Senator Lindsey Graham, Ranking Member
Questions for the Record
Judge Cynthia Valenzuela Dixon
Nominee to be United States District Judge for the Central District of California

1. **In *Crawford v. Marion County Election Board* you wrote that Voter ID laws are "modern - day poll taxes."**

    a. **Do you still believe Voter ID laws are "modern - day poll taxes"? If not, explain what caused you to change your mind.**

    Response: The Supreme Court held in *Crawford v. Marion County Election Board*, that voter identification requirements are not facially unconstitutional. As an advocate, I filed an amicus brief on behalf of a client in the case. I was duty bound to advance legally cognizable arguments that served my clients interests. The amicus brief was filed almost 17 years ago, and since leaving MALDEF I have not further considered these issues. As a judicial nominee, the Code of Conduct for United States Judges precludes me from offering a personal opinion. If confirmed, I would faithfully and impartially follow all Supreme Court and Ninth Circuit precedent including *Crawford*.

2. **In *Martinez v. Regents of Univ. of California* you argued in support of a California law that allowed illegal immigrants to receive in-state tuition while out-of-state Americans paid out of state tuition.**

    a. **Why did you defend this policy?**

    Response: In 2010, the California Supreme Court held in *Martinez v. Regents of Univ. of California*, that the state statute that provides resident tuition rates at public postsecondary schools to certain students, whether or not legally present in the United States, was not based on residence in California, and was, therefore, not preempted by 8 U.S.C.A. § 1623. MALDEF filed an amicus brief in the case advancing legally cognizable arguments that served the organization's interests. MALDEF's brief noted that out of state residents (including United States citizens) who attended California boarding schools, and those students living on California's borders (in Oregon, Arizona, and Nevada) who attended California's public schools, benefitted from the law. The amicus brief was filed almost 15 years ago, and since leaving MALDEF I have not further considered this issue. As a judicial nominee, the Code of Conduct for United States Judges precludes me from offering a personal opinion. If confirmed, I would faithfully and impartially follow all Supreme Court and Ninth Circuit precedent.

b. **According to the Plaintiffs' in this case, "California spends in excess of $208 million each year subsidizing the tuition of illegal aliens." Do you have any reason to believe this figure to be inaccurate?**

   Response: I have no knowledge of whether that figure is either accurate or inaccurate.

3. **Please define the term "racism."**

   Response: Black's Law Dictionary defines "racism" as "a set of policies that is exhibited by a person or persons toward a group of people of a different race. Often antagonistic and confronting. The assumption of lower intelligence and importance."

4. **Please define the term "sexism."**

   Response: Webster's Dictionary defines "sexism" as "(1) prejudice or discrimination based on sex; and (2) behavior, conditions, or attitudes that foster stereotypes of social roles based on sex."

5. **While you were National Vice President/Director of Litigation of MALDEF, the organization submitted an Amicus Brief in *Coral Constr., Inc. v. City & Cnty. of San Francisco*. The California Supreme Court described the facts of this case as follows:**

   defendant City and County of San Francisco (City) has preferentially awarded public contracts to minority-owned business enterprises (MBE's) and women-owned business enterprises (WBE's). . . . The City's first MBE/WBE ordinance, adopted in 1984, set aside specified percentages of public contracting dollars for MBE's and WBE's. The ordinance also gave bid discounts, which required the City's contracting authorities to treat bids by MBE's and WBE's as if they were lower than they in fact were. Both the set-asides and the bid discounts afforded MBE's and WBE's a competitive advantage over other bidders.

   a. **Was this a racist ordinance? 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."**
   b. **Was this a sexist ordinance? 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."**
   c. **Should holding a leadership position in an organization that defends a racist ordinance exclude you from a position on the bench? 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."**

d. **If you hold a leadership position in an organization, do you have an obligation to voice opposition to that organization using its resources to defend a racist policy?**
e. **What role did you play in this case?**
f. **Did you make any attempt to stop MALDEF from defending this ordinance?**
g. **What was the outcome of this case?**

Response: In *Coral Constr., Inc. v. City & Cnty. of San Francisco*., the issue that MALDEF raised in its 2008 amicus brief was the political process doctrine, a legally cognizable doctrine established in two United States Supreme Court cases – *Hunter v. Erickson,* 393 U.S. 385 (1969) and *Washington v. Seattle*, 458 U.S. 457 (1982). The doctrine prohibited the state from imposing extra burdens, beyond those of the ordinary political process, on legislation benefitting minorities. The California Supreme Court stated in its decision that it did not question the political process doctrine's continued validity. Six years later in a plurality opinion in *Schuette v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary*, 134 S. Ct. 623 (2014), the Supreme Court abandoned the political process doctrine. As I recall, I had no role in drafting or editing the brief. I do not recall whether I reviewed and/or approved the brief, but I did not sign the brief. The amicus brief was filed almost 15 years ago, and since leaving MALDEF I have not further considered this issue. If confirmed, I would faithfully and impartially follow all Supreme Court and Ninth Circuit precedent.

6. **In *Chamber of Commerce v. Whiting* you argued against Arizona's law requiring employers use a federal electronic verification system to confirm they only employ authorized workers.**
   a. **What was the outcome of this case?**

   Response: The Supreme Court upheld the Legal Arizona Workers Act, including the employer sanctions provision that provides for the suspension and/or revocation of the business licenses of Arizona employers who knowingly or intentionally employ unauthorized workers. The Supreme Court ruled that the law is not expressly preempted by the federal Immigration Reform and Control Act, which prohibits the knowing hiring of unauthorized workers and preempts state laws imposing sanctions on those who hire unauthorized workers because the Arizona law falls within the IRCA's licensing and similar laws exception. The Supreme Court also ruled that the law's requirement that employers use the federal electronic system to confirm eligibility for employment is not impliedly preempted, because it does not conflict with the federal scheme, and the federal statute establishing the electronic verification system does not limit state action.

7. **While you were National Vice President/Director of Litigation of MALDEF, the organization submitted an Amicus Brief in *Ricci v. DeStefano*. In this case MALDEF argued in defense of abandoning written exams for firefighters that allegedly produced a disparate impact on minority candidates.**

a. **During your hearing you failed to answer my question about whether you believe we should abolish written exams for firefighters. Do you believe we should abolish written exams for firefighters? Please provide a yes or no answer and explain your reasoning. Failure to provide a yes or no answer will be construed as a "yes."**
b. **Should we abolish the Armed Services Vocational Aptitude Battery? Please provide a yes or no answer and explain your reasoning. Failure to provide a yes or no answer will be construed as a "yes."**
c. **Should states abolish their Bar Exams? Please provide a yes or no answer and explain your reasoning. Failure to provide a yes or no answer will be construed as a "yes."**
d. **Should we abolish the United States Medical Licensing Examination? Please provide a yes or no answer and explain your reasoning. Failure to provide a yes or no answer will be construed as a "yes."**
e. **Should the FAA abolish knowledge tests for Pilots? Please provide a yes or no answer and explain your reasoning. Failure to provide a yes or no answer will be construed as a "yes."**
f. **Should the Nuclear Regulatory Commission abolish their operator licensing examination? Please provide a yes or no answer and explain your reasoning. Failure to provide a yes or no answer will be construed as a "yes."**

Response: The Supreme Court held in *Ricci v. DeStefano*, that Title VII was violated by the City of New Haven's (City) failure to promote firefighters based on legally valid test results without a "strong basis in evidence" that the promotions would subject the City to discrimination claims. MALDEF filed an amicus brief in the case. As I recall, I had no role in drafting or editing the brief. I do not recall whether I reviewed and/or approved the brief, but I did not sign the brief. The amicus brief was filed almost 15 years ago, and since leaving MALDEF I have not further considered this issue. As a judicial nominee, the Code of Conduct for United States Judges precludes me from offering a personal opinion. However, consistent with the Supreme Court's decision in *Ricci*, I understand that written examinations, including the ones detailed in subparts (a)-(f), are legally valid tests absent a strong basis in evidence that they are discriminatory. If confirmed, I would faithfully and impartially follow all Supreme Court and Ninth Circuit precedent including *Ricci*.

8. **In a 2008 article titled "The Bakke Decision - 30 Years Later Cause for Concern? Yes. For Despair? No" you were quoted as stating the following:**

Two of the states that continue to ban any consideration of racial diversity in their public universities - California and Florida - are among the states with the highest Latino population. . . . This creates long-lasting negative effects on the entire Latino community, and because we are one of the fastest-growing communities in the country today, the effects are especially pernicious.

a. **Please explain what "long-lasting negative effects" you were referring to.**

Response: At the time, in 2008, the issue being litigated was how public school districts could voluntarily pursue integration. MALDEF, and the other clients it represented, argued that preserving then-existing law (*Bakke/Grutter*) was an effective tool to reach the promise of *Brown*. In *Parents Involved in Community Schools*, the Supreme Court held that it is impermissible to consider race in student assignment where the school district is not under court mandate to desegregate. Sixteen years later, in 2023, *Students for Fair Admissions* held consideration of race as a factor in college admissions violates the Equal Protection Clause. If confirmed, I would faithfully and impartially follow all Supreme Court and Ninth Circuit precedent, including *Students for Fair Admissions*.

9. **In 2010, a MALDEF press release stated you sent a letter to Governor Jan Brewer of Arizona urging the Governor to veto to House Bill 2281 (HB 2281). Among other things, this bill prohibited a school district or charter school from including in its program of instruction any courses or classes that: (1) promote the overthrow of the United States government; (2) promote resentment toward a race or class of people; (3) are designed primarily for pupils of a particular ethnic group; (4) advocate ethnic solidarity instead of the treatment of pupils as individuals.**
    a. **Why did you urge Governor Jan Brewer to veto this bill?**
    b. **Do you believe it is reasonable for a state to prohibit a school district or charter school from promoting the overthrow of the United States government? 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."**
    c. **Do you believe it is reasonable for a state to prohibit a school district or charter school from promoting resentment toward a race or class of people? 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."**
    d. **Do you believe it is reasonable for a state to prohibit a school district or charter school from designing classes primarily for pupils of a particular ethnic group? 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."**
    e. **Do you believe it is reasonable for a state to prohibit a school district or charter school from designing classes that advocate ethnic solidarity instead of the treatment of pupils as individuals? 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: After a protracted legal battle, the United States District Court for the District of Arizona held that HB 2281 was enacted with racial animus in violation of the 14th Amendment Equal Protection provisions, and for political purposes in violation of the First Amendment. As an advocate, I was duty bound to advance legally cognizable arguments that served my clients interests. The letter was sent almost 16 years ago, and since leaving MALDEF I have not further considered this issue. None of the statements listed in subparts (b)-(e) reflect statements that I have made or positions that I have ever advocated for. Because there are similar issues currently being litigated in the federal courts. Canons 2 and 3 of the Code of Conduct for United States Judges preclude me from commenting further. If confirmed, I would faithfully and impartially follow all Supreme Court and Ninth Circuit precedent, including with respect to this issue.

10. **The "California Immigrant Youth Justice Alliance" is a "semi-independent" project housed and financially sponsored by MALDEF. The California Immigrant Youth Justice Alliance publishes a manifesto supporting: (1) abolishing ICE, (2) open borders, (3) the belief that "all immigration policies [are] deeply rooted in white national[ism]," (4) criticizes the U.S. for its "support of the occupation of Palestine," (5) advocates for "ending global capitalism." The California Immigrant Youth Justice Alliance appears to have been originally called the "California Dream Team Alliance."**

    a. **Do you denounce MALDEF sponsoring an organization that supports abolishing ICE?**
    b. **Do you denounce MALDEF sponsoring an organization that supports open borders?**
    c. **Do you denounce MALDEF sponsoring an organization that claims "all immigration policies [are] deeply rooted in white national[ism]"?**
    d. **Do you denounce MALDEF sponsoring an organization that "[c]riticizes the U.S. for its "support of the occupation of Palestine"?**
    e. **Do you denounce MALDEF sponsoring an organization that advocates for "ending global capitalism"?**
    f. **Do you agree with the following statement made by President Barack Obama: "the free market is the greatest producer of wealth in history -- it has lifted billions of people out of poverty"?**
    g. **"The Center for Civic Media" at M.I.T. reports that California Immigrant Youth Justice Alliance was founded in 2010. Did you have any role in approving the links between MALDEF and the California Immigrant Youth Justice Alliance?**
    h. **Did you play any role in the creation of the California Immigrant Youth Justice Alliance?**
    i. **Did you ever communicate with anyone holding a leadership position in the California Immigrant Youth Justice Alliance? If yes, what was the content and nature of those communications?**

    Response: After the hearing, I researched the California Immigrant Youth Justice Alliance (CIYJA). My research found that the organization was established in 2011. I

left MALDEF in January 2011. As noted in the question, the organization reportedly went through at least one name change. As I testified at the hearing, I did not know about and/or could not recall anything about the group prior to being questioned about it at the hearing. To my knowledge, I never communicated with anyone holding a leadership position in the group, and as I testified at the hearing, I do not agree with the group's stated positions. I played no role in the creation of the CIYJA, nor in creating any connection between the group and MALDEF, and I have never made any statement supporting or agreeing with the statements identified in subparts (a)-(f).

Moreover, as a federal prosecutor, I prosecuted immigration crimes and worked with dedicated and respected ICE agents to secure convictions in those cases.

Finally, as a California State Bar Court judge for the past eight years, I have performed the duties of a judge fairly, impartially, and diligently. If confirmed as a federal district judge, I would fully and faithfully exercise impartiality in all cases that come before me.

11. **MALDEF sponsors numerous other organizations, many of which take radical positions.**
    a. **Did you ever communicate with anyone holding a leadership position in "Familia: Trans Queer Liberation Movement"? If yes, what was the content and nature of those communications?**
    b. **Did you play any role in the creation of "Familia: Trans Queer Liberation Movement"?**
    c. **Did you play any role in approving links between "Familia: Trans Queer Liberation Movement" and MALDEF?**
    d. **Did you ever communicate with anyone holding a leadership position in "Napa Valley Dream Team"? If yes, what was the content and nature of those communications?**
    e. **Did you play any role in the creation of "Napa Valley Dream Team"?**
    f. **Did you play any role in approving links between "Napa Valley Dream Team" and MALDEF?**
    g. **Did you ever communicate with anyone holding a leadership position in "REPAIR"? If yes, what was the content and nature of those communications?**
    h. **Did you play any role in the creation of "REPAIR"?**
    i. **Did you play any role in approving links between "REPAIR" and MALDEF?**
    j. **Did you ever communicate with anyone holding a leadership position in "San Diego Dream Team"? If yes, what was the content and nature of those communications?**
    k. **Did you play any role in the creation of "San Diego Dream Team"?**
    l. **Did you play any role in approving links between "San Diego Dream Team" and MALDEF?**
    m. **Did you ever communicate with anyone holding a leadership position in "San Fernando Valley Dream Team"? If yes, what was the content and nature of those communications?**

n. **Did you play any role in the creation of "San Fernando Valley Dream Team"?**
o. **Did you play any role in approving links between "San Fernando Valley Dream Team" and MALDEF?**
p. **Did you ever communicate with anyone holding a leadership position in "San Joaquin Immigrant Youth Collective"? If yes, what was the content and nature of those communications?**
q. **Did you play any role in the creation of "San Joaquin Immigrant Youth Collective"?**
r. **Did you play any role in approving links between "San Joaquin Immigrant Youth Collective" and MALDEF?**
s. **Did you ever communicate with anyone holding a leadership position in "Texas Dream Alliance"? If yes, what was the content and nature of those communications?**
t. **Did you play any role in the creation of "Texas Dream Alliance"?**
u. **Did you play any role in approving links between "Texas Dream Alliance" and MALDEF?**

Response: I have no knowledge of any of these groups, and, to the best of my recollection, did not play any role in the creation of or links between the groups and MALDEF.

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

Response: Yes.

13. **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.**

14. **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.

15. **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.

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

Response: Although I am aware that the Supreme Court consulted the English common law when interpreting the ordinary public meaning of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008), I understand that it is rarely appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution. If confirmed, and if presented with a case or controversy involving this issue, I would apply binding Supreme Court and Ninth Circuit precedent and the methods required by that precedent to interpret constitutional provisions.

17. **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: To the extent that "independent value judgments" means "personal policy preferences," then I disagree with the statement. The Code of Conduct for United States Judges Canon 2(A) provides that "A judge must respect and comply with the law", not her or his independent value judgments. As a sitting California State Bar Court Judge and nominee to the federal district court, my duty is and would be to review the evidence and arguments submitted by the parties with impartiality, research the applicable statutes and precedent, and "reach the answer" by applying the binding precedent to the material facts before me.

18. **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. If confirmed, I would faithfully apply all Supreme Court and Ninth Circuit precedent concerning the relationship between international-law norms and domestic laws. For example, the Supreme Court has recognized that "not all international law obligations automatically constitute binding federal law enforceable in United States courts." *Medellin v. Texas*, 552 U.S. 491, 504-505 (2008).

19. **Please define the term "prosecutorial discretion."**

Response: Title 9 of the Department of Justice Manual, and specifically 9-27.000 Principles of Federal Prosecution and the corresponding "comment" state:

> **Comment.** Under the federal criminal justice system, the prosecutor has wide latitude in determining when, whom, how, and even whether to prosecute for apparent violations of federal criminal law. The prosecutor's broad discretion in

such areas as initiating or foregoing prosecutions, selecting or recommending specific charges, and terminating prosecutions by accepting guilty pleas has been recognized on numerous occasions by the courts. *See, e.g.*, *United States v. LaBonte,* 520 U.S. 751, 762 (1997)*; Oyler v. Boles*, 368 U.S. 448 (1962); *United States v. Fokker Services B.V.,* 818 F.3d 733, 741 (D.C. Cir. 2016); *Newman v. United States*, 382 F.2d 479 (D.C. Cir. 1967); *Powell v. Ratzenbach*, 359 F.2d 234 (D.C. Cir. 1965). This discretion exists by virtue of the prosecutor's status as a member of the Executive Branch, and the President's responsibility under the Constitution to ensure that the laws of the United States be "faithfully executed." U.S. Const. Art. II § 3. *See Nader v. Saxbe*, 497 F.2d 676, 679 n. 18 (D.C. Cir. 1974).

20. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's response was: "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?**

    Response: I am not familiar with the quote or the context in which the statement was made. To the extent that the statement implies that a federal judge would write opinions that are contrary to binding precedent, I would not take that approach. As a sitting California State Bar Court judge and nominee to the federal district court, my duty is and would be to review the evidence and arguments submitted by the parties with impartiality, research the applicable statutes and precedent, and apply the binding precedent to the material facts before me without reservation.

21. **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.

22. **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.

23. **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 can seek relief from the sentence in two ways. The prisoner can file a motion pursuant to 28 U.S.C. § 2255 to "vacate, set aside, or correct the sentence," on the grounds, among others, that it was imposed "in violation of the Constitution and laws of the United States." The prisoner can seek relief pursuant to 18 U.S.C. § 3582(c) (compassionate release), on the grounds, among others, that "extraordinary and compelling reasons warrant" a modification of the "imposed term of imprisonment."

24. **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: Both cases involved challenges to college admissions policies which included the consideration of race as a factor. The Supreme Court held that the admissions policies violated the Equal Protection Clause of the Fourteenth Amendment.

25. **Have you ever participated in a decision, either individually or as a member of a group, to hire someone or to solicit applications for employment? If yes, please list each job or role where you participated in hiring decisions.**

    Response: Yes. I participated in hiring decisions as National Vice-President of Litigation/Director of Litigation at MALDEF. As a California State Bar Court judge, I participated in the selection process for externs.

26. **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.

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

    Response: No.

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

    Response: No.

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

    Response: Yes.

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

    Response: In *303 Creative LLC v. Elenis,* 600 U.S. 570 (2023), the Supreme Court held that the First Amendment right to free speech protected a website designer's right to refuse to create wedding websites that were inconsistent with the designer's religious belief that marriage is reserved for unions between a man and a woman.

31. **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. *See 303 Creative LLC v. Elenis,* 600 U.S. 570 (2023).

32. **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 its focus is limited to the time, place, and manner of 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 consider whether an "impermissible purpose or justification underpins" the restriction. *Id.* at 76.

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

    Response: The Supreme Court defined the doctrine as follows: "'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) (citations omitted). "The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats 'protect[s] individuals from the fear of violence' and 'from

the disruption that fear engenders,' in addition to protecting people 'from the possibility that the threatened violence will occur.'" *Id.* at 359-60. "Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." *Id.* at 360.

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

Response: In *Miller v. Fenton*, 474 U.S. 104, 114 (1985), the Supreme Court noted that "[a]t least in those instances in which Congress has not spoken and in which the issue falls somewhere between a pristine legal standard and a simple historical fact, the fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." The Ninth Circuit, when analyzing the concept of a mixed question of law and fact, stated the distinction in this way:

> The first step is the establishment of the "basic, primary, or historical facts: facts 'in the sense of a recital of external events and the credibility of their narrators ...'." Townsend v. Sain, 372 U.S. 293, 309 n. 6, 83 S.Ct. 745, 755 n. 6, 9 L.Ed.2d 770 (1963) (quoting Brown v. Allen, 344 U.S. 443, 506, 73 S.Ct. 397, 446, 97 L.Ed. 469 (1953) (opinion of Frankfurter, J.)). The second step is the selection of the applicable rule of law. The third step—and the most troublesome for standard of review purposes—is the application of law to fact or, in other words, the determination "whether the rule of law as applied to the established facts is or is not violated." Pullman-Standard, 456 U.S. at 289 n. 19, 102 S.Ct. at 1790 n. United States v. McConney, 728 F.2d 1195, 1200 (9th Cir. 1984), overruled on other grounds by Estate of Merchant v. C.I.R ., 947 F.2d 1390 (9th Cir.1991).

If confirmed, I would be guided by these principles and any other Supreme Court and Ninth Circuit precedent in determining whether something is a question of fact or a question of law.

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

Response: 18 U.S.C. §3553(a)(2) prescribes the factors that a federal judge must consider in imposing a sentence. But Congress has not directed judges to consider any of the purposes of sentencing as most important. In accord with the prescribed factors, a federal judge must impose a sentence that is "sufficient, but not greater than necessary."

36. **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 Ninth Circuit precedent.

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

Response: As a 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 Ninth Circuit decision. If confirmed, I would faithfully follow binding Supreme Court and Ninth Circuit precedent.

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

Response: Title 18, United States Code, §1507 states:

> Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court 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.
>
> Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

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

Response: In *Cox v. Louisiana*, 379 U.S. 559, 561-64 (1965), the Supreme Court held that a Louisiana state statute, modeled on 18 U.S.C. § 1507, prohibiting picketing near a courthouse was constitutional on its face.

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

    a. **Was *Brown v. Board of Education* correctly decided?**
    b. **Was *Loving v. Virginia* correctly decided?**
    c. **Was *Griswold v. Connecticut* correctly decided?**
    d. **Was *Roe v. Wade* correctly decided?**

e. **Was *Planned Parenthood v. Casey* correctly decided?**
f. **Was *Gonzales v. Carhart* correctly decided?**
g. **Was *District of Columbia v. Heller* correctly decided?**
h. **Was *McDonald v. City of Chicago* correctly decided?**
i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**
k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**
l. **Were *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?**
m. **Was *303 Creative LLC v. Elenis* correctly decided?**

Response to all subparts: As a sitting California State Bar Court judge and nominee to the federal district court, the judicial canons generally preclude me from stating an opinion regarding whether a particular case was correctly decided. However, because the issues of *de jure* racial segregation in public schools and government prohibitions on interracial marriage are so unlikely to come before me, I can opine that *Brown v. Board of Education* and *Loving v. Virginia* were correctly decided. In addition, I note that the Supreme Court overturned *Roe* and *Casey* in *Dobbs*. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 268-290 (2022). As to the other cases, if confirmed, I would fully and faithfully follow binding precedent of the Supreme Court and the Ninth Circuit.

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

Response: I would apply the legal standard set forth in *N.Y. Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022), where the Supreme Court held:

> In keeping with Heller, we hold 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.

42. **Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."**
    a. **Has anyone associated with Demand Justice, 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.

b. **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.

c. **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.

43. **The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."**
    a. **Has anyone associated with Alliance for Justice, 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.

    b. **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.

    c. **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.

44. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**
    a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**
        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.

Response: No.

b. **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?**
    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.**

    Response: No.

c. **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?**
    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.**

    Response: No.

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

    Response: No.

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

    Response: No.

    c. **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.

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

Response: No.

46. **Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."**
    a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

    Response: No.

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

    Response: No.

    c. **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.

47. **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.**
    a. **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?**
    b. **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?**
    c. **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?**
    d. **Has anyone associated with the Raben Group offered to assist you with your nomination, including but not limited to organizing letters of support?**

    Response: I met Robert Raben in 1998 when I worked for the United States Department of Justice in Washington, D.C. In connection with my applications

for federal judge in 2014 and presently, I spoke with Robert by telephone and email about my interest in becoming a federal judge and in seeking the support of the Hispanic National Bar Association (HNBA). The HNBA has a formal endorsement process that I followed both in 2014 and presently.

48. **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.**
    a. **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.

    b. **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.

       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.

49. **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."**
    a. **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.

    b. **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.

    c. **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.

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

Response: I applied to Senator Feinstein's Judicial Advisory Committee on or about January 18, 2021.

I applied to Senator Padilla's Judicial Evaluation Commission on March 11, 2021. Thereafter, I interviewed with the local selection commission responsible for evaluating applicants for the Central District of California. I then had a telephonic interview with the statewide chair of the commission on or about November 21, 2023. On January 4, and 17, 2024, I had an interview with counsel for Senator Padilla. On February 9, 2024, I had an interview with Senator Padilla. On February 12, 2024, I had an interview with the White House Counsel's office. Since February 13, 2024, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 23, 2024, I was notified by the White House Counsel's office of the President's intent to nominate me. On April 24, 2024, the President announced his intent to nominate me.

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

Response: No.

52. **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.

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

Response: No.

54. **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.

55. **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.

56. **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: Yes. As previously noted, I spoke with Robert Raben in his capacity as a HNBA endorsement committee member about seeking support for my federal judicial application.

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

    Response: No.

58. **Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?**
    a. **If yes,**
        i. **Who?**
        ii. **What advice did they give?**
        iii. **Did they suggest that you omit or include any particular case or type of case in your questionnaire?**

        Response: No.

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

    On February 12, 2024, I had an interview with the White House Counsel's office. Since February 13, 2024, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On April 23, 2024, I was notified by the White House Counsel's office of the President's intent to nominate me. On April 24, 2024, the President announced his intent to nominate me.

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

    Response: I received these questions on May 29, 2024. I conducted research and

drafted answers, which I submitted for review by the Office of Legal Policy. I reviewed their comments and made minor revisions to my answers where I felt appropriate.

Senator Mike Lee
Questions for the Record
Cynthia Valenzuela Dixon, Nominee for District Court Judge for the Central District of California

1. How would you describe your judicial philosophy?

Response: As a sitting California State Bar Court judge, I approach every case by reviewing the evidence and arguments submitted by the parties with impartiality, researching the applicable statutes and precedent, and applying the binding precedent to the material facts before me. I endeavor to treat every litigant with dignity and respect and to ensure that each of them understands the rationale for my decisions. I hope that all parties who come before me, whether they prevail or not, feel heard and understand that I have upheld the rule of law.

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

Response: If confirmed, I would follow Supreme Court and Ninth Circuit guidance to start with the text at issue to determine if the text clearly and unambiguously answers the question presented. If not, I would apply binding precedent from the Supreme Court and Ninth Circuit to address the question, as well as the methods of interpretation and canons of instruction used by these higher courts. If that were not sufficient to complete the analysis, I would consider persuasive authority from other, non-binding courts. If more were required, I would look to the legislative history while keeping in mind that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) ("As we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms.").

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 consider the constitutional provision at issue as well as the applicable Supreme Court and Ninth Circuit precedent for interpreting that constitutional provision. In the rare case of a question of first impression involving a constitutional provision that had not yet been interpreted by the Supreme Court or Ninth Circuit, I would look to Supreme Court and Ninth Circuit precedent for the framework of analysis to be applied and interpret the text in a manner consistent with the method of analysis used. For example, the Supreme Court looked to the original public meaning of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008) ("In interpreting this text, we are 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. Normal

meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.") (internal quotations and citations omitted).

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

Response: The text of the Constitution is the starting point for all constitutional analysis. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). The Supreme Court has provided guidance in interpreting particular constitutional provisions. For example, in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008), the Supreme Court evaluated the relevant text of the Second Amendment by looking to the original public meaning at the time of the founding.

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: As directed by the Supreme Court, my approach to reading statutes is to follow the binding precedent, which states that "[i]t is well settled that 'the starting point for interpreting a statute is the language of the statute itself.'" *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 56 (1987). "If 'the statute is clear and unambiguous, that is the end of the matter'" and "[t]here is no need to look beyond the plain meaning in order to derive the 'purpose' of the statute." *Tang v. Reno*, 77 F.3d 1194, 1196-97 (9th Cir. 1996) (internal citations omitted); *see also Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010) ("We must enforce plain and unambiguous statutory language according to its terms").

6. Does the "plain meaning" of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?

Response: The Supreme Court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020). However, that meaning is broad enough to "apply to circumstances beyond those the Founders specifically anticipated." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022). If confirmed, I will faithfully apply the interpretive methods used by the Supreme Court and Ninth Circuit in analyzing constitutional and statutory provisions.

7. What are the constitutional requirements for standing?

Response: In *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180- 81 (2000), the Supreme Court articulated that to demonstrate standing under Article III, a plaintiff must show "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not

conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

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

Response: The Supreme Court has held that Article I, § 8, give Congress the implied powers that are "necessary and proper" to execute its enumerated powers. *McCulloch v. Maryland*, 17 U.S. 316, 324 (1819). Implied powers have been recognized by the Supreme Court as follows: the power to incorporate a bank, *id*. at 325, and the power to enact federal criminal laws, *United States v. Fox*, 95 U.S. 670, 672 (1877).

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 the power which it undertakes to exercise.'" *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (quoting *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948)). If confirmed, I would evaluate the issue by reviewing the evidence and arguments submitted by the parties with impartiality, researching the applicable statutes and precedent, and applying the binding precedent to the material facts before me.

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

Response: The Supreme Court has held that the Fourteenth Amendment Due Process Clause protects certain substantive rights that are not enumerated in the Constitution. Identifying such a right requires an examination of whether it is "deeply rooted in this nation's history and tradition" and "implicit in the concept of ordered liberty." *See Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 231 (2022) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). These rights include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), to control the education of such children, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and to marital privacy and to use contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

11. What rights are protected under substantive due process?

Response: Examples of such rights that the Supreme Court has recognized include the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), to control the education of such children, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and to marital privacy and to use contraception, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

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

Response: The Supreme Court has held that substantive due process does not protect the right to abortion, *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228 (2022) or the economic rights at stake in *Lochner v. New York*, 198 U.S. 45 (1905), *see Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). If confirmed, I would be bound by and would fully and faithfully follow these precedents, as well as other Supreme Court or Ninth Circuit precedents.

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

Response: In *United States v. Lopez*, 514 U.S. 549, 558-59 (1995) (citations omitted), the Supreme Court held that Congress's power under the Commerce Clause is limited to regulating: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce, "or persons or things in interstate commerce"; and (3) activities that substantially affect interstate commerce.

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

Response: As defined in Black's Law Dictionary (11th ed. 2019), a suspect classification is a "statutory classification based on race, national origin, or alienage, and thereby subject to strict scrutiny under equal-protection analysis." The Supreme Court determines whether a particular group qualifies as a "suspect class" by evaluating whether the group is a "discrete and insular minority" that has been "subjected to . . . a history of purposeful unequal treatment," with "obvious, immutable or distinguishing characteristics that define them as a discrete group." *Graham v. Richardson*, 403 U.S. 365, 372 (1971); *Mass. Bd. of Ret. v. Murguia*, 427 U.S. 307, 313 (1976); *Bowen v. Gillard*, 483 U.S. 587, 602 (1987). Classifications based on alienage, nationality, and race are all suspect and subject to strict scrutiny. *Graham*, 403 U.S. at 371-72.

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

Response: "Separation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others. Yet the dynamic between and among the branches is not the only object of the Constitution's concern. The structural principles secured by the separation of powers protect the individual as well." *Bond v. United States*, 564 U.S. 211, 222 (2011).

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: As a sitting California State Bar Court judge, I approach every case by reviewing the evidence and arguments submitted by the parties with impartiality, researching the applicable statutes and precedent, and applying the binding precedent to the material facts before me. If confirmed, I would apply the same approach to this question. The judiciary's role in evaluating the constitutionality of its own actions and those of other branches is well-established in Supreme Court and Ninth Circuit case law. *See, e.g. Marbury v. Madison*, 5 U.S. 137 (1803); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *United States v. Williams*, 68 F.4 th 564 (9th Cir. 2023). If confirmed, I will faithfully apply these and all other binding Supreme Court and Ninth Circuit precedent in deciding such a case.

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

Response: Empathy should not play a role in the judge's consideration of the merits of the case. Empathy can play a role in the dignity and respect extended to all the litigants and lawyers that appear before a judge.

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 and inconsistent with the role given to judges in Article III of the Constitution.

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, and do not know the reason or reasons that may account for this change. If confirmed, and if the issue were to come before me, I would review the evidence and arguments submitted by the parties with impartiality research the applicable precedent, and apply the binding precedent to the material facts before me.

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

Response: Black's Law Dictionary (11th ed. 2019) defines judicial review as "[a] court's power to review the actions of other branches or levels of government," and judicial supremacy as "[t]he doctrine that interpretations of the Constitution by the

federal judiciary in the exercise of judicial review . . . are binding on the coordinate branches of the federal government and the states."

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

Response: As a sitting California State Bar Court judge and nominee to the federal district court, it would be inappropriate for me to comment on such matters that pertain solely to the other branches of government. If confirmed, and the issue were to come before me, I would review the evidence and arguments submitted by the parties with impartiality, research the applicable precedent, and apply the binding precedent to the material facts before me. I note that Article VI requires elected officials to swear an oath to support the Constitution. And Article III establishes the role of judges in "say[ing] what the law is." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). Thus, "[n]o state legislator or executive or judicial officer can war against the Constitution," including the power granted to the judicial branch within it, "without violating his undertaking to support it." *Id.* at 18-19.

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: Judge have a limited role. Judges apply binding precedent to the material facts presented to them. They do not impose their will or personal viewpoint on proceedings.

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: Supreme Court precedent that directly applies to a case must be followed by lower courts, and lower courts must "leav[e] to [the Supreme] Court the prerogative of overruling its own decisions." *Mallory v. Norfolk S. Ry. Co*., 600 U.S. 122, 136 (2023) (quotation omitted). If confirmed, I would be bound to follow stare decisis regardless of whether the precedent is "questionable."

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. A sentencing judge must consider the factors set forth in 18 U.S.C. § 3553. A defendant's "race, sex, national origin, creed, religion, and socio-economic status . . . are not relevant in the determination of a sentence." U.S.S.G. § 5H1.10.

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 do not subscribe to a particular definition of the word "equity." I note that Black's Law Dictionary (11th ed. 2019) defines equity as "fairness; impartiality; evenhanded dealing . . . or the body of principles constituting what is fair and right; natural law . . . .The recourse to principles of justice to correct or supplement the law as applied to particular circumstances . . . ."

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

Response: I am not aware of a consensus definition of those terms. While I am generally familiar with the concepts, I have not had to define the terms for use in a case or controversy. In general, the concept of equity is synonymous with fairness and justice, and the concept of equality is synonymous with sameness.

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

Response: The Fourteenth Amendment guarantees "the equal protection of the laws." If confirmed, and the issue were to come before me, I would review the evidence and arguments submitted by the parties with impartiality research the applicable precedent and apply the binding precedent to the material facts before me.

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

Response: I am not aware of a consensus definition of the term "systemic racism". While I am generally familiar with the concept, I have not had to define the term for use in a case or controversy. In general, the concept of "systemic racism" is that there is racial bias across systems that present obstacles for some minority groups.

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

Response: I do not have a current understanding of the definition of that term. As a California State Bar Court judge for the past eight years, I have not had any occasion to consider the term.

30. Do you distinguish "Critical Race Theory" from "systemic racism," and if so, how?

Response: As a California State Bar Court judge for the past eight years, I have not had occasion to consider these terms. In general, I believe that "critical race theory" is a form of academic study while "systemic racism" concerns the belief that there is racial bias across systems that present obstacles for some minority groups.

31. As the National Vice President and the Director of Litigation of the Mexican American Legal Defense and Education Fund ("MALDEF"), you were named as counsel in *Chamber of Commerce v. Whiting*. In that case, you argued that an Arizona licensing law was "expressly preempted" by federal legislation, and that "Arizona has done precisely what federal law says it cannot." The Supreme Court disagreed, stating in its holding that because "the State's licensing provisions fall squarely within the federal statute's savings clause and that the Arizona regulation does not otherwise conflict with federal law, we hold that the Arizona law is not preempted." Should the plain text of a statute control a federal judge's interpretation of that statute?

Response: Yes.

32. What would you do if a statute clearly dictates a specific outcome, but you believe Congress was motivated to pass that statute by a belief system you do not agree with?

Response: If confirmed, I would faithfully and impartially follow all Supreme Court and Ninth Circuit precedent.

33. You were named as counsel in *Crawford v. Marion County Election Board*. In your brief, you concluded that an Indiana voter identification law "was enacted amidst a racially-charged debate, strongly suggesting that the statute was motivated by discriminatory animus," and "[t]he striking similarities between voter identification laws and the poll taxes this Court rejected less than half a

century ago demonstrate that identification requirements are unconstitutional regardless of the level of scrutiny the Court applies." The Supreme Court disagreed, holding that "if a nondiscriminatory law is supported by valid neutral justifications, those justifications should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators." Do you believe that certain laws should be invalidated because of the cultural climate at the time of a law's enactment?

Response: No. If confirmed, I would faithfully and impartially follow all Supreme Court and Ninth Circuit precedent.

34. **In Crawford, you also argued that the Indiana law would "increas[e] the cost of voting for those who can least afford it." As you were aware, at the time of the enactment of the Indiana voter identification law in question, Indiana offered free photo identification to any Indiana citizen who desired to obtain one. Do you stand by your argument that free state-issued identification cards "increase the cost of voting" for individuals of one race more than another?**

Response: The Supreme Court held in *Crawford v. Marion County Election Board*, that voter identification requirements are not facially unconstitutional. As an advocate, I filed an amicus brief on behalf of a client in the case. I was duty bound to advance legally cognizable arguments that served my clients interests. The amicus brief was filed almost 17 years ago, and since leaving MALDEF I have not further considered these issues. As a judicial nominee, the Code of Conduct for United States Judges precludes me from offering a personal opinion. If confirmed, I would faithfully and impartially follow all Supreme Court and Ninth Circuit precedent including *Crawford*.

35. **While at MALDEF, you were credited in an article published in the San Antonio Express-News. The article stated, "Cynthia Valenzuela . . . indicated the concern is if you don't have Spanish-speaking jurors and the defendant is Hispanic, jurors might not as easily identify with the defendant's cultural or ethnic traits. 'So then, are you really having a jury of your peers if Spanish-speaking jurors aren't allowed to serve on your jury?' [Valenzuela Dixon] asked." Does the Constitution require that a woman be tried by women jurors? Or a Chinese national be tried by Chinese jurors? Or a former president be tried by a jury of other former presidents? What are the constitutional requirements to qualify a jury as a jury of one's peers?**

Response: This question references an article about a case in which MALDEF was not involved. I do not recall anything about this case or the quote. However, with regard to the reach and meaning of the Sixth Amendment, the quote does not reflect my understanding of the contours of the right to jury trial, nor does it reflect how I approached voir dire as a federal prosecutor before my time at MALDEF. I am aware of the Jury Act of 1865(b) which provides that a person is ineligible for jury service if the person is not a citizen; or is not able to speak, understand, read, and write, English with a certain degree of proficiency, among other things. If confirmed, I would

faithfully and impartially follow all Supreme Court and Ninth Circuit precedent including with respect to the issue of jury selection.

36. MALDEF sponsors the California Immigrant Youth Justice Alliance ("CIYJA"). Do you support the CIYJA manifesto titled "First we abolish ICE a manifesto for immigrant liberation," including its call for open borders and an end to global capitalism? If confirmed, could you be impartial in deciding cases regarding immigration enforcement, especially those involving challenges to enforcement actions taken by ICE?

Response: Senator Graham asked me about the California Immigrant Youth Justice Alliance (CIYJA) during my senate confirmation hearing. After the hearing, I researched the group. My research found that the organization was established in 2011. I left MALDEF in January 2011. As I testified at the hearing, I did not know about and/or could not recall anything about the group prior to being questioned about it at the hearing. To my knowledge, I never communicated with anyone holding a leadership position in the group, and as I testified at the hearing, I do not agree with the group's stated positions. I played no role in the creation of the CIYJA, nor in creating any connection between the group and MALDEF, and I have never made any statement supporting or agreeing with the statements identified in CIYJA's manifesto.

Moreover, as a federal prosecutor, I prosecuted immigration crimes and worked with dedicated and respected ICE agents to secure convictions in those cases.

Finally, as a California State Bar Court judge for the past eight years, I have performed the duties of a judge fairly, impartially, and diligently. If confirmed as a federal district judge, I would fully and faithfully exercise impartiality in all cases that come before me.

Senator John Kennedy
Questions for the Record

Cynthia Valenzuela Dixon

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

   Response: Yes. 18 U.S.C. §3591 sets forth death-eligible federal crimes. The government must have given notice of, and the jury must have found aggravating factors as described in 18 U.S.C. §3592, and the proper procedures set forth in 18 U.S.C. §3593 must have been followed.

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

   Response: No.

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

   Response: Yes.

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

   Response: Yes.

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

   Response: As a sitting California State Bar Court judge, I approach every case by reviewing the evidence and arguments submitted by the parties with impartiality, researching the applicable statutes and precedent, and applying the binding precedent to the material facts before me. I endeavor to treat every litigant with dignity and respect and to ensure that each of them understands the rationale for my decisions. I hope that all parties who come before me, whether they prevail or not, feel heard and understand that I have upheld the rule of law.

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

   Response: Yes. The Supreme Court has applied an originalist interpretive method in some contexts, for example, in examining text and history to evaluate the constitutionality of firearms regulations under the Second Amendment. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 36-69 (2022).

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

   Response: In the unlikely event that I was faced with such a task as a lower federal court judge, I would begin with the text of the provision. If the meaning is clear, my analysis would end there. Next, I would review any relevant precedent and Supreme Court and Ninth Circuit analysis in analogous cases. If more was necessary, I would thereafter review any sources that the Supreme Court and Ninth Circuit have directed should be considered when applying the relevant constitutional provision.

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

   Response: Yes. *See Van Buren v. United States*, 593 U.S. 374, 381 (2021) ("[W]e start where we always do: with the text of the statute.").

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

   Response: Judges must start with the text and stop there if the meaning is clear. If the meaning of the statute is ambiguous, judges can apply canons of construction to draw meaning from the structure. *See Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 457-59 (2022), and look to precedent in the same or analogous contexts. The Supreme Court has also considered legislative history in interpreting ambiguous statutory text in certain contexts. *See County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462, 1471-72 (2020).

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

    Response: I believe the Constitution is an enduring document with a fixed quality to it which is to be applied to "new circumstances." *N.Y. Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

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

    Response: The Supreme Court reversed the Ninth Circuit's denial of qualified immunity to a police officer who briefly placed his knee on a person's back while restraining the person in a volatile domestic violence incident. The Supreme Court held that the officer was entitled to qualified immunity because his actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known" and that prior circuit precedent was factually distinguishable, so it did not provide the officer notice that using force in this context was unlawful. *Id*. at 6-7.

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

Response: Federal Rule of Civil Procedure 65 controls the issuance of injunctions. The Supreme Court has held that "[a]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course," *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). The Ninth Circuit has stated:

> A preliminary injunction is a matter of equitable discretion and is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. NRDC*, 555 U.S. 7, 22, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008) (citation omitted). "A party can obtain a preliminary injunction by showing that (1) it is 'likely to succeed on the merits,' (2) it is 'likely to suffer irreparable harm in the absence of preliminary relief,' (3) 'the balance of equities tips in [its] favor,' and (4) 'an injunction is in the public interest.'" *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (alteration in original) (quoting *Winter*, 555 U.S. at 20, 129 S.Ct. 365). When the government is a party, the last two factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

California v. Azar, 911 F.3d 558, 575 (9th Cir. 2018). Additionally, the Ninth Circuit instructed that, "[a]lthough 'there is no bar against ... nationwide relief in federal district court or circuit court,' such broad relief must be '*necessary* to give prevailing parties the relief to which they are entitled.'" *Id.* at 582 (quoting *Bresgal v. Brock*, 843 F.2d 1163, 1170– 71 (9th Cir. 1987) (emphasis in original removed in part)). "[N]ationwide injunctive relief may be inappropriate where a regulatory challenge involves important or difficult questions of law, which might benefit from development in different factual contexts and in multiple decisions by the various courts of appeals." *L.A. Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 664 (9th Cir. 2011).

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

Response: No.

14. Will you faithfully apply all precedents of the U.S. Supreme Court and the U.S. Court of Appeals for the Ninth Circuit?

Response: Yes.

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

Response: In *Nettles v. Grounds*, 830 F.3d 922, 930-31 (9th Cir. 2016) (en banc), the Ninth Circuit instructed that the Supreme Court's considered dicta should be "afford[ed] . . . . a weight that is greater than ordinary judicial dicta as prophecy of what the [C]ourt might hold." If confirmed, I will faithfully apply all binding Supreme Court and Ninth Circuit precedent.

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

Response: If confirmed, I will strongly encourage qualified applicants from a wide range of backgrounds to apply for positions in my chambers and will consider each candidate on his/her merit and hire the most qualified and best fit for my chambers needs at the time. I will not engage in racial, gender-based, religious, or any form of discrimination when selecting from among those applicants.