Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Kevin Gafford Ritz
Nominee to be United States Circuit Judge for the Sixth Circuit
April 24, 2024

1. **You have served as the U.S. Attorney for the Western District of Tennessee since 2022. From 2005 to 2022, you served as an Assistant U.S. Attorney in the U.S. Attorney's Office for the Western District of Tennessee.**

    a. **How has your experience as a federal prosecutor prepared you to serve on the Court of Appeals for the Sixth Circuit?**

    Response: I have dedicated my entire legal career to federal public service, and in particular to upholding the Constitution and laws of the United States. The only client I have had is the United States. Being an advocate for the United States has allowed me to serve our country and represent the country's interests, regardless of any personal views I might hold. I would bring a similar dedication to upholding the rule of law if confirmed as a judge.

    My expertise is in federal appellate litigation and specifically litigation in the Sixth Circuit. For approximately 12 years, I served as appellate chief, managing our office's very active docket in the Sixth Circuit. I have written more than 200 federal appellate briefs (and hundreds of other appellate pleadings) and argued 37 cases in the federal courts of appeals—36 of which were before the Sixth Circuit. In doing this work, I consistently needed to get up to speed on new areas of the law and review extensive trial court records. While I am sure every new Judge has a learning curve, due to this experience and knowledge of the Court's practices and procedures, I believe I would be able to contribute fully to the work of the Court if and when confirmed. I would seek to be prepared and collegial at all times, as that is how I have conducted myself as a federal prosecutor.

    I also have extensive federal trial experience, which gave me a deep appreciation for the work of District Judges. I believe my experience in District Court would provide me with valuable perspective in reviewing the rulings of District Judges on appeal.

    While the role of a judge is much different than the role of a federal prosecutor, I believe my dedication to public service, commitment to the rule of law, and extensive litigation experience will translate well and help guide my work as a federal circuit judge, if confirmed.

2. **During your confirmation hearing, you were asked several questions pertaining to professional ethics and your representation in *United States v. Von Rico Webber*.**

a. Please describe your role in *United States v. Von Rico Webber* and your knowledge of any complaint arising from your representation in that case.

Response: As Assistant United States Attorney, I was counsel of record in *United States v. Von Rico Webber*, W.D. Tenn. No. 08-cr-20261. I did not make any misrepresentations to defense counsel in that case. The consistent and firm position of the government in that case was that I did not make any misrepresentations or commit any misconduct. There was never any finding by a court or any other body that I had made misrepresentations or committed misconduct.

I handled the investigation and the proceedings leading to indictment of Mr. Webber and a co-defendant on August 12, 2008. The indictment charged the defendants with money laundering relating to illegal drug distribution. Record Entry (RE) 2.

The government provided discovery to the defense in December 2008. RE-25. That discovery included "detailed descriptions of the Defendant's cocaine and marijuana trafficking activities," including "a detailed description of the Defendant's involvement in trafficking kilogram quantities of cocaine." RE-98-1, pp. 2, 7.

Mr. Webber's original attorney withdrew as counsel, and the court appointed Autumn Chastain to represent him in February 2009. RE-24; RE-34.

The defendant and his attorney signed a written plea agreement on September 17, 2009. RE-53. That agreement contained no provision about the type or amount of drugs the defendant would be held accountable for at sentencing. And the agreement stated that "no additional promises, representations or inducements" had been made to the defendant or his attorney. RE-53, p. 2. That same day, the defendant engaged in a plea colloquy under oath in open court, where he acknowledged that no promises had been made to him other than those contained in the written plea agreement. RE-98-1.

After receiving the presentence investigation report, which held the defendant accountable for the cocaine and marijuana he was trafficking, the defense attorney moved to withdraw. RE-64. In the motion, filed December 31, 2009, the defense attorney alluded to representations she had made to the defendant regarding sentencing exposure, which she stated were "based on information provided by the Government." *Id.*, p. 2. The defense did not provide any more detail about the "information" referenced in the motion.

On December 30, 2009, the Federal Public Defender Stephen Shankman, who was not involved in the *Webber* case, sent an email to federal defense attorneys in Memphis alleging that I had made misrepresentations to a defense attorney about the sentencing exposure for that attorney's client. The Public Defender appeared to be referencing the *Webber* case, although he did not identify it or the defense attorney. At the time I had only met Mr. Shankman a few times and had only spoken to him a few times. I do not recall handling any cases where he and I were opposing counsel.

This allegation was baseless. One of the attorneys who received the email from the Public Defender sent it to an attorney in the U.S. Attorney's Office. RE-78, p. 4. I learned about the email on or about January 4, 2010.

On January 8, 2010, United States Attorney Larry Laurenzi responded to the Public Defender and the attorneys who received the Public Defender's email. United States Attorney Laurenzi explained that the allegation referenced in the email was baseless, that I had not made any misrepresentations to defense counsel, and that the Public Defender would have learned that the allegation was baseless if he had reviewed the record of the case or contacted the U.S. Attorney's Office.

Below is the entirety of United States Attorney Laurenzi's email communication, dated January 8, 2010. The subject line was "Response to Steve Shankman's e-mail dated December 30, 2009":

> Dear Counsel:
>
> It has come to my attention that you may have received a communication on December 30, 2009, via electronic mail from Stephen B. Shankman, Federal Public Defender in this district. The communication was addressed to several attorneys who practice criminal law in United States District Court for the Western District of Tennessee.
>
> The allegations made by Mr. Shankman in this communication regarding Assistant U.S. Attorney Kevin Ritz are baseless. As to the specific incident described in his e-mail, Mr. Shankman apparently received information about Mr. Ritz and in a communication to the "Criminal Justice Panel" accused Mr. Ritz of failing to acknowledge agreements reached with defense counsel and/or making misrepresentations. Mr. Ritz neither concealed any agreements reached with defense counsel nor did he make any misrepresentations. The record in the case referred to in the communication with Mr. Shankman establishes that no concealment or misrepresentations were made by Mr. Ritz to opposing counsel, and that there was no other agreement between the parties other than that made known to the court by the parties.
>
> Before sending this communication, Mr. Shankman did not contact me, Mr. Ritz, or anyone else in this office to discuss the issues therein. We would all agree that our professional reputation within our legal community is important. I hope that before any of us disseminate disparaging information concerning a fellow lawyer that we act responsibly by taking it upon ourselves to perform some "due diligence" to determine whether or not the information is accurate. At a minimum this "due diligence" should include contacting someone within the respective office to gauge the accuracy of the allegation. In this case, our office was never contacted by Mr. Shankman. Had Mr.

> Shankman discussed this issue with our office, he would have quickly learned that his published accusations are meritless.
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> I assure you that we take any complaint about conduct of attorneys in this office seriously. I encourage you to contact us concerning any allegation of misconduct by any of our staff. Our door is always open. As always, if you have any questions or would like to discuss this matter further, please feel free to contact me.
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> Sincerely,
> Lawrence J. Laurenzi
> United States Attorney

On January 4, 2010, I filed a response to Ms. Chastain's motion to withdraw in the *Webber* case, stating that "[t]o the extent that the defense alleges in its motion that the United States has made misrepresentations to the defense regarding sentencing exposure or anything else," any such allegation was "without merit" and "baseless." RE-73-1, p. 1. The response also stated: "The defense should be prepared to substantiate these baseless allegations in court. The United States has made no misrepresentations to the defense in this case and has fulfilled all its obligations under the law and discovery rules." *Id.*

Pursuant to standard practice, and because the government anticipated an evidentiary hearing regarding communications between counsel, the United States Attorney's Office had another attorney, Vivian Donelson, enter an appearance in the case. RE-70; RE-78. Ms. Donelson advised the court at a January 6, 2010, hearing that the office had "serious concerns" about the "strong inference and innuendo" in Ms. Chastain's motion to withdraw that I had "done something improper." RE-78, p. 4. Ms. Donelson also referenced the Public Defender's email communication, and asked the court for "an evidentiary hearing on the statements that are contained within Ms. Chastain's motion." *Id.*, pp. 4-5. The request for an evidentiary hearing was made so that the government could establish, pursuant to the position it had already taken in writing, that any allegation of misrepresentation was baseless. *Id.*, pp. 7, 10; RE-73-1.

Ms. Donelson further explained that "Mr. Ritz will more than likely be taken off of this case," because of the possibility that I would need to testify at the evidentiary hearing being requested by the government—not because I had done anything wrong. RE-78, p. 6. Ms. Donelson reiterated the government's request for "an evidentiary hearing" so as "to deal with the allegation, the assertion that is there," and again expressed the government's position that it denied any allegation of misrepresentation contained in Ms. Chastain's motion. *Id.*, p. 7, 10.

In addressing the court at the hearing, Ms. Chastain said, "I worked very carefully to try to draft [the motion to withdraw] so as to not make accusations, my attempt was to say that I made representations to my client…based on information. That

information, not saying it was false, but the information I provided to my client was inaccurate information, and because of that, it affected what he has done, and I have to, I feel, step back and withdraw." *Id.*, p. 9. The defendant expressed his preference that Ms. Chastain be allowed to withdraw. *Id.*, p. 11.

The court allowed Ms. Chastain to withdraw and made clear that it was not because of any misrepresentation by myself or anyone else: "I'm making no determination at all, and the record does not reflect a determination by the court adverse in any way to the AUSA….I need that to be absolutely clear." *Id.*

Webber was appointed a new attorney, who filed a motion to withdraw Webber's guilty plea. RE-74; RE-89. At an April 8, 2010 hearing on the motion, I addressed the court and stated: "With regard to Mr. Von Rico Webber's plea, I made no oral or written promises, representations or inducements to [prior defense counsel] or to the defendant other than those included in his plea agreement. As is written in the plea agreement, signed by all parties and filed with this court, that agreement contained the entire plea agreement between the parties. Specifically, I made no promise or representation to Ms. Chastain or the defendant that the government would agree at sentencing to limit the defendant's relevant conduct to a particular type or amount of drug. To the extent that pleadings filed by the defense in this case implied, suggests or allege otherwise, they are incorrect, and the United States and I deny any such allegation." RE-106, pp. 4-5.

After hearing from myself and other counsel, the court allowed the defendant to withdraw his plea. The court made clear that it made no finding that any misrepresentation or misconduct occurred: "In this case, the court will exercise its discretion to allow withdrawal of the plea without making any determination on any remaining issue in the case, that being completely unnecessary to the administration of justice in this case. I think that's the way I should handle that. Any other approach is not necessary. I think that's all I should say on the matter. What we will do is reflect the motion as granted for the reasons stated by the United States in its statement in court today and not for any other reason." *Id.*, p. 6.

Mr. Webber later pled guilty to federal cocaine, marijuana, and money laundering felonies. RE-123; RE-207. As part of his plea, he admitted dealing over five kilograms of cocaine, and that his drug dealing involved both cocaine and marijuana. RE-208. He received a 168-month prison sentence. RE-221.

At my hearing on April 17, 2024, I was asked about a letter sent to the Office of Professional Responsibility regarding this case. I did not receive notice from the Office of Professional Responsibility regarding any such letter or complaint. I assume that is because the Office of Professional Responsibility determined the complaint was meritless and dismissed the complaint without engaging in further review or investigation, and without informing me of the complaint. Additionally, I do not recall being informed of any such letter or complaint. I reviewed my case files and records and did not locate any record of such letter or complaint.

b. In your view, why are ethical obligations important for the legal profession?

Response: As set out in the preamble to the Tennessee Rules of Professional Conduct, "a lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." Tenn. Sup. Ct. R. 8, Preamble.

Lawyers and judicial officers are entrusted with upholding the rule of law, which is essential to preserving and sustaining our Constitution and country. Because of this important role that legal professionals play, it is essential that attorneys conduct themselves with dignity and civility and use "the law's procedures only for legitimate purposes and not to harass or intimidate others." *Id.* It is also essential for attorneys to be able to trust each other's commitments and representations, even while zealously advocating for the interests of their clients. When attorneys meet these standards, clients and other participants in the justice system can be confident in the results of a case and the judgments of courts.

The rules of professional conduct provide a floor for ethical conduct, but I have always held myself to a higher standard. Outside of the United States Attorney's Office, I have sought to contribute to promoting professionalism and integrity in the legal profession in Memphis and Tennessee through activities such as teaching at the law school and taking on leadership roles in the Federal Bar Association and Tennessee Bar Association. I also served for many years on the Sixth Circuit Criminal Pattern Jury Instruction Committee.

It has been humbling to be recognized at various points in my career for professionalism and contributions to upholding the rule of law. I received the United States Attorney's Spirit of Excellence Award in 2018, the United States Attorney's Award in 2015, and the U.S. Attorney's Office Distinguished Service Award in 2007. In 2019, I was invited to become a member in the Leo Bearman, Sr. American Inn of Court. In 2020, I was selected as a Finalist for the *Memphis Business Journal* "Best of the Bar" honor.

In addition, several years ago I was elected to be a Fellow in the Memphis Bar Foundation, "in recognition of devoted and distinguished service to the legal profession and the administration of justice, and adherence to the highest standards of professional ethics and personal conduct."

I also note that the legal profession is largely self-governing, representing the independence of the legal profession, "the close relationship between the profession and the processes of government and law enforcement," and the "vital role in the preservation of society." Tenn. Sup. Ct. R. 8, Preamble. I served as a Hearing Panel Member for the Tennessee Board of Professional Responsibility for six years. That experience gave me firsthand insight into how important it is for attorneys to meet

and sustain high ethical standards, so as to increase confidence in the legal system among members of the public.

c. How do you view the role of ethical obligations in the context of your legal practice and the work of your office?

Response: I have spent my entire legal career keeping people safe as a federal prosecutor in the Western District of Tennessee. As a prosecutor, integrity, professionalism, and fairness are paramount. In fact, a prosecutor has specific ethical responsibilities that other lawyers do not have. *See, e.g.,* Tenn. Sup. Ct. R. 8, RPC 3.8.

The professional rules and law governing a prosecutor's responsibilities provide a floor for ethical conduct, but I have always held myself to a higher standard. I wholeheartedly agree that a "prosecutor has the responsibility of a minister of justice whose duty is to seek justice rather than merely to advocate for the [government's] victory at any given cost." Tenn. Sup. Ct. R. 8, RPC 3.8 cmt. 1. Since becoming United States Attorney, I have stressed to our attorneys that their job is not to "win" cases, but rather to do the right thing.

The Western District of Tennessee is a medium-sized federal district, and the community of attorneys who practice in federal court, especially in criminal matters, is relatively small. In my 19 years of practice in this district and in the Sixth Circuit, I have always treated opposing counsel, judges, court staff, and defendants with respect and courtesy, and I have always been honest and fair in my dealings. I saw this both as my professional duty and as a practical necessity, as I would almost assuredly be interacting with the same individuals in future cases. As United States Attorney, I have set the same expectations for attorneys in our office.

I am proud that my nomination has the strong support of the current Federal Public Defender for the Western District of Tennessee, who has been with that office for 34 years. I am also proud that my nomination has the strong support of several other criminal defense attorneys who regularly practice in federal court in the Western District of Tennessee.

Additionally, I believe that my commitment to integrity and professionalism was one reason I was nominated to be, and unanimously confirmed as, United States Attorney in 2022. Recently, I went through another extensive vetting process, including with the American Bar Association (ABA). The ABA evaluates nominees on the basis of "integrity, professional competence, and judicial temperament." The ABA solicited input on my nomination from dozens of defense attorneys and judges who know me well. I received a unanimously well-qualified rating from the ABA.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Kevin Gafford Ritz
Nominee to be United States Circuit Judge for the Sixth Circuit

Instructions:

You must provide an answer specific to each question and sub-question. You may not group your answer to one question with other questions nor may you answer questions by cross-referencing other answers. Failure to follow these instructions will be interpreted as an intentional evasion of the question.

With respect to questions that ask for a yes or no answer, please start your response with 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 follow these instructions will be interpreted as an intentional evasion of the question.

1. **A December 30, 2009 email to multiple attorneys from the former Federal Public Defender for the Western District of Tennessee, Stephen Shankman, states the following:**

> ***I considered writing this e-mail about two months ago, but decided against it at that time. The issue has popped up again and I feel that it is best to alert everyone now (if you were not already aware). . .I was contacted by a panel lawyer today seeking some advice on responding to a PSR. It appears that the lawyer had negotiated a plea agreement based on representations made by the AUSA and which would have allowed the defendant a good chance of a low sentence and even the possibility of probation. The pre sentence report went out of its way to hammer the defendant, specifically identifying cocaine as the drug involved , and adding all enhancements possible, ultimately exposing the defendant to a near 10 year sentence.***
>
> ***The lawyer contacted the AUSA involved who simply said he could do nothing about it and declined to acknowledge his earlier representations (or misrepresentations)… At this point I stopped the conversation and said "Was the AUSA Kevin Ritz?" the answer was "yes".***
>
> ***It is unfortunate that this is not the first, second, third or whatever occasion that this sort of thing has occurred, but everyone should be aware of this unfortunate pattern of behavior. You should be aware, your clients should be aware, and you should proceed with extreme caution....***
>
> ***It's a sad commentary…steve***

a. When and how did you first become aware of this email?

Response: I learned about the email on or about January 4, 2010, after it was sent to another attorney in the U.S. Attorney's Office.

b. Did you contact Mr. Shankman upon becoming aware of this email? If yes, please describe the content of those communications.

Response: No. I did not contact Mr. Shankman, but on January 8, 2010, United States Attorney Larry Laurenzi responded to him and the attorneys who received his email. United States Attorney Laurenzi explained that the allegation referenced in the email was baseless, that I had not made any misrepresentations to defense counsel, and that Mr. Shankman would have learned that the allegation was baseless if he had reviewed the record of the case or contacted the U.S. Attorney's Office.

Below is the entirety of United States Attorney Laurenzi's email communication, dated January 8, 2010. The subject line was "Response to Steve Shankman's e-mail dated December 30, 2009":

> Dear Counsel:
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> It has come to my attention that you may have received a communication on December 30, 2009, via electronic mail from Stephen B. Shankman, Federal Public Defender in this district. The communication was addressed to several attorneys who practice criminal law in United States District Court for the Western District of Tennessee.
>
> The allegations made by Mr. Shankman in this communication regarding Assistant U.S. Attorney Kevin Ritz are baseless. As to the specific incident described in his e-mail, Mr. Shankman apparently received information about Mr. Ritz and in a communication to the "Criminal Justice Panel" accused Mr. Ritz of failing to acknowledge agreements reached with defense counsel and/or making misrepresentations. Mr. Ritz neither concealed any agreements reached with defense counsel nor did he make any misrepresentations. The record in the case referred to in the communication with Mr. Shankman establishes that no concealment or misrepresentations were made by Mr. Ritz to opposing counsel, and that there was no other agreement between the parties other than that made known to the court by the parties.
>
> Before sending this communication, Mr. Shankman did not contact me, Mr. Ritz, or anyone else in this office to discuss the issues therein. We would all agree that our professional reputation within our legal community is important. I hope that before any of us disseminate disparaging information concerning a fellow lawyer that we act responsibly by taking it upon ourselves to perform some "due diligence" to determine whether or not the information

is accurate. At a minimum this "due diligence" should include contacting someone within the respective office to gauge the accuracy of the allegation. In this case, our office was never contacted by Mr. Shankman. Had Mr. Shankman discussed this issue with our office, he would have quickly learned that his published accusations are meritless.

I assure you that we take any complaint about conduct of attorneys in this office seriously. I encourage you to contact us concerning any allegation of misconduct by any of our staff. Our door is always open. As always, if you have any questions or would like to discuss this matter further, please feel free to contact me.

Sincerely,
Lawrence J. Laurenzi
United States Attorney

c. What cases do you believe Mr. Shankman was referring to when he described that this was not the "*first, second, third or whatever occasion that this sort of thing has occurred.*"

Response: I do not know what Mr. Shankman was referencing. At the time I had only met Mr. Shankman a few times and had only spoken to him a few times. I do not recall handling any cases where he and I were opposing counsel.

2. **On May 16, 2010 a complaint was sent to Patrice Brown, Acting Counsel of the Office of Professional Responsibility, regarding your actions in *United States v. Von Rico Webber*. The complaint, in relevant part, reads as follows:**

> ***Dear Miss Brown:***
>
> ***This letter is a formal request that your office investigate matters pertaining to the fair dealing and, more importantly, honesty of Assistant United States Attorney Kevin Gafford Ritz in the office of the United States Attorney for the Western District of Tennessee. . . . Upon information and belief, AUSA Ritz's conduct as detailed in the attached e-mail and transcripts as well as facts I think are important to bring to your attention may have implicated Tennessee Rule of Professional responsibility 8.4(c) & 8.4(d), and perhaps others. Certainly, if true, they must implicate DOJ policies of which I am unaware.***
>
> ***The first attachment is a copy of an e mail . . . [i]t was authored by the Federal Defender for the Western District of Tennessee, Mr. Stephen Shankman, 200 Jefferson Street, Suite 200, Memphis, TN 38103, (901) 544-3895. The e mail was addressed to a large number, if not all, of the CJA panel attorneys for the Western District of Tennessee. Presumably, all of the recipients, whose e mail addresses and names are on the e mail, may have information consistent with the very serious allegations***

contained therein. The details of that e mail, in and of themselves, certainly warrant the attention of your office.

Additionally, the e mail apparently was in reference to the handling by AUSA Ritz on behalf of the United States the prosecution of an accused in United States v. Von Rico Webber, Docket No. 08-20261-JPM. Many of those details are contained in the transcripts of the relevant portions of that litigation attached to this letter.

Most troubling, if true, AUSA Ritz told a United States Judge during his statement before the Court on pages 4-5 of the attached transcript dated 4/8/2010 what I believe to be a false statement. It is my understanding upon information and belief that Attorney Autumn Chastain, 707 Adams Street, Memphis, TN 38105 has information, and perhaps e mails, to the effect that what he told the Judge is not true.

Please give this matter the appropriate attention it deserves.

Your statement before the Court on pages 4-5 of the transcript dated 4/8/2010 reads as follows:

With regard to Mr. Von Rico Webber's plea, I made no oral or written promises, representations or inducements to Ms. Autumn Chastain or to the defendant other than those included in his plea agreement. As is written in the plea agreement, signed by all parties and filed with this court, that agreement contained the entire plea agreement between the parties. Specifically, I made no promise or representation to Ms. Chastain or the defendant that the government would agree at sentencing to limit the defendant's relevant conduct to a particular type or amount of drug. To the extent that pleadings filed by the defense in this case implied, suggests or allege otherwise, they are incorrect, and the United States and I deny any such allegation.

a) **Was any part of your statement untrue?**

Response: No.

b) **Did you send any emails that may suggest, to a reasonable reader, that your statement is untrue?**

Response: No.

c) **When and how did you become aware that a complaint was sent to the Office of Professional Responsibility regarding your conduct?**

Response: At my hearing on April 17, 2024, I was asked about a letter sent to the Office of Professional Responsibility regarding this case. I did not receive notice from the Office of Professional Responsibility regarding any such letter or complaint. I assume that is because the Office of Professional Responsibility determined the complaint was meritless and dismissed the complaint without engaging in further review or investigation, and without informing me of the complaint. Additionally, I do not recall being informed of any such letter or complaint. I reviewed my case files and records and did not locate any record of such letter or complaint.

d) **Did anyone from the United States Attorney's Office management team or supervisory chain discuss this investigation with you? If yes, please explain the contents of this discussion and the individuals involved.**

Response: I am unaware of any investigation associated with this case and do not recall any communications about any such investigation.

e) **Did you personally negotiate the above discussed guilty plea with Ms. Chastain?**

Response: Yes.

f) **Did anyone else in the United States Attorney's Office negotiate with Ms. Chastain during this case?**

Response: To my knowledge, no.

3. **In *United States v. Von Rico Webber* Ms. Chastain submitted a motion to withdraw as counsel. Her motion, in relevant part, states the following:**

Counsel became aware of [a] conflict after receiving the PSR and having a subsequent conversation with the AUSA in the case, Kevin Ritz.

During counsel's representation, counsel met with her client on several occasions advising him of his exposure in this case.

Counsel based her calculations and exposure on statements made prior to client's decision to change his plea.

After receiving the PSR, counsel has discovered that her representations to client were based on information provided by the Government, which were subsequently learned to be inaccurate.

This discrepancy in the information relied upon, now exposes the Defendant to significantly more time. **(Cleaned up).**

a) Did you make any inaccurate representations to Ms. Chastain in this case?

Response: No. Ms. Chastain later stated to the court that she was not making any accusations of misrepresentations in the motion to withdraw. She said, "I worked very carefully to try to draft [the motion to withdraw] so as to not make accusations, my attempt was to say that I made representations to my client…based on information. That information, not saying it was false, but the information I provided to my client was inaccurate information, and because of that, it affected what he has done, and I have to, I feel, step back and withdraw." Record Entry (RE) 78, p. 9.

4. **In a later motion to withdraw the defendant's guilty plea, the defendant's counsel offered the following summary of the background of your dealings with Ms. Chastain:**

Upon receipt of the PSR Mr. Webber's prior counsel, Autumn Chastain, was shocked to read that it suggested that Mr. Webber had a base offense level 34 because the "underlying offense" was cocaine trafficking.

Ms. Chastain had only discussed the possibility that Mr. Webber's advisory guideline imprisonment range would be calculated based upon the fact that the underlying offense for the monetary transaction was marijuana trafficking with him prior to his guilty plea.

The undersigned was appointed to represent Mr. Webber upon this Court granting Ms. Chastain's Motion to Withdraw. That motion was premised upon the potential conflict between Ms. Chastain and Mr. Webber due to the erroneous information/advice she had furnished to him.

Since the undersigned was appointed to represent Mr. Webber, I have obtained and reviewed the PSR, discovery, and pertinent transcripts. . . . Regardless of the reason, Mr. Webber and his counsel at the time understood that the "underlying offense" which would be used to calculate his advisory guidelines was marijuana trafficking.. . .

Interestingly, neither the indictment, nor the change of plea transcript, belie this reasonable belief and position. The Indictment charges that the funds were the proceeds of distributing controlled substances without any specification of the alleged illegal narcotics. Further, the United States never mentioned its position that the "underlying offense" was cocaine trafficking at the change of plea. Like the indictment, the basis in fact didn't specify the "illegal controlled substances" both parties agreed the financial transaction promoted. (Cleaned up and emphasis added).

a) Please explain, in detail, why the indictment did not specify the alleged illegal narcotics.

Response: The original indictment charged the defendant and a co-defendant with money laundering relating to illegal drug distribution. There was no legal requirement to specify the alleged illegal narcotics. After indictment and before the first guilty plea the defendant entered, the government provided discovery, which included detailed descriptions of the defendant's cocaine and marijuana trafficking activities, including a detailed description of the defendant's involvement in trafficking kilogram quantities of cocaine.

Mr. Webber, after first being allowed to withdraw his plea to the money laundering charge, ultimately pled guilty to federal cocaine, marijuana and money laundering felonies. As part of his plea, he admitted dealing over five kilograms of cocaine, and that his drug dealing involved both cocaine and marijuana. He received a 168-month prison sentence.

b) Please explain, in detail, why the "basis in fact didn't specify the 'illegal controlled substances' both parties agreed the financial transaction promoted."

Response: The original indictment charged the defendant and a co-defendant with money laundering relating to illegal drug distribution. There was no legal requirement that the plea agreement specify the alleged illegal narcotics. Nor was it necessary for the narcotics to be identified at the plea hearing. After indictment and before the first guilty plea the defendant entered, the government provided discovery, which included detailed descriptions of the defendant's cocaine and marijuana trafficking activities, including a detailed description of the defendant's involvement in trafficking kilogram quantities of cocaine.

The defendant and his attorney signed a written plea agreement on September 17, 2009. That agreement contained no provision about the type or amount of drugs the defendant would be held accountable for at sentencing. And the agreement stated that "no additional promises, representations or inducements" had been made to the defendant or his attorney. That same day, the defendant engaged in a plea colloquy under oath in open court, where he acknowledged that no promises had been made to him other than those contained in the written plea agreement.

Mr. Webber, after first being allowed to withdraw his plea to the money laundering charge, ultimately pled guilty to federal cocaine, marijuana and

money laundering felonies. As part of his plea, he admitted dealing over five kilograms of cocaine, and that his drug dealing involved both cocaine and marijuana. He received a 168-month prison sentence.

5. **Vivian Donelson the counsel representing the United States at Ms. Chastain's motion to withdraw as counsel hearing stated the following in open Court:**

   those allegations are serious, and it is taken so seriously by our office, that is one of the reasons that I am here, and Mr. Ritz will more than likely be taken off of this case . . . Because of those particular allegations.

   a) Was Vivian Donelson's statement accurate?

   Response: The change in counsel was due to the possibility of an evidentiary hearing and not because I made any misrepresentations. The consistent and firm position of the government in the case was that I did not make any misrepresentations or commit any misconduct, and there was never any finding by a court or any other body that I had made misrepresentations or committed misconduct.

   On January 4, 2010, I filed a response to Ms. Chastain's motion to withdraw, stating that "[t]o the extent that the defense alleges in its motion that the United States has made misrepresentations to the defense regarding sentencing exposure or anything else," any allegation was "without merit" and "baseless." RE-73-1, p. 1. The response also stated: "The defense should be prepared to substantiate these baseless allegations in court. The United States has made no misrepresentations to the defense in this case and has fulfilled all its obligations under the law and discovery rules." *Id.*

   Pursuant to standard practice, and because the government anticipated an evidentiary hearing regarding communications between counsel, the United States Attorney's Office had another attorney, Vivian Donelson, enter an appearance in the case. RE-70; RE-78. Ms. Donelson advised the court at a January 6, 2010, hearing that the office had "serious concerns" about the "strong inference and innuendo" in Ms. Chastain's motion to withdraw that I had "done something improper." RE-78, p. 4. Ms. Donelson asked the court for "an evidentiary hearing on the statements that are contained within Ms. Chastain's motion." *Id.*, pp. 4-5. The request for an evidentiary hearing was made so that the government could establish, pursuant to the position it had already taken in writing, that any allegation of misrepresentation was baseless. *Id.*, pp. 7, 10; RE-73-1.

   Ms. Donelson further explained that "Mr. Ritz will more than likely be taken off of this case," because of the possibility that I would need to testify at the

evidentiary hearing being requested by the government—not because I had done anything wrong. RE-78, p. 6. Ms. Donelson reiterated the government's request for "an evidentiary hearing" so as "to deal with the allegation, the assertion that is there," and again expressed the government's position that it denied any allegation of misrepresentation contained in Ms. Chastain's motion. *Id.*, p. 7, 10.

In addressing the court at the hearing, Ms. Chastain said, "I worked very carefully to try to draft [the motion to withdraw] so as to not make accusations, my attempt was to say that I made representations to my client…based on information. That information, not saying it was false, but the information I provided to my client was inaccurate information, and because of that, it affected what he has done, and I have to, I feel, step back and withdraw." *Id.*, p. 9.

The court allowed Ms. Chastain to withdraw and made clear that it was not because of any misrepresentation by myself or anyone else: "I'm making no determination at all, and the record does not reflect a determination by the court adverse in any way to the AUSA….I need that to be absolutely clear." *Id.*

b) When and how were you informed you were being "taken off of this case"?

Response: On January 4, 2010, I filed a response to Ms. Chastain's motion to withdraw, stating that "[t]o the extent that the defense alleges in its motion that the United States has made misrepresentations to the defense regarding sentencing exposure or anything else," any allegation was "without merit" and "baseless." RE-73-1, p. 1. The response also stated: "The defense should be prepared to substantiate these baseless allegations in court. The United States has made no misrepresentations to the defense in this case and has fulfilled all its obligations under the law and discovery rules." *Id.*

Pursuant to standard practice, and because the government anticipated an evidentiary hearing regarding communications between counsel, the United States Attorney's Office had another attorney, Vivian Donelson, enter an appearance in the case. RE-70; RE-78. I learned of that decision on or about January 6, 2010, from Ms. Donelson.

c) When and how did you learn the Court granted at Ms. Chastain's motion to withdraw as counsel?

Response: I learned of the court's ruling at the hearing on the motion, on January 6, 2010.

d) When and how did you learn the Court granted the defendant's motion to withdraw his guilty plea?

Response: I learned of the court's ruling at the hearing on the motion, on April 8, 2010.

e) **Explain in detail how the United States Attorney's Office management team/supervisory chain handled your move to the appellate team.**

Response: In December 2010, the United States Attorney established, for the first time in our office, the positions of Criminal Appellate Chief and Civil Appellate Chief. I discussed my interest in serving as Criminal Appellate Chief with the United States Attorney. He appointed me as Criminal Appellate Chief in December 2010. I remained assigned to the narcotics unit until late April 2011, when I was appointed to be Special Counsel for the United States Attorney and became a member of the management team. I continued to handle various district court matters for several months after being appointed as Criminal Appellate Chief.

6. **In 2010, the same year as Ms. Chastain's motion to withdraw as counsel, you were appointed as "Criminal Appellate Chief" of the United States Attorney's Office for the Western District of Tennessee. Were you ever told, or was it otherwise ever suggested, that you were assigned to this position due to your actions (or perception of your actions) in the *Webber* case?**

Response: No.

a. **After the *Webber* case when was the next occasion you were lead counsel in a District Court criminal <u>trial</u> (*note* this question does not include being lead counsel on appeal)? Please provide a citation to the case.**

Response: I was sole and lead counsel in the criminal trial of Arthur Lee Chandler, in January 2011. The case number was W.D. Tenn. 09-cr-20518. I also handled numerous other matters in the trial court.

7. **Have you ever been accused of any making a misrepresentation or engaging in unethical conduct, in any other case (regardless of whether the allegations were ever formally investigated)? If yes, please explain in detail and provide citations to the relevant cases.**

Response: To my knowledge, no.

8. **Have you been "taken off" any other case? If yes, please give the citations, if the cases were reported, and the docket number and date if unreported. Identify the party or parties whom you represented; describe the nature of your participation in the litigation and the final disposition of the case.**

Response: To my knowledge, no, other than through routine reassignment of cases within the U.S. Attorney's Office.

9. **"The Intercept" reported that the D.C. Court of Appeals gave your First Assistant United States Attorney, Reagan Taylor Fondren, "a year of probation plus a stern warning not to commit any further misconduct" because she "intentionally suppress[ed] evidence in violation of the Constitution and thereby secure felony convictions resulting in years of unjust imprisonment." Previously, "[i]n 2021, the D.C. Board on Professional Responsibility . . . unanimously recommended a six-month suspension" for Reagan Taylor Fondren for prosecutorial misconduct.**

   Response: My responses are below. I would note that the D.C. Court of Appeals stayed any suspension for Ms. Fondren.

   a) **You announced the appointment of Reagan Taylor Fondren as First Assistant United States Attorney on Oct. 24, 2022. On what date did you appoint Reagan Taylor Fondren as First Assistant United States Attorney?**

      Response: I appointed her in early October 2022, and her promotion was effective October 23, 2022.

   b) **Did you conduct any due diligence on Reagan Taylor Fondren before appointing her First Assistant United States Attorney?**

      Response: Yes.

   c) **When Senator Mike Lee asked if you were aware of the sanction imposed on Reagan Taylor Fondren when you appointed her you responded "I may have been aware of ongoing proceedings, my recollection Senator, they were not still proceeding and I honestly can't remember if they still are today . . . I am not sure I knew the particulars of the situation." Please explain why you failed to learn the "particulars of the situation" before appointing Reagan Taylor Fondren as First Assistant United States Attorney.**

      Response: Ms. Fondren is a native of Memphis who has worked in public service with the United States Department of Justice for her entire legal career. She began her legal career as a Presidential Management Fellow with the Drug Enforcement Administration. In 2008, she joined the United States Attorney's Office for the District of Columbia. She has been an Assistant United States Attorney for 16 years. Since 2014 she has served in the Western District of Tennessee, where she had leadership roles in the Criminal Division and the Civil Division under prior United States Attorneys, including during the Obama

Administration and the Trump Administration. She was a well-qualified candidate to serve as First Assistant United States Attorney.

d) Do you believe prosecutorial ethics are important? If so, shouldn't you have taken minimal steps to learn the "particulars" Reagan Taylor Fondren's sanction prior to appointing her First Assistant United States Attorney?

Response: Yes, prosecutorial ethics are important. At the time I appointed Ms. Fondren to be First Assistant United States Attorney in October 2022, I understood that the matter that ultimately led to the December 2023 D.C. Court of Appeals decision in her case was still being litigated. This matter concerned a case that went to trial in 2009, when Ms. Fondren was at the U.S. Attorney's Office for the District of Columbia. I also understood that the United States Department of Justice and the National Association of Assistant United States Attorneys had written briefs in support of Ms. Fondren and the other attorney involved.

e) Did anyone raise Reagan Taylor Fondren's sanction during your preparation for your Committee hearing? If yes, why did you fail to familiarize yourself with the "particulars of the situation"?

Response: No.

f) When did you learn of the D.C. Board on Professional Responsibility's recommended sanction?

Response: I do not recall, but at the time I appointed Ms. Fondren to be First Assistant United States Attorney in October 2022, I understood that the matter that ultimately led to the December 2023 D.C. Court of Appeals decision was still being litigated. I also understood that the United States Department of Justice and the National Association of Assistant United States Attorneys had written briefs in support of Ms. Fondren and the other attorney involved.

g) When did you learn of the D.C. Court of Appeals sanction?

Response: I learned of the D.C. Court of Appeals's decision in this matter when it was issued in December 2023, more than a year after Ms. Fondren assumed the First Assistant position.

h) What steps did you take when you learned of Reagan Taylor Fondren's sustained prosecutorial misconduct?

Response: When I learned of the D.C. Court of Appeals's decision in December 2023, I discussed the matter with Ms. Fondren.

i) **If an attorney receives a 6-month sanction for intentionally suppressing evidence in violation of the Constitution, would you consider them to be disqualified from 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, unless the attorney acted in good faith and pursuant to the guidance of supervisors, in which case I would investigate the matter further.

j) **Will you investigate the "particulars" of any sanction imposed against an applicant for a 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.

k) **If you answered "yes" to the previous question, please explain why you will conduct more rigorous due diligence on clerkship applicants than you did when appointing a First Assistant United States Attorney.**

Response: I performed due diligence when appointing a First Assistant United States Attorney and, if confirmed, will perform sufficient due diligence on clerkship applicants.

10. **Did Reagan Taylor Fondren's previous work for then-Senator Joseph R. Biden play any role in your decision to appoint her as First Assistant United States Attorney?**

Response: No.

11. **In a May 2, 2023 press release you stated "Most convicted sex offenders who live and work in West Tennessee meet their registration requirements and are productive members of our communities." When asked about this statement by Sen. Blackburn you replied "Senator, I don't believe I said that."**

a. **Was this a correct statement?**

Response: Yes. During the hearing I was asked about the following quoted statement: "Most convicted sex offenders who live and work in West Tennessee are productive members of the community." As I indicated at the hearing, I did not make this statement as quoted.

On May 2, 2023, in my capacity as United States Attorney, and together with the United States Marshal for the Western District of Tennessee, I announced indictments against four convicted sex offenders for failure to register or maintain their registration in violation of the Sex Offender Registration and Notification Act (SORNA). SORNA requires sex offenders to register and keep their registration current in each jurisdiction in which they reside, work, or go to school.

In the press release announcing these four indictments, I gave the following statement, provided in full: "Most convicted sex offenders who live and work in West Tennessee meet their registration requirements and are productive members of our communities. Compliance with SORNA holds convicted sex offenders accountable to law enforcement and helps to keep our communities safe. Failure to register is a serious offense, and my office will aggressively pursue those offenders who attempt to avoid their legal obligations when living and working in West Tennessee."

Our office has placed a strong emphasis on prosecuting sex crimes, including crimes against children. For example, in March 2023 our office announced a 45-year sentence against a defendant for producing sexually explicit images of a minor; possessing child exploitation material; and transporting a minor interstate with the intent to engage in sexual activity. In December 2022 our office announced a 25-year sentence against a defendant for producing child pornography and committing that offense as a registered sex offender.

b. Do you still agree with the above quoted statement?

Response: I agree that it is important for sex offenders who are released from prison to fulfill their registration requirements and be productive members of the community, and that if they fail to fulfill their registration requirements, or if they reoffend, they should be prosecuted.

c. Explain the process by which a press release is issued from your office.

Response: Typically, the attorney handling a case will work with supervisors and the Public Affairs Officer to draft a press release about a case deemed to be of public interest. Unless I am unavailable, I review and approve press releases.

d. You approve all press releases issued by your office, correct?

Response: Unless I am unavailable, I review and approve press releases.

e. You approved the above quoted press release, correct?

Response: To my recollection, yes.

12. **At your investiture you made the following comments:**

> ***Before I talk about what it means to me to represent the United States every day, I first want to step back and take stock of this particular moment. Over the past few years we've experienced a lot. A pandemic that has killed more than a million Americans. A violent attack, perpetrated by fellow citizens, on our seat of government. An unacceptable increase in gun violence. The longest federal government shutdown in history.***
>
> ***A long-overdue reckoning with racism in the criminal justice system. And finally, just recently, the tragic death of a young man in Memphis – a tragedy that is leading to an even deeper reckoning, here and elsewhere. That's a lot to navigate for someone who takes on this type of role.***
>
> ***. . .***
>
> ***But you should know that justice, for me, is about more than putting people in prison. For me, it's also about who votes and how hard it is to cast that vote. It's about where pipelines or bus routes go. Justice is about whether people in all zip codes can get a loan. Whether women have access to health care. Whether citizens have affordable housing or clean drinking water. Sometimes those are Department of Justice issues. Sometimes they're not. But for me, they are all "justice" issues.*** **(Emphasis added).**

a) Please explain how "who votes" is a justice issue.

Response: There are many federal laws that protect the right to vote, including the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act, the Help America Vote Act, and the Civil Rights Acts. The Department of Justice's Civil Rights Division has a Voting Section that enforces these laws. Also, U.S. Attorney's Offices can address election fraud or threats to election officials that occur in the office's jurisdiction.

13. **According to the "U.S. News and World Report" Memphis, Tennessee was the most dangerous place to live in the U.S. in 2023-2024 "WREG Memphis" reports that in 2023 Memphis had the most homicides in its history. "Action News 5" states that "data shows 2024 homicides exceed pace of 2023." According to conservative news source "The Tennessee Star" Memphis had a homicide rate of 63.9 homicides per 100,000. Comparing this figure to World Bank data, if it were its own country, Memphis would be the most dangerous nation in the world by homicide rate.**

a. Explain what steps you are taking as U.S. Attorney to reduce homicides in Memphis.

Response: As United States Attorney, there is no higher priority for me or for my team than addressing violent crime in Memphis. Our office manages important law enforcement partnerships focused on violent crime, such as Project Safe Neighborhoods, the Safe Streets Task Force, and the Multi-Agency Gang Unit. Together with the dedicated agents and officers of the FBI, ATF, Memphis Police Department and other agencies, my team works to identify the people and groups that drive violence in our city and remove them from our streets via prosecution.

Federal laws against racketeering, firearms, carjacking, robbery and drugs are tools that carry robust penalties, and our office uses them every day against drivers of violence, including gang members who may be involved in murders. Since becoming United States Attorney, I have signed indictments charging several hundred defendants alleging violations of these statutes. We have several hundred cases involving these charges pending. In fact, in November, our office announced the Violent Crime Initiative in partnership with the Department of Justice's Criminal Division. As part of this initiative, prosecutors from the Criminal Division have embedded themselves in Memphis to help our office's Assistant United States Attorneys build additional coordinated cases against gang members, trigger-pullers, and shot-callers. The threat from organized criminal enterprises, and the unacceptable level of violent crime and murders, require that our office use federal tools aggressively and work across agencies to bring the federal government's significant resources to bear.

b. How would you rate your performance as the chief federal prosecutor for the district that includes Memphis?

Response: The dedicated federal public servants of the U.S. Attorney's Office work hard every day to uphold the rule of law, protect civil rights, and make communities in West Tennessee safer. It is an honor to lead them, and I believe our team faithfully fulfills that mission. Our law enforcement partners at the federal, state, and local level consistently praise the work of our team at the United States Attorney's Office. We also have sustained, positive engagement with community members, faith leaders, business leaders, and civic groups. One example of recent engagement was in March 2024, when members of my team and I met with representatives of leading railroad companies and federal and local law enforcement officers to address the problem of cargo theft.

On April 24, 2024, the Memphis Shelby County Crime Commission announced "across-the-board declines" in crime rates during the first quarter of 2024. The Commission stated: "According to preliminary figures from the Tennessee

Bureau of Investigation (TBI) and released by the University of Memphis Public Safety Institute and the Memphis Shelby Crime Commission, crime rates in all categories of reported major violent crime and major property crime dropped in the city of Memphis during the first quarter of this year compared to the first quarter of 2023 (January-March). Major violent crime includes the categories of murder, forcible rape, robbery, and aggravated assault. Based on reported crimes, the major violent crime rate in Memphis dropped 10.4 percent during the first quarter of 2024. That includes declines of 5.7 percent in murders, 30.3 percent in rapes, 16.3 percent in robberies, and 8.4 percent in aggravated assaults." Moreover, "[a]ccording to the TBI's preliminary figures, the overall crime rate was 13.9 percent less than the first quarter of 2023."

There is no tolerable level of violent crime, and our office will stay focused on bringing violent offenders to justice. But these trends are encouraging and suggest that our strategies and partnerships are working. I am confident that our office's vigorous efforts to enforce the federal laws are making people safer in Memphis and throughout West Tennessee.

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

Response: Yes.

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

Response: No.

   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.**

16. **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.

17. **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.

18. **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 am unfamiliar with this statement, and I disagree with it. If confirmed, I would not rule based on "independent value judgments." Rather, I would approach cases by reviewing the briefs and arguments with an open mind, diligently reviewing the record, and researching the relevant law. In ruling, I would faithfully and impartially apply the law and relevant precedent.

19. **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. I am not familiar with this statement or what message it was meant to convey. If confirmed, I would faithfully and impartially apply the law and relevant precedent.

20. **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: Yes. The Constitution and statutes of the United States are domestic laws, and if confirmed, I would examine the text, structure, and background of the Constitution and statutes when interpreting these sources of law.

21. **Do you believe it is appropriate for the Sixth Circuit to grant a petition for rehearing en banc because the relevant panel decision made a factual error?**

    Response: Under Federal Rule of Appellate Procedure 35(a), en banc review is disfavored and ordinarily will not be ordered unless (1) such review is necessary to secure or maintain uniformity of the court's decisions or (2) the proceeding involves a question of exceptional importance. If confirmed, I would follow this standard in determining whether to vote for or against rehearing en banc.

22. **Do you believe it is appropriate for the Sixth Circuit to grant a petition for rehearing en banc because the relevant panel decision reached an undesirable policy outcome?**

    Response: Under Federal Rule of Appellate Procedure 35(a), en banc review is disfavored and ordinarily will not be ordered unless (1) such review is necessary to secure or maintain uniformity of the court's decisions or (2) the proceeding involves a

question of exceptional importance. If confirmed, I would follow this standard in determining whether to vote for or against rehearing en banc.

23. **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.

24. **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.

25. **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: A prisoner in federal custody may seek relief from a sentence in several ways. First, a prisoner may file a direct appeal of the judgment under 28 U.S.C. § 1291. Second, a prisoner may file a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. Third, a prisoner may file a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Fourth, a prisoner may file a motion for modification of a term of imprisonment under 18 U.S.C. § 3582(c). Fifth, a prisoner may apply for presidential clemency.

26. **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 these cases, the plaintiff, a nonprofit organization, claimed that race-conscious admissions systems operated by Harvard College and the University of North Carolina violated Title VI of the 1964 Civil Rights Act and the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court decided these cases jointly. First, the Court held that the nonprofit organization had Article III standing. The Court then held that the admissions systems failed strict scrutiny, because "[b]oth programs lack

sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points." 600 U.S. 181, 230 (2023). Therefore, the programs violated the Equal Protection Clause.

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

    Response: Yes.

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

    Response: I have served as United States Attorney since September 2022. In that role, I have hiring authority for all positions in the office. From 2011 to 2022, I was a member of the management team of the U.S. Attorney's Office and periodically participated on hiring panels. I also served as coordinator for our office's law school intern program for several years.

28. **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, sex, sexuality, or gender identity?**

    Response: No.

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

    Response: No.

30. **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, sex, sexuality, or gender identity?**

    Response: To my knowledge, 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.

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

Response: Yes. *See Students for Fair Admissions Inc. v. President & Fellows of Harvard College,* 600 U.S. 181, 206 (2023); *Vitolo v. Guzman*, 999 F.3d 353, 360 (6th Cir. 2021).

32. **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, 577-80, 603 (2023), the Court held forcing a website designer to design a same-sex wedding website against her religious beliefs would violate the Free Speech Clause of the First Amendment.

33. **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 has favorably cited *Barnette* as recently as last year. *See 303 Creative LLC v. Elenis,* 600 U.S. 570, 585-89 (2023).

34. **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: A law regulating speech is content-based if it "applies to particular speech because of the topic discussed or the idea or message expressed." *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)). A law is content-neutral if it does not focus on the substance of the idea expressed by speech but rather on the time, place, and manner of the speech. *Id.* at 71. The Supreme Court has noted that "restrictions on speech may require some evaluation of the speech and nonetheless remain content neutral" so long as the law "does not single out any topic or subject matter for differential treatment." *Id.* at 72. Even if a law is facially content-neutral, a court should also consider whether an "impermissible purpose or justification underpins" the restriction. *Id.* at 76.

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

Response: The First Amendment does not protect true threats. True threats "encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003). To punish a true threat as a

crime, the government must show the defendant was at least reckless as to the threatening nature of the communication. *Counterman v. Colorado*, 600 U.S. 66, 69 (2023).

36. **Under Supreme Court and Sixth 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 "long noted the difficulty of distinguishing between legal and factual issues." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 401 (1990). Generally, questions of fact involve "questions of who did what, when or where, how or why." *U.S. Bank Nat'l Ass'n v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 394 (2018). Questions of law "require courts to expound on the law, particularly by amplifying or elaborating on a broad legal standard." *Id.* at 396. The "fact/law distinction at times has turned on a determination that, as a matter of sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Miller v. Fenton*, 474 U.S. 104, 114 (1985).

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

Response: A federal judge is required to impose sentences that are "sufficient, but not greater than necessary" to comply with the purposes set forth in 18 U.S.C. § 3553(a)(2). The statute does not direct that any of these purposes is more important than any other.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning of any particular Supreme Court decision. If confirmed, I would faithfully follow binding Supreme Court and Sixth Circuit precedent.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the quality of the reasoning of any particular Sixth Circuit decision. If confirmed, I would faithfully follow binding Supreme Court and Sixth Circuit precedent.

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

Response: Under 18 U.S.C. § 1507, "[w]hoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades

in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both."

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on matters that could come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court and Sixth Circuit precedent. I am aware that the Supreme Court has upheld a similar state statute. *See Cox v. Louisiana*, 379 U.S. 559, 561-64 (1965).

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

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

Response: Yes. As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of a particular Supreme Court decision, or on legal issues that may come before me if confirmed. Following the practice of prior judicial nominees, however, I would make an exception for *Brown*. Whether the racial segregation of schools is constitutional is not likely to come again before the courts, so I can state my opinion that *Brown* was correctly decided.

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

Response: Yes. As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of a particular Supreme Court decision, or on legal issues that may come before me if confirmed. Following the practice of prior judicial nominees, however, I would make an exception for *Loving*. Whether interracial marriage is constitutional is not likely to come again before the courts, so I can state my opinion that *Loving* was correctly decided.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including this case.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. The Supreme Court overturned *Roe* in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), which is binding precedent. If confirmed, I would apply *Dobbs* faithfully.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. The Supreme Court overturned *Casey* in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), which is binding precedent. If confirmed, I would apply *Dobbs* faithfully.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including this case.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including this case.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including this case.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any

particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including this case.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including this case.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including this case.

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 judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including this case.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including this case.

43. **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 held in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022), 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."

44. **Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."**

    n. **Has anyone associated with Demand Justice, including Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond, 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.

    o. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?**

    Response: No, not to my knowledge.

    p. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Jen Dansereau, and/or Becky Bond,? If so, who?**

    Response: No, not to my knowledge.

    q. **In the course of your prior confirmation, you testified that you spoke to Christopher Kang "about the judicial nominations process."**

        i. **What precisely did you discuss with Mr. Kang about the nominations process?**
        ii. **Did Mr. Kang or anyone associated with Demand Justice offer to support your prior or current nomination in any way, to include organizing letters of support or any other effort?**
        iii. **When was your last date of contact with Mr. Kang?**
        iv. **When was your last date of contact with anyone associated with Demand Justice?**

    Response: I did not testify as part of my confirmation process to become United States Attorney. To my knowledge, I have never been in contact with Christopher Kang.

45. **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."**

r. **In the course of your prior confirmation, you testified that you were "in contact" with former Alliance for Justice President Nan Aron "on one occasion."**
   i. **Please describe that occasion.**
   ii. **Did Ms. Aron or anyone associated with the Alliance for Justice offer to support your prior or current nomination in any way, to include organizing letters of support or any other effort?**
   iii. **When was your last date of contact with Ms. Aron?**
   iv. **When was your last date of contact with anyone associated with the Alliance for Justice?**

Response: I did not testify as part of my confirmation process to become United States Attorney. To my knowledge, I have never been in contact with Nan Aron.

s. **Has anyone associated with Alliance for Justice, including, but not limited to, Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris, 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, not to my knowledge.

t. **Are you currently in contact with anyone associated with the Alliance for Justice including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

Response: No, not to my knowledge.

u. **Have you ever been in contact with anyone associated with Alliance for Justice, including, but not limited to: Rakim Brooks, Betsy Miller Kittredge, Nan Aron, Jake Faleschini, and/or Zachery Morris? If so, who?**

Response: No, not to my knowledge.

46. **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."**
   v. **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, not to my knowledge.

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

w. **Are you currently in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**

Response: No, not to my knowledge.

i. **Please include in this answer anyone associated with Arabella's subsidiaries, including the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

x. **Have you ever been in contact with anyone associated with Arabella Advisors, including, but not limited to: Eric Kessler, Himesh Bhise, Joseph Brooks, Isaiah Castilla, and/or Saurabh Gupta?**

Response: No, not to my knowledge.

i. **Please include in this answer anyone associated with Arabella's subsidiaries, such as the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, the North Fund, or any other such Arabella dark-money fund that is still shrouded.**

47. **The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**

y. **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, not to my knowledge.

z. **Are you currently in contact with anyone associated with the Open Society Foundations, including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

Response: No, not to my knowledge.

aa. **Have you ever been in contact with anyone associated with the Open Society Foundations including but not limited to: George Soros, Alexander Soros, Mark Malloch-Brown, and/or Binaifer Nowrojee?**

Response: No, not to my knowledge.

bb. **Have you ever received any funding, or participated in any fellowship or similar program affiliated with the Open Society network?**

Response: No, not to my knowledge.

48. **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."**

cc. **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, not to my knowledge.

dd. **Are you currently in contact with anyone associated with Fix the Court, including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

Response: No, not to my knowledge.

ee. **Have you ever been in contact with anyone associated with Fix the Court including, but not limited to: Gabe Roth, and/or Josh Cohen? If so, who?**

Response: No, not to my knowledge.

49. **The Raben Group is a lobbying group that "champions diversity, equity, and justice as core values that ignite our mission for impactful change in corporate, nonprofit, government and foundation work." The group prioritizes judicial nominations and its list of clients have included the Open Society Foundations, the American Civil Liberties Union, the New Venture Fund, the Sixteen Thirty Fund, and the Hopewell Fund. It staffs the Committee for a Fair Judiciary.**

ff. **In the course of your prior nomination, you testified that you had "spoken to Robert Raben and perhaps another staff member of the Raben Group on a couple of occasions." You also testified that you spoke with "person associated with the Raben Group."**

i. **Please describe the nature of these interactions, including what was discussed.**

ii. **Did Mr. Raben or anyone associated with the Raben Group offer to support your prior or current nomination in any way, to include organizing letters of support, endorsements, or any other effort?**

iii. **When was your last date of contact with Mr. Raben?**

iv. **When was your last date of contact with anyone associated with the Raben Group?**

Response: I did not testify as part of my confirmation process to become United States Attorney. To my knowledge, I have never been in contact with any of these individuals.

gg. **Has anyone associated with The Raben Group 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, not to my knowledge.

hh. **Are you currently in contact with anyone associated with The Raben Group, including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff and/or Katherine Huffman? If so, who?**

Response: No, not to my knowledge.

ii. **Have you ever been in contact with anyone associated with The Raben Group including but not limited to: Robert Raben, Donald Walker, Patty First, Joe Onek, Gara LaMarche, Steve Sereno, Dylan Tureff, and/or Katherine Huffman? If so, who?**

Response: No, not to my knowledge.

jj. **Has anyone associated with the Raben Group offered to assist you with your nomination, including but not limited to organizing letters of support?**

Response: No, not to my knowledge.

50. **The Committee for a Fair Judiciary "fights to confirm diverse and progressive federal judges to counter illegitimate right-wing dominated courts" and is staffed by founder Robert Raben.**

kk. **Has anyone associated with the Committee for a Fair Judiciary requested that you provide services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No, not to my knowledge.

ll. **Are you currently in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**

Response: No, not to my knowledge.

mm. **Have you ever been in contact with anyone associated with the Committee for a Fair Judiciary, including, but not limited to: Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, and/or Joe Onek? If so, who?**

Response: No, not to my knowledge.

nn. **Has anyone associated with the Committee for a Fair Judiciary offered to support your prior or current nomination in any way, to include organizing letters of support, endorsements, or any other effort?**

Response: No, not to my knowledge.

51. **The American Constitution Society is "the nation's foremost progressive legal organization" that seeks to "support and advocate for laws and legal systems that redress the founding failures of our Constitution, strengthen our democratic legitimacy, uphold the role of law, and realize the promise of equality for all, including people of color, women, LGBTQ+ people, people with disabilities, and other historically excluded communities."**

oo. **Has anyone associated with the American Constitution Society, 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, not to my knowledge.

pp. **Are you currently in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

Response: No, not to my knowledge.

qq. **Have you ever been in contact with anyone associated with the American Constitution Society including, but not limited to Russ Feingold? If so, who?**

Response: No, not to my knowledge.

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

Response: In mid-August 2023, I spoke with Congressman Steve Cohen regarding a vacancy on the United States Court of Appeals for the Sixth Circuit. On September 11, 2023, I submitted application materials to the offices of Senators Marsha Blackburn and

Bill Hagerty. On October 19, 2023, I interviewed with attorneys from the White House Counsel's Office. On October 24 and November 29, 2023, I participated in interviews with a panel of staff members for Senators Blackburn and Hagerty. On December 22, 2023, I was contacted by an attorney from the White House Counsel's Office, who informed me that I would be moving forward in the selection process. Since December 22, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 12, 2024, I met with Senator Blackburn. On March 20, 2024, the President announced his intent to nominate me.

53. **During or leading up to your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No, not to my knowledge.

54. **During your selection process, did you talk with any officials from or anyone directly associated with Alliance for Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No, not to my knowledge.

55. **During or leading up to your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No, not to my knowledge.

56. **During or leading up to your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundations, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No, not to my knowledge.

57. **During or leading up to your selection process did you talk with any officials from or anyone directly associated with Fix the Court, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No, not to my knowledge.

58. **During or leading up to your selection process, did you talk with any officials from or anyone directly associated with the Raben Group or the Committee for a Fair**

Judiciary, or did anyone do so on your behalf? If so, what was the nature of those discussions?

Response: No, not to my knowledge.

59. **During or leading up to your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No, not to my knowledge.

60. **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.

rr. 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?

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

Response: In mid-August 2023, I spoke with Congressman Steve Cohen regarding a vacancy on the United States Court of Appeals for the Sixth Circuit. On September 11, 2023, I submitted application materials to the offices of Senators Marsha Blackburn and Bill Hagerty. On October 19, 2023, I interviewed with attorneys from the White House Counsel's Office. On October 24 and November 29, 2023, I participated in interviews with a panel of staff members for Senators Blackburn and Hagerty. On December 22, 2023, I was contacted by an attorney from the White House Counsel's Office, who informed me that I would be moving forward in the selection process. Since December 22, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 12, 2024, I met with Senator Blackburn. On March 20, 2024, the President announced his intent to nominate me.

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

Response: On April 24, 2024, I received the Questions for the Record from the Office of Legal Policy (OLP) at the Department of Justice. I reviewed the questions and prepared my responses after conducting legal research and reviewing my own records. I submitted

my draft answers to OLP. I received and considered limited feedback from OLP then finalized my answers.

Senator Mazie K. Hirono
Senate Judiciary Committee

Nominations Hearing | April 17, 2024
Questions for the Record for Kevin G. Ritz

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 Mike Lee
Questions for the Record
Kevin Gafford Ritz, Nominee for United States Circuit Judge for the Sixth Circuit

1. How would you describe your judicial philosophy?

Response: I have had the honor of working for and appearing before many federal judges in my career. If confirmed, I would follow the examples set by those judges and approach cases with an open mind, carefully review and listen to the arguments made by the parties, conduct thorough research, and apply the applicable law to the facts.

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

Response: If confirmed, my first step in interpreting a statute would be to look to any binding Supreme Court or Sixth Circuit precedent interpreting the text. In the absence of such precedent, I would look to the text. For words not defined in the statute, I would look to the plain meaning of the words, considered in their context in the statute as a whole. If the language is clear, then the inquiry would end. If the plain meaning was not sufficient to complete the analysis, I would then turn to other tools of statutory interpretation, such as textual analysis, structural analysis, and canons of construction.

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

Response: If confirmed, I would first determine whether there is binding precedent governing the interpretation of the provision in question. If so, I would follow that precedent. If not, I would review the text of the constitutional provision at issue, along with any relevant precedent considering similar issues or similar constitutional provisions. I would also examine any sources the Supreme Court has directed should be considered when applying the relevant provision.

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

Response: If confirmed, I would follow the Supreme Court's precedent regarding the role of the text and original meaning. In many contexts the Supreme Court has held that interpretation of constitutional provisions should begin with the text of the Constitution and look to the original public meaning of the text. *See, e.g., New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

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 terms of the provision at the time of enactment. *See Bostock v. Clayton County*, 590 U.S. 644, 654-55 (2020).

7. What are the constitutional requirements for standing?

Response: To demonstrate standing under Article III, a plaintiff must show (1) a concrete and particularized injury in fact; (2) traceability between that injury and the allegedly unlawful action; and (3) redressability 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: Under the Necessary and Proper Clause in Article I, Section 8, Congress has implied powers beyond those specifically enumerated to carry out its enumerated powers. *McCulloch v. Maryland*, 17 U.S. 316, 421 (1819).

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

Response: The Supreme Court has held that "[t]he question of the constitutionality of action taken by Congress does not depend on recitals of power which it undertakes to exercise." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (internal citation omitted). If confirmed and confronted with a claim regarding the constitutionality of a law that does not reference a specific constitutional enumerated power, I would consult binding precedent from the Supreme Court and the Sixth Circuit and determine whether Congress has appropriately exercised its powers.

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

Response: Under binding Supreme Court precedent, certain fundamental rights, not enumerated in the Constitution, are protected by the Due Process Clause of the Fourteenth Amendment, if those rights are "deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022) (internal citation omitted). Examples of such rights include the right to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, and to bodily integrity. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

11. What rights are protected under substantive due process?

Response: 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 confirmed, I would follow Supreme Court and Sixth Circuit precedent regarding substantive due process rights, regardless of any personal beliefs I have. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court held that a statute that banned the use of contraceptives violated the right of marital privacy. I understand the Supreme Court to have overturned *Lochner v. New York*, 198 U.S. 45 (1905) in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

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

Response: The Supreme Court has identified three categories of regulation in which Congress can exercise its power under the Commerce Clause: (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce, and (3) activities that substantially affect interstate commerce. *Gonzales v. Raich*, 545 U.S. 1, 16-17 (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 held that race, religion, national origin, and alienage qualify as suspect classes that would trigger strict scrutiny. *See City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971).

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

Response: The principles of checks and balances and separation of powers, as represented in the constitutional grant of separate powers to separate branches, ensure our government has 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) (internal citation 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 confirmed, I would follow Supreme Court and Sixth Circuit precedent to determine whether one branch has exercised authority not granted by the text of the

Constitution. *See, e.g., 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: A judge should treat all parties with respect, but consideration of a case should be guided only by the facts and the applicable law, not personal views or feelings.

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

Response: Both are improper. If confirmed, I would do neither of these things.

19. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not studied historical trends of judicial review, so I cannot fairly assess why the Supreme Court has invalidated more federal statutes since 1857 than in the period before that date. If confirmed, I would faithfully apply Supreme Court and Sixth Circuit precedent in addressing the constitutionality of federal statutes.

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

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

21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Under Article VI, all elected officials must take an oath or affirmation to support the Constitution. U.S. Const. art. VI. cl. 3. "[T]he federal judiciary is supreme in the exposition of the law of the Constitution." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on how elected officials should conduct their affairs.

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 understand this statement to emphasize that the limited role of a judge is to interpret the law and apply the law to the facts of each case. The role of a judge is limited to deciding cases and does not include making policy or enforcing laws.

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 would faithfully follow Supreme Court and Sixth Circuit precedent. If "a precedent of [the Supreme Court] has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to [the Supreme Court] the prerogative of overruling its own decisions." *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (internal citation omitted).

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 judge's 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 or the context in which the statement was made. I do not subscribe to a particular definition of the word "equity." "Equity" is defined in Black's Law Dictionary (11th ed. 2019) as "[f]airness; impartiality; evenhanded dealing." If confirmed, I would seek to be fair, impartial, and evenhanded.

26. Without citing a dictionary definition, do you believe there is a difference between "equity" and "equality?" If so, what is it?

Response: I do not subscribe to a particular definition of the words "equity" and "equality." If confirmed, I would seek to be fair, impartial, and evenhanded.

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 Fourteenth Amendment provides that "[n]o State shall . . .deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. I am not aware of any Supreme Court or Sixth Circuit precedent that uses the term "equity" to define Fourteenth Amendment guarantees.

28. According to your current understanding, and without citing a dictionary definition, how do you define "systemic racism?"

Response: I do not subscribe to a particular definition of the phrase "systemic racism."

29. According to your current understanding, and without citing a dictionary definition, how do you define "Critical Race Theory?"

Response: Although I have heard the term "critical race theory," I do not subscribe to a particular definition of that term and do not know enough about the term or how people use it to provide my own definition.

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. During the hearing on April 17, 2024, you stated that in response to your activity in the case of *United States* v. *Von Rico Webber*, you were not subject to any formal complaint or investigation. On what date were you made aware of the complaint filed by J. Patten Brown III to Patrice Brown, Acting Counsel of the Office of Professional Responsibility?

Response: At my hearing on April 17, 2024, I was asked about a letter sent to the Office of Professional Responsibility regarding this case. I did not receive notice from the Office of Professional Responsibility regarding any such letter or complaint. I assume that is because the Office of Professional Responsibility determined the complaint was meritless and dismissed the complaint without engaging in further review or investigation, and without informing me of the complaint. Additionally, I do not recall being informed of any such letter or complaint. I reviewed my case files and records and did not locate any record of such letter or complaint.

32. According to statements made by Vivian Donelson during Autumn Chastain's motion to withdraw as counsel hearing, you would "more than likely be taken off the case" because of Autumn Chastain's allegations. Were you removed from the case in *United States* v. *Von Rico Webber*? If yes, what reason did your superiors provide for removing you from the case?

Response: The change in counsel was due to the possibility of an evidentiary hearing and not because I made any misrepresentations. The consistent and firm position of the government in that case was that I did not make any misrepresentations or commit any misconduct, and there was never any finding by a court or any other body that I had made misrepresentations or committed misconduct.

On January 4, 2010, I filed a response to Ms. Chastain's motion to withdraw, stating that "[t]o the extent that the defense alleges in its motion that the United States has made misrepresentations to the defense regarding sentencing exposure or anything else," any such allegation was "without merit" and "baseless." Record Entry (RE) 73-1, p. 1. The response also stated: "The defense should be prepared to substantiate these baseless allegations in court. The United States has made no misrepresentations to the defense in this case and has fulfilled all its obligations under the law and discovery rules." *Id.*

Pursuant to standard practice, and because the government anticipated an evidentiary hearing regarding communications between counsel, the United States Attorney's Office had another attorney, Vivian Donelson, enter an appearance in the case. RE-70; RE-78. Ms. Donelson advised the court at a January 6, 2010, hearing that the office had "serious concerns" about the "strong inference and innuendo" in Ms. Chastain's motion to withdraw that I had "done something improper." RE-78, p. 4. Ms. Donelson asked the court for "an evidentiary hearing on the statements that are contained within Ms. Chastain's motion." *Id.*, pp. 4-5. The request for an evidentiary hearing was made so that the government could establish, pursuant to the position it had already taken in writing, that any allegation of misrepresentation was baseless. *Id.*, pp. 7, 10; RE-73-1.

Ms. Donelson further explained that "Mr. Ritz will more than likely be taken off of this case," because of the possibility that I would need to testify at the evidentiary hearing being requested by the government—not because I had done anything wrong.

RE-78, p. 6. Ms. Donelson reiterated the government's request for "an evidentiary hearing" so as "to deal with the allegation, the assertion that is there," and again expressed the government's position that it denied any allegation of misrepresentation contained in Ms. Chastain's motion. *Id.*, p. 7, 10.

In addressing the court at the hearing, Ms. Chastain said, "I worked very carefully to try to draft [the motion to withdraw] so as to not make accusations, my attempt was to say that I made representations to my client…based on information. That information, not saying it was false, but the information I provided to my client was inaccurate information, and because of that, it affected what he has done, and I have to, I feel, step back and withdraw." *Id.*, p. 9.

The court allowed Ms. Chastain to withdraw and made clear that it was not because of any misrepresentation by myself or anyone else: "I'm making no determination at all, and the record does not reflect a determination by the court adverse in any way to the AUSA….I need that to be absolutely clear." *Id.*

33. I asked if this complaint reflected your pattern of behavior as a prosecutor. You responded by saying "certainly not." However, in the email received by this committee, the concerned attorney the following: "I stopped the conversation and said, 'Was the AUSA Kevin Ritz?' …the answer was 'yes.' It is unfortunate that this is not the first, second, third or whatever occasion that this sort of thing has occurred . . . ." Can you recall what the other instances of misconduct were that the attorney may have been referring to as the first, second, third, or any other time where your actions approximated the behavior that ultimately got you removed from the *Webber* case?

Response: The change in counsel was due to the possibility of an evidentiary hearing and not because I made any misrepresentations. I do not know what the author of that email was referring to. At the time I had only met the author a few times and had only spoken to him a few times. I do not recall handling any cases where he and I were opposing counsel.

34. In the April 17 hearing, you stated, "I recall this," and "I took action and I believe I communicated with everyone who received that [email]." Did any of the people you contacted indicate that you may be subject to a formal complaint with the OPR?

Response: No.

35. Were you reassigned to another division within the United States Attorney's Office as a result of *Webber* incident?

Response: No.

36. In last week's hearing, you stated that you were "aware in a very vague sense" of the serious ethics allegations against Ms. Reagan Taylor Fondren when you

chose her to serve as your First Assistant United States Attorney. When did you first become aware of those allegations?

Response: I do not recall, but at the time I appointed Ms. Fondren to be First Assistant United States Attorney in October 2022, I understood that the matter that ultimately led to the December 2023 D.C. Court of Appeals decision in her case was still being litigated. This matter concerned a case that went to trial in 2009, when Ms. Fondren was at the U.S. Attorney's Office for the District of Columbia. I also understood that the United States Department of Justice and the National Association of Assistant United States Attorneys had written briefs in support of Ms. Fondren and the other attorney involved.

37. **Knowing that Ms. Taylor Fondren had been accused of intentionally withholding exculpatory evidence from the defendant and making false representations to the court, did you have any conversations with her about those allegations? Were the two separate investigations into her conduct a factor in your decision to elevate her to serve as your First Assistant?**

Response: Ms. Fondren is a native of Memphis who has worked in public service with the United States Department of Justice for her entire legal career. She began her legal career as a Presidential Management Fellow with the Drug Enforcement Administration. In 2008, she joined the United States Attorney's Office for the District of Columbia. She has been an Assistant United States Attorney for 16 years. Since 2014 she has served in the Western District of Tennessee, where she had leadership roles in the Criminal Division and the Civil Division under prior United States Attorneys, including during the Obama Administration and the Trump Administration. She was a well-qualified candidate to serve as First Assistant United States Attorney.

At the time I appointed Ms. Fondren to be First Assistant United States Attorney in October 2022, I understood that the matter that ultimately led to the December 2023 D.C. Court of Appeals decision in her case was still being litigated. This matter concerned a case that went to trial in 2009, when Ms. Fondren was at the U.S. Attorney's Office for the District of Columbia. I also understood that the United States Department of Justice and the National Association of Assistant United States Attorneys had written briefs in support of Ms. Fondren and the other attorney involved.

38. **In the Hearing, you stated, "I'm not sure I was aware of the particulars of her situation." If you were only vaguely aware of the allegations against Ms. Taylor Fondren before selecting her as your First Assistant, was it a responsible decision for you to select her as your chief deputy without thoroughly investigating the validity of those serious allegations yourself?**

Response: Ms. Fondren is a native of Memphis who has worked in public service with the United States Department of Justice for her entire legal career. She began her legal career as a Presidential Management Fellow with the Drug Enforcement

Administration. In 2008, she joined the United States Attorney's Office for the District of Columbia. She has been an Assistant United States Attorney for 16 years. Since 2014 she has served in the Western District of Tennessee, where she had leadership roles in the Criminal Division and the Civil Division under prior United States Attorneys, including during the Obama Administration and the Trump Administration. She was a well-qualified candidate to serve as First Assistant United States Attorney.

At the time I appointed Ms. Fondren to be First Assistant United States Attorney in October 2022, I understood that the matter that ultimately led to the December 2023 D.C. Court of Appeals decision in her case was still being litigated. This matter concerned a case that went to trial in 2009, when Ms. Fondren was at the U.S. Attorney's Office for the District of Columbia. I also understood that the United States Department of Justice and the National Association of Assistant United States Attorneys had written briefs in support of Ms. Fondren and the other attorney involved.

39. Ms. Taylor Fondren began serving as your First Assistant in October, 2022. In 2023, she began a year of probation for prosecutorial misconduct. Did her probation interfere with her ability to function as your First Assistant?

Response: No.

40. I asked you about a previous statement wherein you said, "[t]here cannot be one rule of law for people who look like me and another for people of color." Do you believe that currently there are multiple rules of law in this country depending on the race of the defendant? If so, will you give an example? If not, why did you feel obliged to make that statement?

Response: No. I was speaking about the principle of upholding the rule of law, which is a core piece of the mission of the Department of Justice. I was expressing the idea that there is only one rule of law that must apply equally to all citizens.

41. In response to questions you were asked by Senator Grassley before your confirmation as United States Attorney, you stated that "everyone has implicit biases." In the hearing, you reaffirmed this belief when you said "I think we all do [have implicit biases]." Explain the biases you have, which groups you are biased towards or against, and how your personal biases have influenced your career.

Response: I understand implicit bias to refer to biases that operate below the level of conscious awareness. I do not think I am immune from such unconscious biases, but I cannot know with confidence what those unconscious biases may be. That is why, if confirmed, I would approach cases with an open mind, carefully review and listen to the arguments made by the parties, conduct thorough research, and apply the applicable law to the facts.

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

Questions for the Record for Kevin Ritz, nominated to be United States Circuit Judge for Sixth Circuit

I. Directions

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

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

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

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

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

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

II. Questions

1. **Is racial discrimination wrong?**

   Response: Yes. Racial discrimination is illegal under many federal laws, including employment and housing laws.

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

   Response: As a judicial nominee, I am precluded by the Code of Conduct for United States Judges from pre-judging a constitutional issue that could come before me, such as the existence of unenumerated rights. If confirmed, I would faithfully follow Supreme Court and Sixth Circuit precedent, and in particular, the Supreme Court's test as articulated in *Washington v. Glucksberg*, 521 U.S. 702 (1997).

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

   Response: I have had the honor of working for and appearing before many federal judges in my career. If confirmed, I would follow the examples set by those judges and approach cases with an open mind, carefully review and listen to the arguments made by the parties, conduct thorough research, and apply the relevant law to the facts. I have not studied the philosophies of the listed Courts, and so I am not sufficiently familiar with them to provide an opinion on which philosophy is most analogous to my own.

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

   Response: Black's Law Dictionary (11th ed. 2019) defines "originalism" as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted; specifically, the canon that a legal text should be interpreted through the historical ascertainment of the meaning that it would have conveyed to a fully informed observer at the time when the text first took effect." I do not subscribe to any particular label, but if confirmed, I would follow binding Supreme Court and Sixth Circuit precedent regarding the meaning of any text, as well as the method of interpretation embodied in that precedent. I note, for example, that the Supreme Court has employed an originalist approach when interpreting several constitutional provisions. *See, e.g., New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004).

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

Response: Black's Law Dictionary (11th ed. 2019) defines "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I do not subscribe to any particular label, but if confirmed, I would follow binding Supreme Court and Sixth Circuit precedent regarding the meaning of any text, as well as the method of interpretation embodied in that precedent. I am not aware of Supreme Court or Sixth Circuit precedent that has applied "living constitutionalism" as an interpretive method.

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

Response: If confirmed, I would faithfully follow binding Supreme Court and Sixth Circuit precedent. If there is no binding precedent, I would review the text of the constitutional provision at issue, along with any relevant precedent considering similar issues or similar constitutional provisions. In many contexts the Supreme Court has held that interpretation of constitutional provisions should begin with the text of the Constitution and look to the original public meaning of the text. *See, e.g., New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022); *Crawford v. Washington*, 541 U.S. 36 (2004). If the meaning of the relevant text was unambiguous, I would be bound by that meaning under Supreme Court precedent. *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022); *Florida v. Jardines*, 569 U.S. 1 (2013).

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

Response: If confirmed, I would faithfully follow binding Supreme Court and Sixth Circuit precedent. The Supreme Court held that a textual analysis of the Constitution should be "guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (internal citation omitted). When determining the meaning of statutory text, the Court has explained that a 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." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020).

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

Response: If confirmed, I would faithfully follow binding Supreme Court and Sixth Circuit precedent. The Supreme Court has explained that the Constitution is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human

affairs." *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819). "[A]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 28 (2022).

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

Response: *Dobbs* is binding precedent, and therefore lower courts must follow it.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including *Dobbs*.

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

Response: *Bruen* is binding precedent, and therefore lower courts must follow it.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including *Bruen*.

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

Response: *Brown* is binding precedent, and therefore lower courts must follow it.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of a particular Supreme Court decision, or on legal issues that may come before me if confirmed. Following the practice of prior judicial nominees, however, I would make an exception for *Brown*. Whether the racial segregation of schools is constitutional is not likely to come again before the courts, so I can state my opinion that *Brown* was correctly decided.

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

law?

Response: *Students for Fair Admissions* is binding precedent, and therefore lower courts must follow it.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including *Students for Fair Admissions v. Harvard*.

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

Response: *Gibbons* is binding precedent, and therefore lower courts must follow it.

a. **Was it correctly decided?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including *Gibbons*.

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

Response: There is a rebuttable presumption in favor of detention for drug offenses carrying a possible penalty exceeding ten years, certain violent crimes, and certain crimes with minor victims. 18 U.S.C. § 3142(e).

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

Response: I am not aware of any language in the Bail Reform Act, nor any Supreme Court or Sixth Circuit precedent, that has established policy rationales underlying the presumptions in § 3142(e).

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

Response: The Constitution and federal statutory law limit the requirements governments may impose on private institutions. For instance, the Free Exercise Clause of the First Amendment imposes strict scrutiny review on a law burdening religious practice if the law is not neutral and generally applicable. *Fulton v. City of Philadelphia*, 593 U.S. 522,

533 (2021). Additionally, the "ministerial exception," rooted in the First Amendment, bars certain employment discrimination claims against religious institutions. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 181 (2012).

Also, the Religious Freedom Restoration Act prohibits the government from "substantially burden[ing] *a person's* exercise of religion even if the burden results from a rule of general applicability" unless the government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705 (2014). A "person" under this Act includes closely-held, for-profit corporations. *Id.* at 708.

If confirmed, I would faithfully follow Supreme Court and Sixth Circuit precedent when interpreting the Constitution and federal statutory law.

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

Response: Laws burdening religion that are not neutral and generally applicable are subject to strict scrutiny. *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). Under strict scrutiny, a law can only be sustained where the government furthers "interests of the highest order" and has employed "means narrowly tailored in support of those interests." *Tandon v. Newsom*, 593 U.S. 61, 64-65 (2021) (internal citation omitted).

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

Response: In *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020), the Supreme Court held that the religious entities were entitled to a preliminary injunction for several reasons. First, the religious entities were likely to prevail on their First Amendment claims because the regulations singled out houses of worship (and were therefore not generally applicable) and failed to satisfy strict scrutiny. *Id.* at 16-18. Second, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* at 19 (internal citation omitted). Third, enjoining the enforcement of the executive order would not harm the public interest, as "the State has not shown that public health would be imperiled if less restrictive measures were imposed." *Id*.

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

Response: In *Tandon v. Newsom*, 593 U.S. 61, 62-63 (2021), the Supreme Court held that the plaintiffs were entitled to an injunction against restrictions on at-home religious gatherings. The Court explained that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." *Id.* at 62. Moreover, "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* The Court further reasoned that "[c]omparability is concerned with the risks various activities pose, not the reasons why people gather." *Id.* Applying these standards, and noting that the regulations in question contained "myriad exceptions and accommodations for comparable activities," the Court held the restrictions failed strict scrutiny review. *Id.* at 64-65.

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

Response: Yes.

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

Response: In *Masterpiece Cakeshop v. Colo. Civil Rights Comm'n*, 584 U.S. 617, 621-25 (2018), the Supreme Court held that the Colorado Civil Rights Commission violated the Free Exercise Clause of the First Amendment when it ordered a baker to cease and desist from discriminating against a same-sex couple. The Court reasoned that the Commission's "clear and impermissible hostility toward the sincere religious beliefs" of the baker was "inconsistent with the First Amendment's guarantee that our laws be applied in a manner that is neutral toward religion." *Id.* at 634, 640.

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

Response: Yes. Whether a person has a sincerely-held religious belief does not "turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 714 (1981).

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

Response: Individuals with sincere religious beliefs are entitled to invoke the Free Exercise Clause if their religion prevents or requires certain action, without judicial

evaluation of the validity of their interpretations. *See Frazee v. Ill. Dep't of Emp't Sec.*, 489 U.S. 829, 833 (1989). If confirmed, I would faithfully follow Supreme Court and Sixth Circuit precedent on this issue.

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

Response: Individuals with sincere religious beliefs are entitled to invoke the Free Exercise Clause if their religion prevents or requires certain action, without judicial evaluation of the validity of their interpretations. *See Frazee v. Ill. Dep't of Emp't Sec*., 489 U.S. 829, 833 (1989). If confirmed, I would faithfully follow Supreme Court and Sixth Circuit precedent on this issue.

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

Response: To my knowledge, the Catholic Church does not consider abortion acceptable and morally righteous.

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

Response: In *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2063-64 (2020), the Supreme Court clarified that the "ministerial exception" from fair employment statutes does not require that the employee at issue have the title of "minister." "What matters, at bottom, is what an employee does." *Id.* at 2064. The teachers in the case "performed vital religious duties" and thus the ministerial exemption applied even though the teachers were not ministers. *Id.* at 2066.

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

Response: In *Fulton v. City of Philadelphia*, 593 U.S. 522, 526-27, 543 (2021), the Supreme Court held that Philadelphia's refusal to contract with Catholic Social Services (CSS) pursuant to its non-discrimination policy unless CSS agreed to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. The non-discrimination policy was not generally applicable because the Commissioner was permitted to make discretionary exceptions, and it failed strict scrutiny. *Id.* at 533, 542.

24. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition**

assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.

Response: Maine operated a tuition assistance program for schools. *Carson v. Makin*, 596 U.S. 767, 771 (2022). The program stipulated that the funds could only be used for "nonsectarian" schools. *Id.* The Supreme Court held that this limitation violated the Free Exercise Clause because (1) individuals were prohibited from using funds for the school of their choosing only because of the school's religious character, *id.* at 780; (2) and Maine failed to show the limitation satisfied strict scrutiny, *id.* at 781-82.

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

Response: In *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 512 (2022), the Supreme Court held that the Free Speech and Free Exercise Clauses of the First Amendment protect a school employee (here, a high school football coach) engaging in personal religious observance. The Court ruled that the school district's policy was not neutral and generally applicable and that the school district could not satisfy strict scrutiny for its policy. *Id.* at 526, 532. Also, allowing the coach's actions did not raise Establishment Clause concerns. *Id.* at 532-33.

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

Response: In this case, an Amish community brought a Free Exercise Clause challenge against the application of an ordinance requiring the installation of certain modern septic systems. *Mast v. Fillmore County*, 141 S. Ct. 2430, 2430-31 (2021) (Gorsuch, J., concurring in the decision to grant, vacate, and remand). The Court vacated the order requiring the Amish community to comply with the ordinance. *Id.* In his concurrence, Justice Gorsuch noted that the Religious Land Use and Institutionalized Persons Act mandates strict scrutiny for government actions that burden religion. *Id.* at 2432. Justice Gorsuch argued that "the County and courts below erred by treating the County's *general* interest in sanitation regulations as 'compelling' without reference to the *specific* application of those rules to *this* community." *Id.* Justice Gorsuch also noted that in the litigation below there was insufficient attention paid to exemptions from the rule that other groups enjoy and how other jurisdictions had handled similar situations. *Id.* at 2432-33.

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

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on matters that could come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court and Sixth Circuit precedent. I am not aware of any Supreme Court or Sixth Circuit precedent addressing whether the First Amendment right to assemble limits the application of 18 U.S.C § 1507 in the context of protests at a judge's home.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

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

Response: Yes.

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

Response: If confirmed, I would evaluate any challenges to political appointments under the relevant law and binding precedent. As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on matters that could come before me if confirmed.

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

Response: The Supreme Court has identified some circumstances where a program or policy having a racially disparate impact can be used as evidence of illegal discrimination. *See, e.g., Ricci v. DeStefano*, 557 U.S. 557, 577-78 (2009). Disparate impact alone does not establish discriminatory intent under the Equal Protection Clause, but such impact can serve as a "starting point" in the analysis. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

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

Response: As a judicial nominee, it would be inappropriate for me to comment on a matter of policy reserved to the legislative and executive branches.

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

Response: No.

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

Response: The Second Amendment protects a personal right to keep and bear arms in the home and outside the home. *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 8-10 (2022).

36. **What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: "[W]hen 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 Ass'n v. Bruen*, 597 U.S. 17 (2022) (internal citation omitted).

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

Response: Yes. *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 8-10 (2022).

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

Response: No.

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

Response: No.

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

Response: The President "shall take care that the laws be faithfully executed." U.S. Const. art. II, § 3. The executive's discretion to execute the laws is "broad" but not "unfettered" as it is subject to "constitutional constraints." *Wayte v. United States*, 470 U.S. 598, 608 (1985) (internal citation omitted).

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

Response: "Prosecutorial discretion" is "[a] prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." Black's Law Dictionary (11th ed. 2019). An "administrative rule" is "[a]n officially promulgated agency regulation that has the force of law." *Id.*

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

Response: No.

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

Response: In *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 759 (2021), the United States Supreme Court vacated a stay pending appeal of a court order enjoining a nationwide moratorium on evictions issued by the Centers for Disease Control (CDC). The plaintiffs were likely to succeed in their argument that the CDC exceeded its statutory authority in issuing the moratorium. *Id.* at 763.

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

Response: No.

45. **In your 2023 U.S. Attorney investiture speech, you highlighted the challenges you believe America faces and what justice means. You said, "we've experienced a long-overdue reckoning with racism in the criminal justice system."**

a. **What part of the criminal justice system needs a long-overdue reckoning?**

Response: I did not say that the criminal justice system needs a long-overdue reckoning. I was alluding in the past tense to widespread public debate over racism in the criminal justice system that has occurred in recent years.

b. **Is the American justice system systemically racist?**

Response: I am not aware of any consensus definition of what "systemically racist" means, and I have not used that phrase to describe our justice system. I am proud to have spent my entire legal career serving our country as a federal prosecutor in our justice system. As an Assistant United States Attorney and United States Attorney, I have enforced the laws of the United States in an impartial way. During my career, I have observed the individuals who make up the justice system—including judges, prosecutors, defense attorneys, probation officers, U.S. Marshals, and others—carrying out their roles with integrity, professionalism, and fairness. Because policy-makers may debate "systemic racism," and as a judicial nominee, it would not be appropriate for me to comment on a matter that could arise in litigation. If confirmed, I would faithfully follow Supreme Court and Sixth Circuit precedent, including in cases alleging racial discrimination.

46. **You also said "there cannot be one rule of law for people who look like me and another for people of color." That sounds like you are claiming the legal system is, in fact, racist.**

a. **Are there racist federal judges sitting on the federal bench today?**

Response: No, not to my knowledge.

b. **Have you ever encountered a racist U.S. Attorney?**

Response: No, not to my knowledge.

c. **If yes, did you report them to the Office of Professional of Responsibility?**

d. **If no, how were your remarks correct?**

Response: I was speaking about the principle of upholding the rule of law, which is a core piece of the mission of the Department of Justice. I was expressing the idea that there is only one rule of law that must apply equally to all citizens.

47. **When asked if the criminal justice system is systemically racist, you explained there are "structural barriers and disparate outcomes that communities of color experience in our society, separate and apart from any individuals' views or intentions.**

a. **What barriers and outcomes are you referring to?**

Response: This answer was provided to a written question about systemic racism that did not provide a definition of systemic racism. I am not aware of any consensus definition of what "systemically racist" means, and I have not used that phrase to describe our justice system. I understand social scientists and others have referenced structural barriers and disparate outcomes when discussing the concept of systemic racism. One disparate outcome that I understand has been addressed and discussed by Congress and others is the disparities in cocaine sentencing. Because policy-makers may debate "systemic racism," and as a judicial nominee, it would not be appropriate for me to comment on a matter that could arise in litigation. If confirmed, I would faithfully follow Supreme Court and Sixth Circuit precedent, including in cases alleging racial discrimination.

b. **What specific structural barriers or disparate outcomes exist?**

Response: This answer was provided to a written question about systemic racism that did not provide a definition of systemic racism. I am not aware of any consensus definition of what "systemically racist" means, and I have not used that phrase to describe our justice system. I understand social scientists and others have referenced structural barriers and disparate outcomes when discussing the concept of systemic racism. One disparate outcome that I understand has been addressed and discussed by Congress and others is the disparities in cocaine sentencing. Because policy-makers may debate "systemic racism," and as a judicial nominee, it would not be appropriate for me to comment on a matter that could arise in litigation. If confirmed, I would faithfully follow Supreme Court and Sixth Circuit precedent, including in cases alleging racial discrimination.

c. **As a white U.S. Attorney, are there barriers or outcomes you are contributing to?**

Response: This answer was provided to a written question about systemic racism that did not provide a definition of systemic racism. I am not aware of any consensus definition of what "systemically racist" means, and I have not used that phrase to describe our justice system. I understand social scientists and others have referenced structural barriers and disparate outcomes when discussing the concept of systemic racism. One disparate outcome that I understand has been addressed and discussed by Congress and others is the disparities in cocaine sentencing. Because policy-makers may debate "systemic racism," and as a judicial nominee, it would not be appropriate for me to comment on a matter that could arise in litigation. If confirmed, I would faithfully follow Supreme Court and Sixth Circuit

precedent, including in cases alleging racial discrimination.

48. **In the same speech, you argued, "justice is whether women have access to healthcare."**

a. **What healthcare are you referring to?**

Response: I did not reference any specific type of health care. Nor did I have any type of health care in mind. I note that Memphis has had a persistently high infant mortality rate in recent decades. Health professionals and others have worked to reduce that infant mortality rate by improving access to health care for pregnant women and new mothers.

b. **What do you mean by access?**

Response: I did not reference any specific type of access of health care. Nor did I have any type of access to health care in mind. I note that Memphis has had a persistently high infant mortality rate in recent decades. Health professionals and others have worked to reduce that infant mortality rate by improving access to health care for pregnant women and new mothers.

c. **Was the Supreme Court's ruling in *Dobbs* incorrect in returning abortion to the states?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on the merits of any particular Supreme Court decision, or on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court precedent, including *Dobbs*.

d. **If no, then what did you mean in your remarks?**

49. **You also claimed access to affordable housing is a justice issue.**

a. **Could a court ever order a landowner to lower prices to make housing more affordable?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court and Sixth Circuit precedent. I am not aware of any Supreme Court or Sixth Circuit precedent in which either court upheld a lower court order to a landowner to lower prices to make housing more affordable.

b. **Could a judge order rent control to pursue affordable housing justice?**

Response: As a judicial nominee, I am generally precluded by the Code of Conduct for United States Judges from commenting on legal issues that may come before me if confirmed. If confirmed, I would faithfully follow binding Supreme Court and Sixth Circuit precedent. I am not aware of any Supreme Court or Sixth Circuit precedent in which either court upheld a lower court order requiring rent control to pursue "affordable housing justice."

50. **You say justice is about who votes and how hard it is to cast that vote. Are state IDs or driver's licenses more challenging to get for some races than others?**

Response: I am unaware of any laws that make it more difficult for individuals of some races to get state IDs or driver's licenses than individuals of other races.

51. **I also have several other ethics concerns with your nomination. In particular, the defense bar — hardly a close Republican allied group — has raised these concerns.**

a. **Are prosecutorial ethics important?**

Response: Yes. As a prosecutor, integrity, professionalism, and fairness are paramount. In fact, a prosecutor has specific ethical responsibilities that other lawyers do not have. *See, e.g.*, Tenn. Sup. Ct. R. 8, RPC 3.8. The professional rules and law governing a prosecutor's responsibilities provide a floor for ethical conduct, but I have always held myself to a higher standard. I wholeheartedly agree that a "prosecutor has the responsibility of a minister of justice whose duty is to seek justice rather than merely to advocate for the [government's] victory at any given cost." Tenn. Sup. Ct. R. 8, RPC 3.8 cmt. 1. Since becoming United States Attorney, I have stressed to our attorneys that their job is not to "win" cases, but rather to do the right thing.

b. **What is the judge's obligation under *Brady v. Maryland*?**

Response: *Brady* requires the government to "turn over evidence in its possession that is both favorable to the accused and material to guilt or punishment," *Pennsylvania v. Ritchie*, 480 U.S. 39, 57 (1987), including evidence that could be used to impeach the credibility of a government witness, *Giglio v. United States*, 405 U.S. 150, 154-55 (1972). To make out a successful *Brady* claim, the defendant has the burden of showing the withheld evidence: (1) was favorable to the defendant, either because it was exculpatory or because it was impeaching; (2) was suppressed by the government, either willfully or inadvertently; and (3) resulted in prejudice to the defendant. *United States v. Dado*, 759 F.3d 550, 559-60 (6th Cir. 2014). If confirmed, I would faithfully follow binding Supreme Court and Sixth Circuit precedent regarding *Brady*.

c. **Have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group for**

a breach of ethics, unprofessional conduct, or a violation of any rule of practice?

Response: At my hearing on April 17, 2024, I was asked about a letter sent to the Office of Professional Responsibility regarding *United States v. Webber*. I did not receive notice from the Office of Professional Responsibility regarding any such letter or complaint. I assume that is because the Office of Professional Responsibility determined the complaint was meritless and dismissed the complaint without engaging in further review or investigation, and without informing me of the complaint. Additionally, I do not recall being informed of any such letter or complaint. I reviewed my case files and records and did not locate any record of such letter or complaint.

52. **Are you aware of a 2010 DOJ Office of Professional Responsibility complaint filed by J. Patten Brown III, a lawyer who formerly practiced in Tennessee?**

Response: At my hearing on April 17, 2024, I was asked about a letter sent to the Office of Professional Responsibility regarding *United States v. Webber*. I did not receive notice from the Office of Professional Responsibility regarding any such letter or complaint. I assume that is because the Office of Professional Responsibility determined the complaint was meritless and dismissed the complaint without engaging in further review or investigation, and without informing me of the complaint. Additionally, I do not recall being informed of any such letter or complaint. I reviewed my case files and records and did not locate any record of such letter or complaint.

53. **Are you aware of a 2009 email from Stephen Shankman, a former federal public defender for the Western District of Tennessee, that warned fellow criminal defense lawyers about your misrepresentations?**

Response: Yes. At the time I had only met Mr. Shankman a few times and had only spoken to him a few times. I do not recall handling any cases where he and I were opposing counsel.

54. **Do you have a pattern of misrepresentations?**

Response: No.

55. **Have you ever been taken off a case because of alleged misrepresentations?**

Response: No.

56. **In *United States v. Weber*, were you removed from the case because of misrepresentation allegations?**

Response: The change in counsel was due to the possibility of an evidentiary hearing and not because I made any misrepresentations. The consistent and firm position of the government in that case was that I did not make any misrepresentations or commit any

misconduct, and there was never any finding by a court or any other body that I had made misrepresentations or committed misconduct. The defense attorney in that case stated to the court that she was not making any accusations of misrepresentations.

a. **Why was another AUSA put on the case?**

Response: In a December 31, 2009, motion to withdraw in that case, the defense attorney Ms. Chastain alluded to representations she had made to the defendant regarding sentencing exposure, which she stated were "based on information provided by the Government." Record Entry (RE) 64, p. 2. Later, in addressing the court, the attorney said "I worked very carefully to try to draft [the motion to withdraw] so as to not make accusations" of misconduct. RE-78, p. 9. Rather, her "attempt was to say that I made representations to my client…based on information." *Id.*

On January 4, 2010, I filed a response to Ms. Chastain's motion to withdraw, stating that "[t]o the extent that the defense alleges in its motion that the United States has made misrepresentations to the defense regarding sentencing exposure or anything else," any allegation was "without merit" and "baseless." RE-73-1, p. 1. The response also stated: "The defense should be prepared to substantiate these baseless allegations in court. The United States has made no misrepresentations to the defense in this case and has fulfilled all its obligations under the law and discovery rules." *Id.*

Pursuant to standard practice, and because the government anticipated an evidentiary hearing regarding communications between counsel, the United States Attorney's Office had another attorney, Vivian Donelson, enter an appearance in the case. RE-70; RE-78. Ms. Donelson advised the court at a January 6, 2010, hearing that the office had "serious concerns" about the "strong inference and innuendo" in Ms. Chastain's motion to withdraw that I had "done something improper." RE-78, p. 4. Ms. Donelson asked the court for "an evidentiary hearing on the statements that are contained within Ms. Chastain's motion." *Id.*, pp. 4-5. The request for an evidentiary hearing was made so that the government could establish, pursuant to the position it had already taken in writing, that any allegation of misrepresentation was baseless. *Id.*, p. 10; RE-73-1.

Ms. Donelson further explained that "Mr. Ritz will more than likely be taken off of this case," because of the possibility that I would need to testify at the evidentiary hearing being requested by the government—not because I had done anything wrong. RE-78, p. 6. Ms. Donelson reiterated the government's request for "an evidentiary hearing" so as "to deal with the allegation, the assertion that is there," and again expressed the government's position that it denied any allegation of misrepresentation contained in Ms. Chastain's motion. *Id.*, p. 7, 10.

The court allowed Ms. Chastain to withdraw and made clear that it was not because of any misrepresentation by myself or anyone else: "I'm making no determination at

all, and the record does not reflect a determination by the court adverse in any way to the AUSA….I need that to be absolutely clear." *Id.*

57. **Do you believe that the defense bar in Tennessee has any faith in your objectivity, given the complainants against you?**

Response: Yes. I am proud that my nomination has the strong support of the current Federal Public Defender for the Western District of Tennessee, who has been with that office for 34 years. I am also proud that my nomination has the strong support of several other criminal defense attorneys who regularly practice in federal court in the Western District of Tennessee.

Additionally, I have practiced in federal court in West Tennessee for 19 years, and I have done so with integrity and professionalism. I believe that was one reason I was nominated to be, and unanimously confirmed as, United States Attorney in 2022. Recently, I went through another extensive vetting process, including with the American Bar Association (ABA). The ABA evaluates nominees on the basis of "integrity, professional competence, and judicial temperament." The ABA solicited input on my nomination from dozens of defense attorneys and judges who know me well. The ABA was also made aware of my representation of the United States in the *Webber* case. I received a unanimously well-qualified rating from the ABA.

58. **Are reports that you removed the Tennessee state flag from the U.S. Attorney's Office true?**

Response: I am unaware of what reports are being referenced, or who may have made those statements. As the chief federal law enforcement officer in West Tennessee, I represent the United States and the Department of Justice. I do not represent the State of Tennessee as an entity, nor do I represent any Tennessee elected or appointed officials or any Tennessee agencies. The United States and Department of Justice are the entities for which I and the attorneys in my office speak. That is why, after being sworn in as United States Attorney, our office made the internal, non-public decision to display only the flags of the United States and Department of Justice, and not the state of Tennessee, in the public-facing portion of our conference room. This is the room in the federal courthouse where we hold our press conferences and similar public-facing events.

a. **If so, why did you remove the Tennessee state flag?**

Response: As the chief federal law enforcement officer in West Tennessee, I represent the United States and the Department of Justice. I do not represent the State of Tennessee as an entity, nor do I represent any Tennessee elected or appointed officials or any Tennessee agencies. The United States and Department of Justice are the entities for which I and the attorneys in my office speak. It would be misleading to have the Tennessee flag displayed during press conferences and similar public-facing events. After all, under our system of federalism, it is important to let the state speak for itself. Our office does not want to give the

impression to anyone in the public or the media that our office speaks for the state when we do not. That is especially important considering that: the state and the United States are oppositional in a number of civil matters; at times the United States prosecutes employees or officials of the state for violations of federal criminal law; and the United States and the state may conduct parallel, yet separate, investigations into the same incidents.

I grew up in Tennessee. I attended Memphis public schools and have spent most of my life in Tennessee. I have devoted my entire legal career to keeping people safe in West Tennessee and will continue to do that as long as I serve in the role of United States Attorney.