

Senator Lindsey Graham, Ranking Member
Questions for the Record
Ms. Dena Michaela Coggins

Nominee to be United States District Judge for the Eastern District of California.

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?**

a. **If yes, list all countries of citizenship and dates of citizenship.**

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

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

Response: No.

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

Response: No.

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

Response: No.

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.

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. Judges are bound to faithfully and impartially apply the binding law to the relevant facts in each case coming before the court. A judge’s personal value judgments are not relevant and should never be considered when analyzing and making legal decisions.

7. **In a concurrence in the denial of rehearing en banc in *Al-Bihani v. Obama* then-Judge Kavanaugh wrote: “international-law norms are not domestic U.S. law in the**

absence of action by the political branches to codify those norms.” Is this a correct statement of law?

Response: As a sitting judge and judicial nominee, I am precluded from offering an opinion on issues pending or impending in any court or that may come before me to avoid creating the impression that I have prejudged the issue. *See* Code of Conduct for United States Judges, Canon 3A(6). If confirmed, I would faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent if this issue came before me. In *Medellin v. Texas*, 552 U.S. 491, 505 (2008), the Supreme Court noted “[n]ot all international law obligations automatically constitute binding federal law enforceable in United States courts.” The Supreme Court recognized that while treaties may constitute an international commitment, it is not binding domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be self-executing and is ratified on those terms. *Id.* at 504-505 (internal citations and quotations omitted).

8. **Please explain what changes Proposition 57 made to the Constitution of California.**

Response: My general understanding is Proposition 57 was enacted to address a federal court order requiring California to reduce its prison population. Proposition 57 was developed as a process of considering parole of non-violent offenders and to provide a system of sentencing credits for inmates who completed educational and rehabilitative programs in order to improve public safety upon an inmate’s release on parole, to comply with the federal court order to reduce the prison population, and to encourage inmate rehabilitation.

9. **While Deputy Legal Affairs Secretary in Governor Edmund G. Brown Jr.’s office did you ever conduct research relating to Proposition 57?**

Response: No.

10. **Did you play any role in drafting, editing, or reviewing Proposition 57?**

Response: No.

11. **While Deputy Legal Affairs Secretary in Governor Brown’s office did you offer any advice or guidance on drafting, editing, researching, or reviewing Proposition 57?**

Response: No.

12. **Please explain the Supreme Court of California’s decision in the case of *In re Gadlin*, 10 Cal. 5th 915 (2020).**

Response: In November 2016, Proposition 57 was approved by the California electorate, which amended the California Constitution to provide “[t]hat any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.” *In re Gadlin*, 10 Cal.5th 915, 919 (2020) (citing Cal. Const., art. I, § 32, subd. (a)(1)) (internal quotations omitted). The Department of Corrections and Rehabilitation adopted regulations to implement the nonviolent offender parole process. *Id.* Those regulations excluded from nonviolent offender parole consideration any inmate who was "convicted of a sexual offense that currently requires or will require registration as a sex offender under the Sex Offender Registration Act." *Id.* In *In re Gadlin*, the California Supreme Court held that nonviolent offender parole eligibility “must be based on an inmate’s current conviction.” *Id.* at 943. The California Supreme Court further held that an inmate may not be excluded from nonviolent offender parole consideration “based on a current conviction for a registerable felony offense that the Department [of Corrections and Rehabilitation]’s regulations have defined as nonviolent.” *Id.*

13. **Please explain, in detail, what type of work you would perform for Governor Brown on individual cases relating to parole.**

Response: The California Constitution gives the Governor the authority to review proposed parole grants after the Parole Board recommends parole. The Governor can affirm, reverse, or refer back to the Parole Board any grant of parole to a person serving an indeterminate life sentence. Each deputy legal affairs secretary, including myself, was assigned certain individual cases to review where the Parole Board recommended parole of an inmate serving an indeterminate life sentence. I reviewed the correctional file, parole hearing transcripts, victims’ statements, and psychological reports. I advised Governor Brown about the facts contained in those documents and answered any questions he had relating to those facts. I did not provide any recommendations to the Governor with respect to his option to affirm, reverse, or refer cases back to the Parole Board. In cases in which he reversed the Parole Board’s recommendation for parole, I prepared a draft of his decision as directed by the Governor, which he reviewed for accuracy, edited, and signed. He decided each individual case.

a. **Did your responsibilities include making recommendations to Governor Brown on whether he should “affirm, modify, or reverse the decision of the parole authority” in individual cases?**

Response: No.

14. **Did you advise Governor Brown on policy relating to parole?**

Response: No.

- a. **If yes, please explain in detail what advice you offered.**

Response: Not applicable.

15. **Did you ever review or research the Parole Authority's decision to parole James Schoenfeld?**

Response: No.

- a. **Did you ever draft any document relating to the Parole Authority's decision to parole James Schoenfeld?**

Response: No.

- b. **Did you ever discuss to the Parole Authority's decision to parole James Schoenfeld with anyone in Governor Brown's office.**

Response: No.

16. **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.

17. **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.

18. **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.

19. **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: The relevant law governing how a prisoner in custody under sentence of a federal court may seek and receive relief from the sentence is found in 28 U.S.C. § 2255. The prisoner may challenge the sentence on the following four grounds: (1) the sentence imposed is in violation of the Constitution or laws of the United States, (2) the Court was without jurisdiction to impose the sentence, (3) the sentence was in excess of the maximum authorized by law, or (4) the sentence is otherwise subject to a collateral attack. 28 U.S.C. § 2255(a). A motion pursuant to 28 U.S.C. § 2255 must be made within one-year from the date the judgment of conviction becomes final; the date the impediment to making a motion created by governmental action in violation of the Constitution or United States laws is removed, if the movant was prevented from making a motion by such governmental action; the date the right asserted was initially recognized by the Supreme Court, if newly recognized and made retroactive to cases on collateral review; or the date which the facts supporting the claim(s) presented should have been discovered through the exercise of due diligence. 28 U.S.C. § 2255(f).

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

Response: In *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, Students for Fair Admissions filed separate lawsuits against Harvard and the University of North Carolina (UNC), asserting their race-based admissions programs violated Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment, respectively. The Supreme Court held both educational institutions violated the Equal Protection Clause of the Fourteenth Amendment, as neither university’s admission policy passed strict scrutiny. The Supreme Court found the admission policies lacked sufficiently focused and measurable objectives warranting the use of race, employed race in a negative manner, involved racial stereotyping, and lacked meaningful end points.

21. **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 was a member of the hiring panel as a Supervising Attorney at the State of California, California Victim Compensation Board, between 2017 and 2018. I participated in interviewing candidates for attorney and staff positions. The ultimate hiring decision was made by the Chief Counsel of the California Victim Compensation Board.

22. **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.

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

Response: No.

24. **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 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.

Response: Not applicable.

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

Response: Yes, government classifications on the basis of race are subject to strict scrutiny. *See, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023).

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

Response: In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held the First Amendment right to free speech prohibited Colorado from compelling a website designer to create expressive designs celebrating marriages that defied her belief that marriage should be for unions between a man and a woman, which the Court found to be a sincerely held conviction by the designer.

27. **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. Recently, the Supreme Court reaffirmed Justice Jackson’s opinion in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023). As in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), the Court held that it is impermissible for the government to compel speech or deploy coercive measures that would result in the same.

28. **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: To determine whether a law that regulates speech is content-based or content-neutral, I would turn to binding Supreme Court and Ninth Circuit precedent. As discussed in *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015), the court is to first determine “whether the law is neutral on its face.” Next, the court is to consider the law’s purpose. *Id.* If the law “imposes content-based restrictions on speech, those provisions stand only if they survive strict scrutiny.” *Id.* at 2231.

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

Response: The standard for determining whether a statement is not protected speech under the true threats doctrine was addressed in *Counterman v. Colorado*, 143 S. Ct. 2106 (2023). Generally, the standard is a recklessness standard. *Id.* at 2113. The Supreme Court analyzed whether the speaker had some subjective understanding of the “threatening nature of his statements.” *Id.* at 2112-2113 (“The State must show that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence.”).

30. **Under Supreme Court and Ninth Circuit precedent, what is a “fact” and what sources do courts consider in determining whether something is a question of fact or a question of law?**

Response: To determine whether an issue is a question of fact, the Supreme Court looks to “who did what, when or where, how or why.” *U.S. Bank Nat’l Ass’n ex rel. CWC Capital Asset Mgmt. LLC v. Vill. At Lakeridge LLC*, 138 S. Ct. 960, 966 (2018). A “question of law” is defined in Black’s Law Dictionary (11th ed. 2019) as “[a]n issue to be decided by the judge, concerning the application or interpretation of the law.”

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

Response: Congress has not directed any one purpose as primary. Retribution, deterrence, incapacitation, and rehabilitation are all well-established principles governing the intended purpose of the sentencing framework. If confirmed, I would consider all the 18 U.S.C. § 3553(a) factors when sentencing a defendant.

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

Response: As a sitting state court judge and judicial nominee, I am precluded from commenting on the quality of Supreme Court decisions. *See* Code of Conduct for United States Judges, Canon 3A(6). If confirmed, I will faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting state court judge and judicial nominee, I am precluded from commenting on the quality of Ninth Circuit decisions. *See* Code of Conduct for United States Judges, Canon 3A(6). If confirmed, I will faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent.

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

Response: My understanding of 18 U.S.C. § 1507 is based on my review of the text, which states, “whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness or court order, 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 a 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.”

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

Response: I am not aware of binding Supreme Court or Ninth Circuit decision addressing whether 18 U.S.C. §1507 is constitutional. In *Cox v. Louisiana*, 85 S. Ct. 476, 479-481 (1965), the Supreme Court held that a similar state statute was facially valid. As a sitting judge and judicial nominee, I am precluded from offering an opinion on issues pending or impending in any court or that may come before me to avoid creating the impression that I have prejudged the issue. See Code of Conduct for United States Judges, Canon 3A(6). If confirmed, I would faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent.

36. **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 sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in the future. However, it is highly unlikely the issue of *de jure* racial segregation at issue in *Brown v. Board of Education* will be relitigated, so offering an opinion is not precluded by the Judicial Canons. As such, it is my opinion that *Brown v. Board of Education* was correctly decided.

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

Response: As a sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in the future. However, it is highly unlikely the issue that a prohibition on interracial marriage will be relitigated, so offering an opinion is not precluded by the Judicial Canons. As such, it is my opinion that *Loving v. Virginia* was correctly decided.

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

Response: As a sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in the future. See Code of Conduct for United States Judges, Canon 3A(6). *Griswold v. Connecticut* is binding United States Supreme Court precedent. If confirmed, I will faithfully and impartially follow binding United States Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in the future. *See* Code of Conduct for United States Judges, Canon 3A(6). In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court overruled *Roe v. Wade* and it is no longer binding precedent. If confirmed, I will faithfully and impartially follow binding United States Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in the future. *See* Code of Conduct for United States Judges, Canon 3A(6). In *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Supreme Court overruled *Planned Parenthood v. Casey* and it is no longer binding precedent. If confirmed, I will faithfully and impartially follow binding United States Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in the future. *See* Code of Conduct for United States Judges, Canon 3A(6). *Gonzales v. Carhart* is binding United States Supreme Court precedent. If confirmed, I will faithfully and impartially follow binding United States Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in the future. *See* Code of Conduct for United States Judges, Canon 3A(6). *District of Columbia v. Heller* is binding United States Supreme Court precedent. If confirmed, I will faithfully and impartially follow binding United States Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in

the future. *See* Code of Conduct for United States Judges, Canon 3A(6). *McDonald v. City of Chicago* is binding United States Supreme Court precedent. If confirmed, I will faithfully and impartially follow binding United States Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in the future. *See* Code of Conduct for United States Judges, Canon 3A(6). *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* is binding United States Supreme Court precedent. If confirmed, I will faithfully and impartially follow binding United States Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in the future. *See* Code of Conduct for United States Judges, Canon 3A(6). *New York State Rifle & Pistol Association v. Bruen* is binding United States Supreme Court precedent. If confirmed, I will faithfully and impartially follow binding United States Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in the future. *See* Code of Conduct for United States Judges, Canon 3A(6). *Dobbs v. Jackson Women's Health* is binding United States Supreme Court precedent. If confirmed, I will faithfully and impartially follow binding United States Supreme Court and Ninth Circuit precedent.

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 sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in the future. *See* Code of Conduct for United States Judges, Canon 3A(6). *Students for Fair Admissions, Inc. v. University of North Carolina and Students for Fair Admissions Inc. v.*

President & Fellows of Harvard College is binding United States Supreme Court precedent. If confirmed, I will faithfully and impartially follow binding United States Supreme Court and Ninth Circuit precedent.

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

Response: As a sitting state court judge and judicial nominee, it is generally improper for me to opine on whether United States Supreme Court cases were correctly decided, because I may be presented with a similar legal issue in a case that comes before me in the future. *See* Code of Conduct for United States Judges, Canon 3A(6). *303 Creative LLC v. Elenis* is binding United States Supreme Court precedent. If confirmed, I will faithfully and impartially follow binding United States Supreme Court and Ninth Circuit precedent.

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

Response: In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court discussed the legal standard to apply in evaluating whether a regulation or statutory provision infringes on Second Amendment rights. More specifically, the Court held, “[W]hen the Second Amendment’s plain text covers an individual’s conduct. . . . [T]he government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* at 2126.

38. **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.

39. **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.

40. **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: Not applicable.

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.

41. **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.

42. **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.

43. **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 October 2023, I submitted an application to the Selection Committees of Senator Alex Padilla and the late Senator Dianne Feinstein. On December 12, 2023, I interviewed with Senator Laphonza Butler's office. On December 15, 2023, I interviewed with Senator Butler. On December 20, 2023, an attorney from the White House Counsel's Office contacted me to set up an interview. On December 22, 2023, I interviewed with attorneys from that office. Since December 22, 2023, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On February 7, 2024, the President announced his intent to nominate me.

44. **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.

45. **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.

46. **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.

47. **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.

48. **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.

49. **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?**

Response: Not applicable.

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

Response: On December 20, 2023, an attorney from the White House Counsel's Office contacted me to set up an interview. On December 22, 2023, I interviewed with attorneys from that office. Since December 22, 2023, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On February 7, 2024, the President announced his intent to nominate me.

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

Response: I received these questions on the evening of March 13, 2024. I conducted legal research, reviewed my files, and drafted my responses. I submitted my draft responses to the Office of Legal Policy at the Department of Justice on March 14, 2024, and received limited feedback. I then finalized and submitted my answers.

Senate Judiciary Committee

Nominations Hearing

March 6, 2024

Questions for the Record

Senator Amy Klobuchar

Dena Coggins, to be United States District Court Judge for the Eastern District of California

Since 2021, you have served as a Superior Court judge in Sacramento County. During this time, you have presided over more than 150 evidentiary hearings or trials and have also presided over 100 juvenile dependency trials.

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

Response: I have been fortunate to be on the bench for almost a decade. As an Administrative Law Judge, I was required to apply federal and state law in the matters that came before me. I presided over hundreds of bench trials and wrote over 150 written decisions on complex legal matters. As an Administrative Law Judge I presided over numerous matters involving self-represented litigants. Whether one is self-represented or represented by counsel, I treat attorneys and litigants fairly and respectfully, and ensure that they have an opportunity to be heard. As a state court judge, I have presided over criminal and juvenile matters. I have presided over juvenile dependency and juvenile delinquency matters, including more than 100 bench trials, hearings on motions, and discovery disputes. I have conducted more than 100 settlement conferences, mediations and pretrial conferences as an Administrative Law Judge and state court judge. As a state court judge, I am required to apply state and federal law in the matters before me, including the Indian Child Welfare Act. I effectively manage a busy caseload as well as supervise seven other state court judges.

- **What steps have you taken to ensure that those who appear before you have confidence that the court reached a fair and just decision, regardless of the outcome?**

Response: The steps that I have taken to ensure that those who appear before me have confidence that the court reached a fair and just decision, regardless of the outcome, is to explain the process and what is occurring at the hearing or trial. I allow the litigants an opportunity to be heard and to ask questions if they do not understand what is occurring in court. I explain that I cannot give them legal advice, but that I am happy to explain the court process. I allow them to speak with their attorney if they have any questions during the proceedings. I am always prepared and thoroughly research all legal issues that I believe will need to be decided in the court proceeding. I ensure that all parties are respectful and control the courtroom to ensure that all parties are treated fairly and respectfully. Following the court hearing or trial, I provide a well-reasoned, concise and understandable plain language decision that ensures the litigants understand how I

reached the legal determination made, which shows the litigants I carefully considered all of the evidence and applied the binding precedent to the facts before me.

Senator Mike Lee

Questions for the Record

Dena Michaela Coggins, Nominee for District Court Judge for the Eastern District of California

1. How would you describe your judicial philosophy?

Response: I understand judicial philosophy to mean a set of ideas and beliefs of a particular judge shaping rulings on cases. My commitment as a judge is to fairly, impartially, and diligently apply binding United States Supreme Court and Ninth Circuit precedent to the facts and legal issues that come before me. I believe it is vital to be prepared and approach each case as a neutral interested arbiter. I am duty bound to ensure litigants receive notice and an opportunity to be heard. I believe it is vital to issue well-reasoned and understandable decisions so the litigants, public, and appellate courts understand how I applied the law to the facts to reach my ultimate decision.

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

Response: In deciding a case turning on the interpretation of a federal statute, I would begin by faithfully and impartially applying United States Supreme Court and Ninth Circuit precedent. If no precedent exists, I would review the plain meaning of the text of the statute. If the plain meaning of the text is unambiguous, I would apply the plain meaning of the text to the case facts to analyze and decide the legal issue before me. If the language is ambiguous, I would research binding United States Supreme Court and Ninth Circuit precedent to determine if there is guidance regarding how the statute should be interpreted. If I needed further guidance, I would consider statutory context and structure, applicable canons of construction, and the method of interpretation that the United States Supreme Court and Ninth Circuit used in the most analogous circumstances. If I needed further guidance, I would examine any sources that the United States Supreme Court and Ninth Circuit directed should be considered when interpreting the statute, including, if appropriate, the legislative history or persuasive authority from other jurisdictions.

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

Response: In a case that turned on interpreting a constitutional provision, I would review and apply binding United States Supreme Court and Ninth Circuit precedent interpreting the constitutional provision. If I was presented with a question of first impression, I would start by reading the plain meaning of the constitutional text. If the text is ambiguous, I would consider the most analogous circumstances and persuasive authority from other jurisdictions. I would ensure I examined any sources the United States Supreme Court and Ninth Circuit directed for consideration when interpreting the specific constitutional provision.

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

Response: The text and the original meaning play a role in interpreting the Constitution. In some cases, the Supreme Court has applied the original meaning of a constitutional provision to interpret the Constitution. *See, e.g., New York State Rifle & Pistol v. Bruen*, 142 S. Ct. 2111 (2022) (Second Amendment); *Crawford v. Washington*, 124 S. Ct. 1354 (2004) (Confrontation Clause of the Sixth Amendment). In *Bruen*, the Court applied the original public understanding of the Second Amendment and explained “the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry.” *Bruen*, 142 S. Ct. 2111, 2138 (2022). If confirmed, I would faithfully and impartially follow United States Supreme Court and Ninth Circuit precedent in deciding a legal issue relating to a specific constitutional provision.

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 plain meaning of a statute or constitutional provision refers to the ordinary public meaning of the relevant language at the time of enactment. *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1738 (2020) (“This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President.”)

7. What are the constitutional requirements for standing?

Response: Article III of the Constitution limits judicial power to cases or controversies where the plaintiff has established standing. In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2157 (2023), citing *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), the Supreme Court set forth the following elements that the plaintiff must show to establish standing “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.”

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

Response: In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the United States Supreme Court defined the scope of the federal legislative power and the federal government’s relationship with state governmental authority. The Constitution delegates

enumerated powers to Congress under Article I of the Constitution. Additionally, the Necessary and Proper Clause authorizes Congress to “make all laws which shall be necessary and proper for carrying into execution” its enumerated powers delegated by the Constitution. *Id.*, 17 U.S. 316, 323-324 (1819) (“[e]ven without the aid of the general clause in the constitution, empowering congress to pass all necessary and proper laws for carrying its powers into execution, the grant of powers itself necessarily implies the grant of all usual and suitable means for the execution of the powers granted.”)

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

Response: To evaluate the constitutionality of a law enacted by Congress without reference to a specific constitutional enumerated power, I would turn to *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566, 2598 (2012), where the Supreme Court cited *Woods v. Cloyd W. Miller Co.*, 68 S. Ct. 421 (1948), stating that “[t]he question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.” If confirmed, I would faithfully and impartially apply the binding precedent of the United States Supreme Court and Ninth Circuit if I was tasked with evaluating the constitutionality of a law enacted by Congress that did not reference a specific constitutional enumerated power.

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

Response: Yes, the Constitution protects rights that are not expressly enumerated in the Constitution. *See Washington v. Glucksberg*, 117 S. Ct. 2258, 2268 (1997) (explaining that the fundamental rights and liberties that are protected by the Due Process Clause are those that are “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.”) (Citations and internal quotation marks omitted). The Constitution protects many unenumerated rights, including the right to marry someone of a different race (*Loving v. Virginia*, 388 U.S. 1 (1967)), to marry someone of the same sex (*Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)), marital privacy (*Griswold v. Connecticut*, 85 S. Ct. 1678 (1965)), and to direct the education of your children (*Meyer v. Nebraska*, 43 S. Ct. 625 (1923)).

11. What rights are protected under substantive due process?

Response: Substantive due process is a principle that the Fourteenth Amendment protects fundamental rights from governmental interference. The Fourteenth Amendment protects certain unenumerated fundamental rights and liberties. *See Washington v. Glucksberg*, 117 S. Ct. 2258 (1997). The Bill of Rights contains guaranteed enumerated rights. Please see my 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: If I am so fortunate to be confirmed, I would faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent to the record before me and not consider my own personal beliefs when deciding legal issues. In *Washington v. Glucksberg*, 117 S. Ct. 2258, 2268 (1997), the Supreme Court explained that the fundamental rights and liberties that are protected by the Due Process Clause are those that are “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” The United States Supreme Court overruled *Lochner v. New York*, 25 S. Ct. 539 (1905) in *West Coast Hotel Co. v. Parrish*, 57 S. Ct. 578 (1937) (finding the freedom of contract to be a qualified right).

- 13. What are the limits on Congress’s power under the Commerce Clause?**

Response: The Constitution delegates to Congress the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” U.S. Const., art. I, § 8. Congress may regulate the channels of interstate commerce, regulate and protect the instrumentalities of interstate commerce, and persons and things in interstate commerce, and “regulate activities that substantially affect interstate commerce.” *Gonzales v. Raich*, 125 S. Ct. 2195, 2205 (2005).

- 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 determined race, religion, national origin and alienage qualify as a suspect class such that laws affecting those groups must survive strict scrutiny. *City of Cleburne v. Cleburne Living Center, Inc.*, 105 S. Ct. 3249, 3254 (1985) (explaining that when a statute classifies by race, alienage, or national origin, the laws are subjected to strict scrutiny); *New Orleans v. Dukes*, 96 S. Ct. 2513, 2516-2517 (1976).

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

Response: The role that checks and balances and separation of powers play in the Constitution’s structure is the framework of our democracy. The Supreme Court has discussed the importance of checks and balances in *Morrison v. Olson*, 108 S. Ct. 2597 (1988), stating “the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.” (Citations and internal quotation marks omitted).

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: If I was tasked with deciding a case in which one branch of government assumed an authority not granted it by the text of the Constitution, I would consider the issues before the court, the binding United States Supreme Court and Ninth Circuit precedent, and the language of the Constitution to decide the legal issue. *See Youngstown Sheet & Tube Co. v. Sawyer*, 72 S. Ct. 863 (1952) (holding the President's actions unconstitutional because they were not explicitly authorized by an act of Congress nor authorized by the Constitution); *see also Bond v. United States.*, 131 S. Ct. 2355 (2011) (regarding separation of powers issues).

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

Response: A judge is obligated to apply binding precedent to the facts before her. My personal views cannot be considered in interpreting and applying the law. Empathy plays a role in the way a judge treats the litigants appearing before the court. Litigants should be treated respectfully, fairly, and impartially. However, empathy should not play a role in deciding any legal issue before the Court.

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

Response: Both outcomes are unacceptable. I would faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent to avoid either outcome.

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 the increased occurrences of the Supreme Court invalidating federal statutes since 1857. If confirmed, I would faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent to the cases before me.

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

Response: Black's Law Dictionary (11th ed. 2019) defines "judicial review" as "a court's power to review the actions of other branches or levels of government." Black's Law Dictionary (11th ed. 2019) defines "judicial supremacy" as "the doctrine that interpretations of the Constitution by the federal judiciary in the exercise of

judicial review . . . are binding on the coordinate branches of the federal government and the states.

- 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: Elected officials are bound by the oath they take to defend the Constitution. U.S. Const., art. 2, § 1, art. 6. If confirmed, in all cases or controversies involving elected officials, I will faithfully and impartially apply the binding United States Supreme Court and Ninth Circuit precedent to the facts before to analyze and decide legal issues that come before the court.

- 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 judiciary has a limited role of interpreting and applying the law in cases that come before the court. As a sitting judge and judicial nominee, I am bound by the powers delegated to the judiciary by the Constitution.

- 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: If confirmed, I will faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent to the facts before me. The United States Supreme Court may overturn its own precedent, but, as a District Court Judge, I would be bound to follow United States Supreme Court and Ninth Circuit precedent, and I would faithfully do so if I am confirmed.

- 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: None.

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 or the context in which the statement was made. The Black’s Law Dictionary (11th ed. 2019) defines equity as “fairness, impartiality, and evenhanded dealing” and “the body of principles constituting what is fair and right; natural law.”

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

Response: Merriam-Webster Dictionary defines “equity” as “justice according to natural law or right” and “specifically: freedom from bias or favoritism.” Merriam-Webster Dictionary defines “equality” as “the quality or state of being equal.” The definitions are not the same.

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

Response: Please see my response to Question 25. The Fourteenth Amendment guarantees “equal protection under the law.” If confirmed, I would follow binding United States Supreme Court and Ninth Circuit precedent.

28. **Without citing Black’s Law Dictionary, how do you define “systemic racism?”**

Response: I do not have a personal definition of “systemic racism.” Merriam-Webster defines “systemic racism” as “the oppression of a racial group to the advantage of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems).”

29. **Without citing Black’s Law Dictionary, how do you define “critical race theory?”**

Response: I do not have a personal definition of “critical race theory.” According to Merriam-Webster, critical race theory is defined as “a group of concepts (such as the idea that race is a sociological rather than biological designation, and that racism pervades society and is fostered and perpetuated by the legal system) used for examining the relationship between race and the laws and legal institutions of a country and especially the United States.”

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

Response: Please see my responses to Questions 28 and 29.

31. **Between the years 2013 and 2015, you were the deputy legal affairs secretary for former California Governor Edmund G. Brown Jr. You described your work to include “briefing the Governor on individual cases relating to parole,” and that “a significant amount of [your] work involved advising the Governor on issues related to the parole of indeterminately sentenced inmates.” In contrast with former Governor Schwarzenegger who blocked roughly three fourths of parole decisions for convicted murderers, and former Governor Davis who blocked nearly 98 percent of parole decisions for murderers, Governor Brown blocked less than one fifth of the Parole Board’s decisions to release convicted murderers. What role did you play in advising Governor Davis to support parole for a substantially higher number of murderers than his predecessors, and did this dramatic shift in policy reflect your recommendations?**

Response: The California Constitution gives the Governor the authority to review proposed parole grants after the Parole Board recommends parole. The Governor can affirm, reverse, or refer back to the Parole Board any grant of parole to a person serving an indeterminate life sentence. Each deputy legal affairs secretary, including myself, was assigned certain individual cases to review where the Parole Board recommended parole of an inmate serving an indeterminate life sentence. I reviewed the correctional file, parole hearing transcripts, victims’ statements, and psychological reports. I advised Governor Brown about the facts contained in those documents and answered any questions he had relating to those facts. I did not provide any recommendations to the Governor with respect to his option to affirm, reverse, or refer cases back to the Parole Board. In cases in which he reversed the Parole Board’s recommendation for parole, I prepared a draft of his decision as directed by the Governor, which he reviewed for accuracy, edited, and signed. He decided each individual case.

Senator John Kennedy
Questions for the Record
Dena M. Coggins

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

Response: Yes. There are certain enumerated offenses whereby a defendant may be sentenced to death as set forth in 18 U.S.C. §3591. In *Gregg v. Georgia*, 96 S. Ct. 2909 (1976), the United States Supreme Court held that the death penalty is constitutional. If I am confirmed, I would faithfully and impartially follow United States Supreme Court and Ninth Circuit precedent and the statutory procedures for sentencing a defendant.

- 2. 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.

- 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, including your approach to constitutional and statutory interpretation. Be as specific as possible.**

Response: I understand judicial philosophy to mean a set of ideas and beliefs of a particular judge shaping rulings on cases. My commitment as a judge is to fairly, impartially, and diligently apply binding United States Supreme Court and Ninth Circuit precedent to the facts and legal issues that come before me. I believe it is vital to be prepared and approach each case as a neutral interested arbiter. I am duty bound to ensure litigants receive notice and an opportunity to be heard. I believe it is vital to issue well-reasoned and understandable decisions so the litigants, public, and appellate courts understand how I applied the law to the facts to reach my ultimate decision.

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

Response: Yes. Originalism is a legitimate method of constitutional interpretation. In some cases, the Supreme Court has applied the original meaning of a constitutional provision to interpret the Constitution. *See, e.g., New York State Rifle & Pistol v. Bruen*, 142 S. Ct. 2111 (2022) (Second Amendment); *Crawford v. Washington*, 124 S. Ct. 1354

(2004) (Confrontation Clause of the Sixth Amendment). In *Bruen*, the Court applied the original public understanding of the Second Amendment and explained “the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry.” *Bruen*, 142 S. Ct. 2111, 2138 (2022). If confirmed, I faithfully and impartially follow Supreme Court and Ninth Circuit precedent in deciding a legal issue relating to a specific constitutional provision.

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: If I were 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 Appeal, I would start by turning to the text of the constitutional provision. If there was no ambiguity in the language, I would apply the constitutional provision to the facts before me to resolve the constitutional question. If the language was ambiguous, I would look to United States Supreme Court and Ninth Circuit guidance to determine the appropriate approach to interpreting the constitutional provision, including, but not limited to, the canons of construction.

8. Is textualism a legitimate method of statutory interpretation?

Response: Yes. In *Bostock v. Clayton County Georgia*, 140 S. Ct. 1731, 1738 (2020), the Supreme Court acknowledged that the Court, “normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” The Court instructed “when the meaning of the statute’s terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration.” *Id.* at 1749.

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

Response: If I were called on to resolve a question determining the meaning of a statute or provision, I would begin by faithfully and impartially applying United States Supreme Court and Ninth Circuit precedent. If no precedent existed, I would turn to the text of the statute or provision. If there was no ambiguity in the text, I would apply the statute or provision to the facts before me to resolve the question. If the text was ambiguous, I would look to United States Supreme Court and Ninth Circuit guidance to determine the appropriate approach to interpret the constitutional provision, including, but not limited to, the canons of construction. I would look beyond textual sources to the extent authorized by the United States Supreme Court and Ninth Circuit.

10. 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 U.S. Constitution’s meaning does not change over time without formal amendment. In *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2118 (2022), the Supreme Court recognized the Constitution has a fixed and enduring meaning and “the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.”

11. 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: In *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021), citing *White v. Pauly*, 137 S. Ct. 548, 551 (2017), the Supreme Court held qualified immunity applies “when an official’s conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” The Supreme Court reversed the Ninth Circuit’s determination that a police officer was not entitled to qualified immunity, because the Respondent did not identify a case that put the police officer on notice that his specific conduct was unlawful as required to show a violation of a clearly established law. *Id.* at 7.

12. 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: Federal Rules of Civil Procedure rule 65 governs injunctive relief and provides the courts authority to issue injunctions. In *City & Cty. of San Francisco v. Barr*, 965 F.3d 753, 764 (9th Cir. 2020), the Ninth Circuit acknowledged there is no prohibition against nationwide injunction but noted “such broad relief must be necessary to give prevailing parties the relief to which they are entitled. The Ninth Circuit noted that injunctions “should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs before the court.” *Id.* at 765. I am not aware of any United States Supreme Court or Ninth Circuit precedent establishing the legal basis for a nationwide injunction.

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

Response: No.

14. Will you fully and faithfully apply all precedents of the U.S. Supreme Court and the U.S. Court of Appeals under which you would sit?

Response: Yes.

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

Response: Dicta is not binding precedent. If confirmed, I would faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent to legal matters coming before the court.

16. The following questions relate to your role as Governor Brown's Deputy Legal Affairs Secretary.

- a. In 2015, did the Governor of California have the authority to block or request additional review of decisions to grant parole in certain cases?**

Response: The California Constitution gives the Governor the authority to review proposed parole grants after the Parole Board recommends parole. The Governor can affirm, reverse, or refer back to the Parole Board any grant of parole to a person serving an indeterminate life sentence. This was true in 2015.

- b. Describe in full your role in advising Governor Brown on issues related to parole determinations.**

Each deputy legal affairs secretary, including myself, was assigned certain individual cases to review where the Parole Board recommended parole of an inmate serving an indeterminate life sentence. I reviewed the correctional file, parole hearing transcripts, victims' statements, and psychological reports. I advised Governor Brown about the facts contained in those documents and answered any questions he had relating to those facts. I did not provide any recommendations to the Governor with respect to his option to affirm, reverse, or refer cases back to the Parole Board. In cases in which he reversed the Parole Board's recommendation for parole, I prepared a draft of his decision as directed by the Governor, which he reviewed for accuracy, edited, and signed. He decided each individual case.

- c. Based on your records and recollection, what was your final day serving as Governor Brown's Deputy Legal Affairs Secretary?**

Response: July 17, 2015.

- d. Based on your records and recollection, how many individuals besides you were responsible for advising Governor Brown on parole decisions around the end of your time in that position?**

Response: Six individuals besides myself were responsible for advising the Governor about the facts contained in a potential parolee's case file. I did not provide any recommendations to the Governor with respect to his option to affirm, reverse, or refer cases back to the Parole Board.

- e. Please describe your knowledge of the 1976 Chowchilla kidnapping and James Schoenfeld's involvement.**

Response: I am unfamiliar with the 1976 Chowchilla kidnapping and James Schoenfeld's involvement.

- f. According to public reporting, on April 1, 2015, a panel of California's parole board granted parole to James Schoenfeld. Based on your records and recollection, were you serving as Governor Brown's Deputy Legal Affairs Secretary at the time this decision was made?**

Response: Yes. However, I am unfamiliar with the 1976 Chowchilla kidnapping and James Schoenfeld's involvement. I did not provide any recommendations to the Governor with respect to his option to affirm, reverse, or refer cases back to the Parole Board, including this matter.

- g. According to public reporting, Governor Brown allowed Schoenfeld's parole decision to stand when he failed to intervene before July 31, 2015. Based on your records and recollection, were you serving as Governor Brown's Deputy Legal Affairs Secretary at the time Governor Brown decided not to intervene?**

Response: No. My final day serving as Governor Brown's Deputy Legal Affairs Secretary was July 17, 2015.

- h. Based on your records and recollection, did you or would you have advised Governor Brown on whether to intervene in the decision to parole James Schoenfeld?**

Response: No. I am unfamiliar with the 1976 Chowchilla kidnapping and James Schoenfeld's involvement. I did not provide any recommendations to the Governor with respect to his option to affirm, reverse, or refer cases back to the Parole Board, including this matter.

- i. Please describe in full your involvement in Governor Brown's decision to allow James Schoenfeld to be paroled.**

Response: I was not involved in any decision made by Governor Brown relating to James Schoenfeld. I am unfamiliar with the 1976 Chowchilla kidnapping and James Schoenfeld's involvement. I did not provide any recommendations to the Governor with respect to his option to affirm, reverse, or refer cases back to the Parole Board, including this matter.

- 17. As a state court judge, has an applicant's race, sex, or religion ever played any role in your decision to offer or refrain from offering the applicant an internship, externship, or clerkship? If so, please provide full details.**

Response: No.

18. Have you ever considered an applicant's race, sex, or religion when making a hiring decision? If so, please provide full details.

Response: No.

19. When reviewing applications from persons seeking to serve as an intern, extern, or law clerk in your chambers, what role would the race, sex, or religion of the applicants play in your consideration?

Response: None.

Questions from Senator Thom Tillis for Dena Michaela Coggins, nominated to serve as U.S. District Judge for the Eastern District of California

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

Response: A judge is obligated to apply binding precedent to the facts before her. My personal views cannot be considered in interpreting and applying the law, as they are irrelevant in analyzing legal issues. A judge's professional background may provide the judge with some familiarity with a legal issue.

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

Response: Impartiality is an expectation for a judge and is required under the Code of Conduct for United States Judges.

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

Response: I understand judicial activism to be a situation where a judge decides a case based on her personal views instead of applying the binding precedent to the facts and issues before the court or deciding issues that are not properly before the court. Judicial activism is not appropriate.

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

Response: No.

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

Response: Yes. As a sitting judge, and if I am confirmed, I am bound to faithfully and impartially apply the binding precedent to the facts of the case and the legal issues before the court without regard to an undesirable outcome.

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

Response: If confirmed, I will faithfully and impartially apply all binding Supreme Court and Ninth Circuit precedent relating to the Second Amendment, which includes the decisions in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), and *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

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

Response: If I am fortunate enough to be confirmed, I am duty bound to faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent in matters concerning qualified immunity. The United States Supreme Court has stated that government officials performing discretionary functions generally are granted qualified immunity and are “shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 S. Ct. 2727, 2738 (1982). Generally, *Bivens* and 42 U.S.C. §1983 support claims of qualified immunity for cases involving law enforcement officers and other government officials. *See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 91 S. Ct. 1999 (1971).

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

Response: As a sitting judge and judicial nominee, I am precluded from offering an opinion on issues pending or impending in any court or that may come before me to avoid creating the impression that I have prejudged the issue. *See Code of Conduct for United States Judges*, Canon 3A(6). If I am fortunate to be confirmed, I am duty bound to faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent in matters concerning qualified immunity. In *Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009), the Supreme Court explained that “[q]ualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.”

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

Response: As a sitting judge and judicial nominee, I am precluded from offering an opinion on issues pending or impending in any court or that may come before me to avoid creating the impression that I have prejudged the issue. *See Code of Conduct for United States Judges*, Canon 3A(6). *See Code of Conduct for United States Judges*, Canon 3A(6). If I am fortunate to be confirmed, I am duty bound to faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent in matters concerning qualified immunity.

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

Response: Article I, Section 8, Clause 8 of the Constitution empowers 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." This clause recognizes the importance of intellectual property rights and is the foundation for the federal copyright and patent systems. If I am fortunate to be confirmed, I will faithfully and impartially apply binding United States Supreme Court and Ninth Circuit precedent regarding intellectual property rights.

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

Response: Although forum shopping and judge shopping is a legitimate concern, I do not believe the issue will present itself in the Eastern District of California, as I do not believe a single judge division exists in the district. In March 2024, the Judicial Conference of the United States limited the ability of litigants to effectively choose judges in certain cases by where they file a lawsuit. The policy addresses all civil actions that seek to bar or mandate state or federal actions, whether by declaratory judgment and/or any form of injunctive relief. The Judicial Conference’s random case assignment policy seeks to deter judge shopping.

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

Response: As a sitting judge and judicial nominee, I am precluded from offering an opinion on issues pending or impending in any court or that may come before me to avoid creating the impression that I have prejudged the issue. *See* Code of Conduct for United States Judges, Canon 3A(6). If I am fortunate to be confirmed, I will faithfully and impartially apply the federal laws and binding United States Supreme Court and Ninth Circuit precedent in matters concerning patent eligibility.