ensure the fitness of nominees, I ask each nominee to answer two questions:

QUESTIONS:

1. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

   Response: No.

2. **Have you ever faced discipline or entered into a settlement related to this kind of conduct?**

   Response: No.

Senator Jon Ossoff
Questions for the Record for Ernest Gonzalez
January 24, 2024

1. **Will you pledge to faithfully apply the law without bias and without regard for your personal policy or political preferences?**

   Response: Yes.

2. **How will you approach First Amendment cases?**

   Response: As a judge, I would approach First Amendment cases by strictly adhering to Supreme Court and Fifth Circuit precedent, balancing rights and considering the context of speech or expression. *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020); *Carson v. Makin*, 142 S. Ct. 1987 (2022); *Janus v. AFSCME*, 138 S. Ct. 2448 (2018).

   a. **In your view, why are First Amendment protections of freedom of speech, publication, assembly, and exercise of religion vital in our society?**

   Response: First Amendment protections of freedom of speech, publication, assembly, and the exercise of religion are vital in our society because they safeguard individual autonomy, foster a robust democracy through diverse perspectives, encourage innovation and progress, allow for peaceful protest and change, promote cultural and social diversity, and contribute to overall individual well-being. These freedoms are foundational to a dynamic and resilient society that values open discourse, tolerance, and the exchange of ideas.

3. **In your experience, why is it critical that indigent defendants have access to public defense under the Sixth Amendment right to counsel and precedent set in *Gideon v. Wainwright*?**

   Response: Public defense for indigent defendants, as mandated by *Gideon v. Wainwright* and the Sixth Amendment, is crucial to ensure fair trials, protecting constitutional rights, prevent coerced confessions, enhance legal expertise, reduce disparities, and preserve confidence in the legal system. This ensures that everyone, regardless of financial status, has access to competent representation and upholds the principles of justice.

4. **In your experience, what are the challenges faced by parties in civil or criminal proceedings for whom English is not their first language?**

   Response: Parties facing legal proceedings with English as a non-native language may encounter challenges such as communication barriers, difficulty understanding legal processes, limited access to legal information, finding language appropriate legal representation, potential cultural differences, heightened fear and anxiety, and a shortage

of qualified interpreters. Addressing these challenges involves enhancing access to interpreters, providing translated legal materials, and promoting cultural competency within the legal system.

a. **What do you see as the role of language access in courts in protecting due process rights and ensuring access to justice?**

   Response: Language access in courts plays a crucial role in protecting due process rights and ensuring access to justice. It facilitates effective communication for individuals with limited English proficiency, allowing them to fully understand legal proceedings, participate meaningfully, and make informed decisions. Without proper language access, there is a risk of misunderstandings, potential violations of due process, and barriers to justice, disproportionately affecting non-native English speakers. Implementing language access measures, such as providing interpreters and translated materials, is essential for upholding the principles of fairness, equity, and access to justice and legal proceedings.

Senator Mike Lee
Questions for the Record
Ernest Gonzalez, Nominee for District Court Judge for the Western District of Texas

1. How would you describe your judicial philosophy?

Response: My judicial philosophy will be to faithfully apply the law to the facts of the case before me, to decide cases and legal issues fairly without bias or prejudice, to treat the litigants with respect, and to provide them an opportunity to be heard. I would work to issue clear rulings that make the holdings and the underlying rationale clear, give all parties a fair and open hearing, and to rule only on the facts and the record, using Supreme Court and Fifth Circuit precedent, and the method of interpretation that is embodied in that precedent.

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

Response: The plain text of the statute is the first thing and the primary source of interpretation. And if the meaning is plain on the face of the statute, then the interpretation process stops there. If there is any ambiguity about the meaning of the plain language or the statute itself, then I would refer to precedent and interpretations of the statute that are controlling in the Fifth Circuit and Supreme Court. If there was no directly controlling precedent, I would look for interpretations of analogous statutes or precedent in other circuits that would be guiding in some way or at least helpful.

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

Response: I would first determine whether the Supreme Court or Fifth Circuit had previously interpreted the specific constitutional provision at issue. If there was no precedent, I would consider the text of the provision and the meaning of the terms at issue, as well as the method of interpretation that the Supreme Court or Fifth Circuit has used in the most analogous circumstance and any persuasive authority from other jurisdictions.

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

Response: The Supreme Court instructs us that the plain meaning and original meaning of the text of a constitutional provision are essential in interpreting the Constitution. The Supreme Court has directed lower courts to look at the plain text and original meaning in several recent cases and in certain contexts. See, e.g., *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022); *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). Thus, when faced with interpreting the

Constitution on an unprecedented matter, I would apply the plain meaning of the text and then look to interpretive principles described in recent Supreme Court and Fifth Circuit precedent.

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

Response: The plain text of the statute is the first thing and the primary source of interpretation. And if the meaning is plain on the face of the statute, then the interpretation process stops there. If there is any ambiguity about the meaning of the plain language or the statute itself, then I would refer to precedent and interpretations of the statute that are controlling in the Fifth Circuit and Supreme Court. If there was no directly controlling precedent, I would look for interpretations of analogous statutes or precedent in other circuits that would be guiding in some way or at least helpful.

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 "plain meaning" of a statute or constitutional provision refers to the public understanding of the relevant language at the time of enactment. *See Bostock v. Clayton County*, 140 S. Ct. 1731, 1739 (2020).

7. What are the constitutional requirements for standing?

Response: In order to establish standing under Article III of the United States Constitution, a party must demonstrate: (1) there is a concrete and particularized injury; (2) that injury is traceable to the allegedly unlawful action; and (3) the injury is redressable by a favorable judicial decision. *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 United States Constitution gives Congress certain enumerated powers. The Necessary and Proper Clause of the Constitution, however, empowers Congress to make laws necessary to implement its enumerated powers. M*cCullough v. Maryland*, 17 U.S. 316 (1891); U.S. Const. Art. I, § 8, cl. 18 (vesting in Congress the power to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers").

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 held that the "[t]he question of the constitutionality of action taken by Congress does not depend on recitals of the power which it

undertakes to exercise." *Nat. Fed'n of Indep. Bus. v. Sebelius,* 567 U.S. 519 (2012). If confronted with this issue as a judge, I would apply Supreme Court and Fifth Circuit precedent.

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

Response: The Supreme Court has held that the Fifth and Fourteenth Amendments protect certain unenumerated "fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty*." Washington v. Glucksberg*, 521 U.S.702, 720-21 (1997) (internal quotation marks and citations omitted). In *Glucksberg*, the Court collected cases previously recognizing such rights, including the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), and direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

11. What rights are protected under substantive due process?

Response: Please see response to Question 10.

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

Response: In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court held that the use of contraceptives by married couples was protected under substantive due process. It further held in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), that the Constitution does not protect the economic rights at stake in *Lochner v. New York*. The Supreme Court held that the economic rights at stake in *Lochner* are subject to the restraints of due process. If confirmed as a district court judge, I will be bound to follow Supreme Court precedent.

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

Response: The Supreme Court has held that there are three broad categories of activity that Congress may regulate under its commerce power: (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and (3) activities that "substantially affect interstate commerce." *See United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

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

Response: "[A] suspect class is one 'saddled with such disabilities, or subjected to such a history of 'purposeful unequal treatment, or relegated to such a position of

political powerlessness as to command extraordinary protection from the majoritarian political process.'" *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976) (*quoting San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28 (1973)). Race, alienage, national origin, and religion are suspect classes that would trigger strict scrutiny. *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

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

Response: Checks and balances and the separation of powers within our Constitution's structure acts as a "self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Morrison v. Olson*, 487 U.S. 654, 693 (1988). The Supreme Court has stated 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 apply binding precedent of the Supreme Court and the Fifth Circuit, including the potential applicability of Supreme Court precedent such as *Nixon v. United States*, 506 U.S. 224, 234-35 (1993); *Marbury v. Madison*, 5 U.S. 137 (1803); and *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: Judges are required to put aside all their personal views, opinions or beliefs and apply the law following relevant Supreme Court and Circuit precedent.

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

Response: Both are undesirable. A judge should strive to avoid both outcomes by faithfully following and applying the law to the facts of the case before the court. If appointed, I will follow the precedent of the Supreme Court and the Fifth 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: I am unfamiliar with any study which has reached the conclusion stated in the question. I have not studied the trend described in this question either, I therefore

do not have sufficient information on which to base an opinion about this subject. If confirmed as a district court judge, I would be required to decide each case on its own merit, following binding Supreme Court and Fifth Circuit precedent and applying the law to the particular facts of the case.

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

Response: "Judicial review" is the judiciary's role "to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803)." 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).

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: The Constitution requires all government officials, including elected and appointed officials, to take an oath to uphold the Constitution. U.S. Const., art. VI, § 3. The Supreme Court has further explained that state executive and legislative officials do not have authority to nullify a judgment of the courts of the United States. *Cooper v. Aaron*, 358 U.S. 1, 17-20 (1958) (explaining that elected officials are bound to follow Supreme Court decisions based on the doctrine of judicial supremacy).

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: I generally understand that in Federalist 78, Hamilton expressed his belief that it is the role of the federal courts to interpret and apply the law, while the role of the legislative and executive branches is to make and enforce the law, respectively. Judges are neither responsible for creating legislation or making new laws nor are they empowered to do so.

23. As a federal judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a federal 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 federal judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: District court judges have a duty to follow and apply binding Supreme Court and circuit court precedent. In the absence of precedent, a district judge must always strive to render decisions in accordance with the Constitution. If there is no precedent that squarely controls the issue being considered, a judge should utilize the constitutional framework and interpretation employed by the Supreme Court and Fifth Circuit in the most analogous 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 factors that a judge may appropriately consider when sentencing an individual defendant are prescribed by Congress in Title 18 United States Code § 3553(a). Section 3553(a) instructs courts to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id*. § 3553(a)(6). Race and certain other demographic factors (i.e., sex, national origin, creed, religion, and socio-economic status) are not relevant in the determination of a sentence.

25. The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?

Response: I am not familiar with this statement by the Biden Administration. I have not developed my own personal definition of equity. The definition of "equity" in Black's Law Dictionary includes "[f]airness; impartiality; evenhanded dealing." Black's Law Dictionary (11th ed. 2019). If this issue would happen to come before if I am confirmed, I would fully and faithfully apply any applicable binding Supreme Court and Fifth Circuit precedent to decide any case involving this issue.

26. Without citing Black's Law Dictionary, do you believe there is a difference between "equity" and "equality?" If so, what is it?

Response: The Oxford American Dictionary defines "equity" as "the quality of being fair and impartial." Equity, Oxford American Dictionary (2010). While "equality" is

defined as "the state of having the same rights, opportunities, or advantages as others." If a case required me to decide the difference between "equity" and "equality," I would consider the parties' arguments, independently research the applicable law, and faithfully apply Supreme Court and Fifth Circuit precedent.

27. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 25)?

Response: The Equal Protection Clause of the 14th Amendment provides that, "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unites States; nor shall any State deprive any person of life, liberty, or property, without due process of law." I am unaware of any Supreme Court or Fifth Circuit precedent addressing whether the Equal Protection Clause guarantees "equity" as defined by the Biden Administration. If I am confirmed as a district court judge, it will be my duty to follow and apply Supreme Court and Fifth Circuit precedent to all cases and issues that come before me.

28. Without citing Black's Law Dictionary, how do you define "systemic racism?"

Response: Merriam-Webster's Dictionary (11th ed. 2023) defines "systemic racism" as "the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems."

29. Without citing Black's Law Dictionary, how do you define "critical race theory?"

Response: Merriam-Webster's Dictionary (11th ed. 2023) defines "critical race theory" as "a group of concepts used for examining the relationship between race and the laws and legal institutions of a country."

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

Response: In essence, systemic racism is a broader societal issue, while critical race theory is a specific academic framework that offers a lens for analyzing and addressing the complexities of racial dynamics within systemic structures.

Senator John Kennedy
Questions for the Record

Ernest Gonzalez

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

   Response: Yes. Whether an offense is punishable by death and the procedures for imposition of the death penalty are decisions made by the legislative branch. 18 U.S.C. §§ 3591-93. 18 U.S.C. §3591 contains certain offenses whereby defendants may be sentenced to death. If confirmed as a district court judge, I would faithfully and impartially apply all applicable laws, including those related to the death penalty.

   a. **Should a judge's opinions on the morality of the death penalty factor into the judge's decision to sentence a criminal defendant to death in accordance with the laws prescribed by Congress and the Eighth Amendment?**

      Response: No.

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

   Response: Yes.

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

   Response: Yes.

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

   Response: My judicial philosophy will be to faithfully apply the law to the facts of the case before me, to decide cases and legal issues fairly without bias or prejudice, to treat the litigants with respect, and to provide them an opportunity to be heard. I would work to issue clear rulings that make the holdings and the underlying rationale clear, give all parties a fair and open hearing, and to rule only on the facts and the record, using Supreme Court and Fifth Circuit precedent, and the method of interpretation that is embodied in that precedent.

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

   Response: According to a number of Supreme Court precedents, originalism is a legitimate method of constitutional interpretation. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008); *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

6. **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: I would consider the text of the provision and the meaning of the terms at issue, as well as the method of interpretation that the Supreme Court or Fifth Circuit has used in the most analogous circumstance and any persuasive authority from other jurisdictions. I would look for interpretations of analogous statutes or precedent in other circuits that would be guiding in some way or at least helpful. And then, last, if all else failed, consistent with Supreme Court precedent, looking to the legislative history and other canons of construction would be another source of divining the meaning of the provision as Congress intended it.

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

   Response: Textualism is a legitimate method of statutory interpretation. *See Bostock v. Clayton County,* 140 S. Ct. 1731, 1739 (2020).

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

   Response: The plain text of the statute is the first thing and the primary source of interpretation. And if the meaning is plain on the face of the statute, then the interpretation process stops there. If there is any ambiguity about the meaning of the plain language or the statute itself, then I would refer to precedent and interpretations of the statute that are controlling in the Fifth Circuit and Supreme Court. If there was no directly controlling precedent, I would look for interpretations of analogous statutes or precedent in other circuits that would be guiding in some way or at least helpful.

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

   Response: The meaning of the U.S. Constitution does not change over time. The Supreme Court has held that, "although [the Constitution's] meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 3 (2022).

10. **Please summarize Part II(A) of the U.S. Supreme Court's decision in *Brown v. Davenport*, 596 U.S. 118 (2022).**

    Response: Part II(A) of *Brown v. Davenport*, 596 U.S. 118, 142 S. Ct. 1510 (2022), the Court outlined the history of habeas petitions and provided a historical background for the Court's decision that before a state prisoner could obtain federal habeas relief, both the *Brecht v. Abrahamson's* "serious and injurious effect or influence on the verdict"-test

(507 U.S. 619, 113 S. Ct. 1710 (1993)) as well as the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2254(d) must be met by the prisoners bringing the habeas petition. The Supreme Court was concerned that federal courts were granting federal habeas relief to state prisoners much too frequently, a practice that threatened the presumption of finality of state court convictions: "The traditional distinction between jurisdictional defects and mere errors in adjudication no longer restrained federal habeas courts. Full-blown constitutional error correction became the order of the day." *Brown*, 596 U.S. at 130, 142 S. Ct. at 1522. The Court noted that frequent granting of relief had the effect of trivializing the writ, which resulted in "an exploding caseload of habeas petitions from state prisoners" and created the risk that meritorious cases could be lost like needles in a haystack. *Id*. at 130-131. For this reason, and within this context the Supreme Court held that before relief could be granted, a state prisoner must prevail on both *Brecht* and § 2254(d).

11. Please summarize Part IV of the U.S. Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).

Response: The Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), held that race-based admissions "must comply with strict scrutiny, they may never use race as a stereotype or negative, and – at some point – they must end." *Id*. at 213. The Court held that the admissions systems at issue failed each of these criteria and invalidated them under the Equal Protection Clause of the Fourteenth Amendment. Specifically, the Court held that the admissions policy goals asserted were commendable, but not sufficiently coherent for purposes of strict scrutiny. The Court also determined that the admissions programs failed to articulate a meaningful connection between the means they employ and the goals they pursue. *Id*. at 214-215. The Court held that the race-based admissions systems failed to comply with the Equal Protection Clause that race may never be used as a "negative" and that it may not operate as a stereotype. *Id*. at 218. The Court's ultimate conclusion was that the programs failed to survive strict scrutiny because they use race as both a negative and as an impermissible stereotype, and they have no logical endpoint. *Id*. at 225.

12. Please summarize Part III of the U.S. Supreme Court's decision in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

Response: The Supreme Court found that it would be an impermissible abridgement of the First Amendments free Speech rights for the state of Colorado, through its enforcement of Colorado Anti-Discrimination Act, to compel the owner of a limited liability company that provided website and graphic design services, and which sought to enter website business, to create speech she did not believe by forcing her to convey on wedding websites messages inconsistent with her religious belief that marriage should be reserved to unions between one man and one woman. Colorado sought to make her choose between speaking as the state demanded and not face sanctions or face sanctions for expressing her own beliefs. In Part III, the Court held that creating websites involved

the creator's speech and that compelling speech the creator did not wish to provide violated her First Amendment rights. *303 Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023).

13. Please summarize Part II of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2022).

Response: In Part II of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the Court applying the *Washington v. Glucksberg* framework, explained the standard used in determining whether the Fourteenth Amendment's reference to "liberty" protects a particular right, and whether the right at issue in *Dobbs* was rooted in our Nation's history and tradition and an essential component of what has been described as "ordered liberty," and whether the right to obtain an abortion was part of a broader entrenched right supported by other precedents. *Id.* at 234. In its analysis, the Court held that a state's regulation of abortion is not a sex-based classification and not subject to the "heightened scrutiny" that applies to such classifications. *Id.* at 237. "When we engage in that inquiry in the present case, the clear answer is that the Fourteenth Amendment does not protect the right to an abortion." *Id.* at 240. It further held that the right to abortion is not deeply rooted in the Nation's history and traditions.

14. Please summarize Part III of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022).

Response: In Part III of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 596 U.S. 215 (2022), the Court considered the doctrine of stare decisis. In doing so, the Court laid out five factors it considered when overruling the previous precedent of *Roe* v. *Wade* and *Casey v. Planned Parenthood*. Specifically, the Court gave "the nature of their error, the quality of their reasoning, the "workability" of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance," as its reasoning for overruling precedent. *Id*.

15. Please describe the legal rule employed in *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), and explain why the U.S. Supreme Court sided with the Petitioner.

Response: *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021), involved the doctrine of qualified immunity. The Supreme Court applies a two-part analysis to determine whether an official is entitled to qualified immunity: First, whether the facts alleged by the plaintiff amount to a constitutional violation; Second, was the constitutional right clearly established at the time of the misconduct. *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S. Ct. 808, 818 (2009). The Court also employed the legal rule that when determining qualified immunity in a Fourth Amendment context, specificity is important so that an officer has notice that his or her specific conduct is unlawful. *Id*. at 6 (holding that "to show a violation of clearly established law, Cortesluna must identify a case that put Rivas-Villegas on notice that his specific conduct was unlawful."). In this case, the Court reversed the Ninth Circuit's determination that the officer was not entitled to qualified

immunity because the officer did not have notice that a specific use of force was unlawful. *Id*. at 9. Applying the rule to the facts of the case, the Court considered the officer's conduct, and concluded that the conduct did not violate a clearly established right against excessive force. The officer was therefore entitled to qualified immunity.

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

Response: The authority for nationwide injunction is derived from the equitable powers of federal courts and is typically based on Rule 65 of the Federal Rules of Civil Procedure. The equitable powers of the federal courts refer to their authority to apply principles of fairness and justice in addition to legal rules. This allows courts to issue equitable remedies, such as injunctions or specific performance, to address unique circumstances where strict application of the law may not suffice. Rule 65 governs the issuance of injunctions and restraining orders in federal civil cases. When a court issues an injunction, it is typically intended to provide relief to the parties involved in the case. However, in some situations, courts have issued a nationwide injunction, which extends the reach of the court's order beyond the immediate parties to the lawsuit. This means that the injunction applies not only to the parties involved in the case but also to individuals or entities across the entire nation. The authority for a nationwide injunction has been a subject of legal and scholarly debate. Proponents argue that it can be a necessary tool for ensuring uniformity and avoiding a patchwork of conflicting legal standards across different jurisdictions. Opponents argue that it may exceed the traditional scope of the equitable relief and interfere with the principle of comity between federal courts and other branches of government. It should be noted, however, that injunctions are "a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). As to the circumstances under which a nationwide injunction against the implementation of federal laws or policies would be proper, that issue currently comes before federal courts. As a district court judge nominee, the Code of Conduct precludes me from making public comment on the merits of a matter pending or impending in any court. Providing an opinion on a matter that could someday be pending before me could lead a litigant to conclude that I had prejudged the issue. If confirmed, I would apply Supreme Court and Fifth Circuit precedent in addressing a case involving a request for a nationwide injunction.

17. Is there ever a circumstance in which a district judge may seek to circumvent a published precedent of the U.S. Court of Appeals under which it sits or the U.S. Supreme Court?

Response: No.

18. If confirmed, please describe what role U.S. Supreme Court dicta would play in your decisions.

Response: If confirmed, I will follow binding precedent of the Supreme Court and the Fifth Circuit. Dicta is not binding precedent.

19. To the best of your recollection, please list up to 10 cases in which you served as lead counsel in a bench trial in federal district court or a case tried before a jury in federal district court.

Response: Cases tried in federal court before a jury:

U.S. v. Jose Torrias – 4:21cr252 (E.D. Tex.)

U.S. v. Debra Mercer-Erwin – 4:20cr212 (E.D. Tex.)

U.S. v. Brian Black – 4:21cr152 (E.D. Tex.)

U.S. v. Victor Lopez-Llamas – 4:18cr205 (E.D. Tex.)

U.S. v. Tyton Hester – 4:18cr85 (E.D. Tex.)

U.S. v. Jennifer Culpepper – 4:19cr266 (E.D. Tex.)

U.S. v. Omar Garcia-Agosto and Steven Mathis – 4:19cr265 (E.D. Tex.)

U.S. v. Juan Arreola – 4:17cr176 (E.D. Tex.)

U.S. v. Efrain Vasquez – 4:17cr107 (E.D. Tex.)

U.S. v. Juan Cadenas-Urena – 4:18cr49 (E.D. Tex.)

20. When reviewing applications from persons seeking to serve as a law clerk in your chambers, what role if any would the race and/or sex of the applicants play in your consideration?

Response: Race and/or sex would play no role in my consideration of persons seeking to serve as a law clerk in my chambers.

21. Please list all social-media accounts you have had during the past 10 years with Twitter/X, Facebook, Reddit, Instagram, Threads, TikTok, and LinkedIn and the approximate time periods during which you had the account. If the account has been deleted, please explain why and the approximate date of deletion.

Response: I have no social media accounts.

22. Why should Senator Kennedy support your nomination?

Response: It would be a great honor and privilege to continue to be a public servant and serve my country as an Article III judge. If confirmed, my judicial philosophy would be to faithfully apply the law to the facts of the case before me, to decide cases and legal issues fairly without bias or prejudice, to treat the litigants with respect, and to provide them an opportunity to be heard. I would work diligently to issue clear rulings that make

the holdings and the underlying rationale clear, give all parties a fair and open hearing, and to rule only on the facts and the record, using the Supreme Court and Fifth Circuit precedent, and the method of interpretation that is embodied in that precedent. My 30 years of public service and legal experience make me well-prepared to meet the challenges and responsibilities of an Article III judge. Having prosecuted some of the most dangerous criminals in the United States and abroad and handling the largest docket of complex cases and defendants in the nation, with over 235 jury trials in my career, I know what it takes to handle a large docket and litigate complex cases. My broad-based experience enables me to analyze and resolve even novel legal issues adeptly, and with confidence. Additionally, on January 22, 2024, the American Bar Association's Standing Committee on the Federal Judiciary advised that it is of the unanimous opinion that I am "Well Qualified" to serve on the United States District Court for the Western District of Texas. My reputation for professional competence and integrity has earned the support of both of my home state senators, Senators John Cornyn and Ted Cruz. It would be an honor and privilege to receive Senator Kennedy's support as well.