Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Sharad Harshad Desai
Nominee to be United States District Judge for the District of Arizona
October 2, 2024

1. **Since 2015, you have worked in senior legal counsel roles at Honeywell International Inc. From 2007 to 2015, you worked as an attorney with the Phoenix law firm Osborn Maledon, P.A., first as an associate and later as a partner. Prior to that, you served as a law clerk to Justice Rebecca White Berch on the Arizona Supreme Court.**

    a. **How has your legal experience prepared you to serve on the district court?**

    Response: My background as an Arizona native and first generation American, as well as my experience as an executive general counsel and litigation counsel in a Fortune 150 public company, a partner in private practice, and a clerk for the Arizona Supreme Court, have prepared me to serve as a district judge for a number of reasons.

    When I started my career as a clerk for Vice Chief Justice Rebecca White Berch, I saw first-hand what it meant for a judge to serve with integrity, impartiality, and diligence, and if I am fortunate to be confirmed I will follow Justice Berch's example. Moreover, during my clerkship I gained a deep understanding of the judicial process by delving into the records of lower-court proceedings and observing how judges render decisions by carefully researching the law and then fairly and impartially applying that law to the facts of the case.

    As a litigator at Osborn Maledon, P.A., I represented clients in courtrooms in both federal and state courts. Substantively, I have a broad base of experience in matters that would come before a federal district court, including complex commercial, civil rights, intellectual property, trade secrets, personal injury, and toxic tort matters. Through my work in civil matters for clients ranging from individuals to Fortune 100 companies, I have engaged in nearly every aspect of civil court practice, from drafting complaints and answers to litigating 12(b) motions, engaging in written and deposition discovery, litigating motions for summary judgment and motions in limine, preparing for trial, participating in trials and evidentiary hearings, litigating post-trial motions, and drafting and arguing appeals.

    Finally, my different positions at Honeywell have also prepared me for the federal bench. During my first four years at the company, I served as Chief Litigation Counsel and Litigation Counsel for two of Honeywell's four divisions, directing legal strategy over an extensive docket of civil cases pending in courts around the world, managing discovery and e-discovery in complex, document-intensive matters, and addressing government subpoenas and civil investigatory demands. Managing and evaluating counsel, as well as handling a large docket efficiently and effectively, are important skills for a district

judge. Likewise, I have gained valuable skills since I transitioned to general counsel roles five years ago. I have developed expertise in complex regulatory issues and emerging areas of the law, like generative artificial intelligence, that are likely to come before the court. More importantly, the significant transition I made from litigation practice to general counseling, as well as my promotions to three general counsel roles with distinct and dissimilar areas of responsibility, have enabled me to hone my ability to quickly learn new subjects, practices, and procedures. If I am fortunate to be confirmed, I believe this experience will facilitate my transition to the district court.

2. **During your confirmation hearing, you were asked several questions pertaining to your work at Honeywell International Inc.**

   a. **Please describe the circumstances of the Consent Agreement between the State Department and Honeywell International Inc. regarding Honeywell's compliance with the International Traffic in Arms Regulations (ITAR).**

   Response: In September 2016 and October 2018, Honeywell International Inc. submitted two voluntary disclosures to the United States Department of State, Office of Defense Trade Controls Compliance regarding unintentional violations of the Arms Export Control Act (22 U.S.C. § 2751 *et seq.*) ("AECA") and the International Traffic in Arms Regulations (22 C.F.R. parts 120-130) ("ITAR"). Specifically, Honeywell disclosed that its Aerospace Integrated Supply Chain division may have transferred ITAR-controlled technical drawings, including controlled technical drawings for manufacturing castings and finished parts, without authorization (a) to subsidiaries and/or suppliers in Canada, Ireland, China, and Taiwan between July 2011 and October 2015, and (b) to employees at subsidiaries located in Canada, Mexico, and China in June and July 2018.

   On April 27, 2021, Honeywell entered into a three-year Consent Agreement with the Department of State under which, among other things, it agreed to undertake remedial measures to conduct its business in full compliance with the AECA and ITAR, pay $8,000,000 as a civil penalty, and spend $5,000,000 towards its remedial compliance efforts.

   With the full support of Honeywell's senior executive leadership and Chief Compliance Officer, Honeywell engaged in an extensive assessment and reshaping of the Company's controls and procedures associated with ITAR-controlled defense articles, services, and technical data to meet the remedial requirements under the Consent Agreement. Honeywell transformed key pillars of its program: jurisdiction and classification, management of technical data, and authorization management. In addition to two external audits and multiple internal assessments, Honeywell undertook a comprehensive resource review and expanded its compliance resources to include a team to sustain the improvements made under the Consent Agreement.

After working closely with the Department of State on its remedial measures, Honeywell successfully completed its obligations under the Consent Agreement on March 27, 2024, one month ahead of the anticipated close out date (i.e., the three-year anniversary date of the Consent Agreement).

b. Please describe your involvement in the events that led to the Consent Agreement, if any.

Response: I was not involved in, and had no responsibility for, the transfers of technical data disclosed by Honeywell in 2016 and 2018 that gave rise to the Consent Agreement. Most of the transfers occurred before I joined Honeywell in August 2015. From August 2015 to October 2018, I served as Litigation Counsel for Honeywell's Aerospace division. As Litigation Counsel, I was primarily responsible for managing commercial, personal injury, and intellectual property litigation matters, and providing advice regarding pre-litigation disputes. My responsibilities did not include providing advice about, or ensuring compliance with, AECA, ITAR, or any other export control regulation.

c. Please describe your involvement with efforts to satisfy the Consent Agreement, if any.

Response: In June 2021, shortly after Honeywell entered into the Consent Agreement, I was promoted to serve as the Vice President and General Counsel for Honeywell's Aerospace Integrated Supply Chain division, the division that years earlier had been involved in the transfers giving rise to the Consent Agreement. During the time I was the General Counsel for that division and until I was promoted to my current position in January 2023, I worked closely with Honeywell's Export Compliance team to implement remedial measures to ensure Honeywell's compliance with export regulations and satisfy Honeywell's obligations under the Consent Agreement. This work included developing procedures for ensuring that technical information was marked with the appropriate export classification, educating employees to ensure they understood their obligations under export regulations, and meeting with both the Special Compliance Officer appointed under the Consent Agreement and Department of State employees to discuss Honeywell's remedial measures.

Senator Lindsey Graham, Ranking Member
Questions for the Record
Sharad H. Desai
Nominee to be United States District Judge for the District of Arizona

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

   Response: Yes.

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

   Response: No.

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

      Response: Please see my response above to Question 2.

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

      Response: Please see my response above to Question 2.

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

         Response: Please see my response above to Question 2.

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

   Response: No.

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

   Response: No.

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

Response: Generally, foreign law should not be considered in constitutional interpretation. The Supreme Court, however, has in certain limited circumstances considered foreign law in construing the Constitution. *See, e.g., New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 34-47 (2022) (examining English common law when interpreting the Second Amendment, while cautioning that "English common-law practices and understandings . . . cannot be indiscriminately attributed to the Framers of our own Constitution"). If I am fortunate to be confirmed, I will faithfully apply precedent from the Supreme Court and the Ninth Circuit Court of Appeals in matters of constitutional interpretation.

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

   Response: I disagree. A judge must research the applicable law and apply that law, including precedent, to the facts of the case to render a decision impartially and without consideration of the judge's personal beliefs.

7. **In a concurrence in the denial of rehearing en banc in *Al–Bihani v. Obama* then-Judge Kavanaugh wrote: "international-law norms are not domestic U.S. law in the absence of action by the political branches to codify those norms." Is this a correct statement of law?**

   Response: Yes.

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

   Response: *Black's Law Dictionary* (12th ed. 2024) defines prosecutorial discretion as 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."

9. **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. A federal judge should faithfully apply precedent to the facts of a case and impartially render a decision.

10. **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.

11. **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.

12. **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 may pursue judicial relief by doing the following: (1) filing a direct appeal under 28 U.S.C. § 1291; (2) moving to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255; (3) filing a petition for a writ of habeas corpus under 28 U.S.C. § 2241; or (4) filing a motion to modify a term of imprisonment under 28 U.S.C. § 3582(c). Additionally, a prisoner may pursue clemency from the president under Article II, Section 2 of the Constitution.

13. **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 this consolidated case, the Supreme Court addressed whether Harvard College's and the University of North Carolina's admissions systems, which considered race in admissions decisions, violated the Equal Protection Clause of the Fourteenth Amendment. The Court held that the admissions systems violated the Constitution because the systems did not satisfy strict scrutiny, finding that the universities could not demonstrate a compelling interest and that the race-based admissions practices were not narrowly tailored.

14. **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: From September 2007 to July 2015, I participated with my lawyer colleagues at Osborn Maledon, P.A. in interviewing and making hiring decisions for all summer law clerks and lawyer positions. Since joining Honeywell International Inc. in July 2015, I have interviewed a number of candidates for both lawyer and non-lawyer positions, including general counsels, assistant general counsels, litigation counsels, paralegals, contracts managers, and legal operations professionals. I have also directly hired an Assistant General Counsel, a Contract Lead, two Directors of Legal Operations, and a Legal Operations Specialist.

15. **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.

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

Response: No.

17. **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: No, not to my knowledge.

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

Response: Please see my response above to Question 17.

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

Response: Yes. *See, e.g.*, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) (applying strict scrutiny to admissions systems that considered race in admissions decisions).

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

    Response: In this case, the Supreme Court held that under the First Amendment, Colorado's public accommodation law could not compel a website creator to create a website that expressed opinions with which the creator disagreed.

20. **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 continues to apply this principle from *Barnette* in its First Amendment decisions. *See, e.g.*, *303 Creative LLC v. Elenis*, 600 U.S. 570, 584-85 (2023); *Janus v. AFSCME, Council 31*, 585 U.S. 878, 892 (2018).

21. **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: The Supreme Court explained in *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, that a regulation is content based and subject to strict scrutiny if it targets "particular speech because of the topic discussed or the idea or message expressed," but that a regulation is content neutral if it "is agnostic as to content." 596 U.S. 61, 69 (2022) (citation omitted). The mere fact that a regulation requires examination of speech does not render it content-based; rather, "it is regulations that discriminate based on 'the topic discussed or the idea or message expressed' that are content based." *Id.* at 74-75 (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015)). The Supreme Court further explained that even where a restriction is facially neutral, that does not end the inquiry because evidence of an impermissible purpose for a facially neutral regulation renders it content based. *Id.* at 69. Furthermore, even content neutral regulations are subject to intermediate scrutiny *Id.* at 76.

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

    Response: In *Counterman v. Colorado*, the Supreme Court held that the First Amendment requires "proof that the defendant had some subjective understanding of the threatening nature of his statements" to be considered a true threat of violence that is outside the

bounds of the First Amendment. 600 U.S. 66, 69 (2023). The Court further explained that the mental state the government must prove is recklessness. *Id.* ("The State must show that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence.").

23. **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: The Supreme Court explained in *U.S. Bank National Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Village at Lakeridge, LLC*, that a "'basic' or 'historical' fact" involves "addressing questions of who did what, when or where, how or why," 583 U.S. 387, 394 (2018) (citing *Thomson v. Keohane*, 516 U.S. 99, 111 (1995)). By contrast, a question of law involves "questions about whether settled facts satisfy a legal standard." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 228 (2020). The distinction between a question of fact and a question of law can be "slippery," *Keohane*, 516 U.S. at 110-11, and "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." *Miller v. Fenton*, 474 U.S. 104, 114 (1985).

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

Response: All four of these purposes of sentencing are set forth in 18 U.S.C. § 3553(a), but that statute does not give greater weight to any factor or factors over the others. If I am fortunate to be confirmed, I will faithfully apply this statute, as construed by the Supreme Court and Ninth Circuit Court of Appeals, in sentencing criminal defendants.

25. **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 precluded from opining on the quality or correctness of a decision rendered by the Supreme Court. If I am fortunate to be confirmed, my role as a district court judge would be to thoroughly research the applicable law, including precedent from the Supreme Court and Ninth Circuit Court of Appeals, and apply that law to the facts of the case to impartially render a decision.

26. **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 precluded from opining on the quality or correctness of a decision rendered by the Ninth Circuit Court of Appeals. If I am fortunate to be confirmed, my role as a district court judge would be to thoroughly research the applicable law, including precedent from the Supreme Court and Ninth

Circuit Court of Appeals, and apply that law to the facts of the case to impartially render a decision.

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

Response: Section 1507 of Title 18 of the United States Code 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 of any court of the United States of its power to punish for contempt."

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

Response: I am not aware of any case decided by the Supreme Court of the United States or the Ninth Circuit Court of Appeals addressing the constitutionality of 18 U.S.C. § 1507, but the Supreme Court has upheld a similar Louisiana statute. See *Cox v. Louisiana*, 379 U.S. 559 (1965). As a judicial nominee, it would not be appropriate for me to opine on an issue that might come before me.

29. **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, it would generally be inappropriate for me to opine on the correctness of a Supreme Court decision. Because it is unlikely that an issue regarding racial segregation would come before me, however, I may confirm that the decision was correctly decided.

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

Response: Yes. As a judicial nominee, it would generally be inappropriate for me to opine on the correctness of a Supreme Court decision. Because it is unlikely that an issue regarding a prohibition on marriages between individuals of different races would come before me, however, I may confirm that the decision was correctly decided.

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

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

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

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision. The Supreme Court overruled *Roe v. Wade* in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

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

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision. The Supreme Court overruled *Casey* in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

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

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

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

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

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

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

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

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

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

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

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

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

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, it would be inappropriate for me to opine on the correctness of Supreme Court decisions.

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

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

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

Response: In *New York State Rifle & Pistol Association v. Bruen*, the Supreme Court explained that the analysis for determining whether a regulation infringes on the right to keep and bear arms under the Second Amendment is not a "means-end" analysis, but instead is a one-step analysis where courts must determine whether the regulation "is consistent with this Nation's historical tradition of firearm regulation." 597 U.S. 1, 17 (2022). In conducting this analysis, courts should consider "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified." *Id.* at 29. A regulation need not be identical to a historical regulation, however, to satisfy this standard if it has a historical analog. *See United States v. Rahimi*, 144 S. Ct. 1889 (2024).

31. **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.

32. **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.

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

    Response: No.

        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.**

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?**

   Response: No.

   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.**

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?**

   Response: No.

   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.**

34. **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.

35. **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.

36. **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?**

    Response: No.

    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?**

    Response: No.

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?**

Response: No.

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: No.

37. **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.

    c. **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.

38. **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.

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

Response: In August 2023, I expressed my interest in being a judge to Senate staff. In October 2023, I submitted an application to Senator Sinema's and Senator Kelly's offices. On November 16, 2023, I interviewed with a committee created by Senator Sinema's office. The following day, November 17, 2023, I interviewed with a committee created by Senator Kelly's office. On August 2, 2024, I received a telephone call from the Office of White House Counsel asking to arrange an interview. On August 6, 2024, I interviewed via telephone with attorneys from the Office of White House Counsel. Since August 9, 2024 I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 9, 2024, my nomination was submitted to the Senate.

40. **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.

41. **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.

42. **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.

43. **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.

44. **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.

45. **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.

46. **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.

47. **Since you were first approached about the possibility of being nominated, did anyone associated with the Biden administration or Senate Democrats give you advice about which cases to list on your committee questionnaire?**

Response: No.

a. **If yes,**
   i. **Who?**

      Response: Please see my response above to Question 47.

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

      Response: Please see my response above to Question 47.

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

Response: Please see my response above to Question 47.

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

Response: On August 2, 2024, I received a telephone call from the Office of White House Counsel asking to arrange an interview. On August 6, 2024, I interviewed via telephone with attorneys from the Office of White House Counsel. Since August 9, 2024 I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 9, 2024, my nomination was submitted to the Senate.

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

Response: I received these questions from the Department of Justice Office of Legal Policy on October 2, 2024. I reviewed each question, reviewed applicable United States Supreme Court and Ninth Circuit Court of Appeals caselaw, and drafted responses to each question. I provided draft responses to lawyers at the Office of Legal Policy, who provided minor feedback, and then finalized my responses before submitting them.

Senate Judiciary Committee
Nominations Hearing
September 25, 2024
Questions for the Record
Senator Amy Klobuchar

Question for Sharad Harshad Desai, to be a U.S. District Judge for the District of Arizona

You have nearly a decade of litigation experience working in private practice in a law firm in Phoenix where you handled a wide range of cases in state and federal courts. You represented a diverse set of clients from indigent or incapacitated clients in proceedings in mental health court, to small businesses and even Fortune 100 companies in commercial litigation, and appellate matters.

- **What did your time as a private practitioner teach you about how a judge should conduct themselves in the courtroom to ensure that the parties who appear before the court believe that the court reached a fair and just decision?**

  Response: My experience as a partner and associate at Osborn Maledon P.A. litigating a broad array of cases on behalf of a broad array of clients, taught me that it is critical for judges to act with respect, fairness, and impartiality towards litigants, counsel, witnesses, jurors, and all other participants in the judicial process. In the dozens of matters I handled in federal and state courts, as well in arbitrations, it was important for my clients to know that the neutral deciding the case was well-prepared, smart, and decisive, but it was even more important for them to know that the judge would rule on the basis of the law rather than any personal feelings or preference for one party over another.

  My formative experience as a clerk for then-Vice Chief Justice Rebecca White Berch of the Arizona Supreme Court Justice Berch also demonstrated the importance of judges acting impartially and without the appearance of impropriety to ensure that litigants felt that they had a full and fair opportunity to present their cases and that their cases were decided fairly, impartially, on the basis of facts, in accordance with the law, and without regard to the parties' identities or the judge's personal preferences.

  If given the opportunity to serve my home state on the United States District Court for the District of Arizona, I will uphold the principles of a fair and impartial judiciary to ensure public confidence in our courts.

Senator Mike Lee
Questions for the Record
Sharad Harshad Desai to be United States District Judge for the District of Arizona

1. How would you describe your judicial philosophy?

Response: If am fortunate to be confirmed, my judicial philosophy would be to evaluate the merits of each case impartially and objectively, thoroughly researching the applicable law, and applying the law to the facts to reach a decision. In doing so, I would faithfully apply the Constitution and applicable law, as interpreted by the Supreme Court and Ninth Circuit Court of Appeals.

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

Response: To reach a decision involving the interpretation of a statute, I would start with the text of the statute and any Supreme Court or Ninth Circuit Court of Appeals precedent interpreting the statute. I would faithfully apply any such precedent. If there is no applicable precedent, I would look to the text of the statute to interpret it, utilizing canons of statutory interpretation, precedent construing similar statutes, and persuasive authority from outside the Ninth Circuit Court of Appeals. If ambiguity remained, I would utilize legislative history consistent with Supreme Court and Ninth Circuit Court of Appeals precedent.

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

Response: To reach a decision involving the interpretation of a constitutional provision, I would start with the text of the constitutional provision and any Supreme Court or Ninth Circuit Court of Appeals precedent interpreting the constitutional provision. I would faithfully apply any such precedent. In the unlikely event there is no applicable precedent, I would look to the text of the constitutional provision to interpret it, utilizing canons of interpretation and persuasive authority from outside the Ninth Circuit Court of Appeals.

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

Response: The Supreme Court has explained that when construing the Constitution, the analysis begins with looking to its text and the original meaning of the provision at issue. *See New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022); *see also District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) ("[T]he 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." (citation and quotation marks omitted).

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 above to Question 2.

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

Response: The Supreme Court has explained that the plain meaning of a statute or constitutional provision refers to the public's understanding of the pertinent language at the time it was enacted. *Bostock v. Clayton County*, 590 U.S. 644 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."); *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (explaining that the inquiry focuses on "*the public understanding* of a legal text in the period after its enactment or ratification." (emphasis in original)).

6. What are the constitutional requirements for standing?

Response: To satisfy the case or controversy requirement set forth in Article III, Section 2 of the Constitution, a plaintiff has standing if they allege "personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) (citation and quotation marks omitted).

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

Response: The Supreme Court held in *McCulloch v. Maryland* that Congress has implied powers beyond those enumerated in the Constitution in order to exercise enumerated powers under the Necessary and Proper Clause found in Article I, Section 8. 17 U.S. 316 (1819).

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

Response: In determining the constitutionality of a federal statute, I would apply relevant Supreme Court and Ninth Circuit Court of Appeals precedent to determine whether the Constitution grants Congress the power to enact the legislation at issue. Congress's failure to reference a specific enumerated power is not relevant to the inquiry. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) ("The question of the constitutionality of action taken by Congress does not depend on recitals of power which it undertakes to exercise." (citation and quotation marks omitted)).

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

Response: Yes. In *Washington v. Glucksberg*, the Supreme Court set forth the applicable standard governing unenumerated rights, holding that the Due Process Clause protects "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty such that neither liberty nor justice would exist if they were sacrificed." 521 U.S. 702, 720-21 (1997) (citation and quotation marks omitted). The Supreme Court has identified several rights not expressly enumerated in the Constitution. *See, e.g.*, *Obergefell v. Hodges*, 576 U.S. 644 (2015) (same-sex marriage); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (right to direct child's education); *Loving v. Virginia*, 388 U.S. 1 (1967) (right to marry); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (right to contraception).

10. What rights are protected under substantive due process?

Response: Please see my response above to Question 9.

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

Response: In *West Coast Hotel Company v. Parrish*, the Supreme Court held that the economic right identified in *Lochner* is not protected under the Due Process Clause of the Fourteenth Amendment, overruling *Lochner*. 300 U.S. 379 (1937). Likewise, in *Dobbs v. Jackson Women's Health Org.*, the Supreme Court held that the right to an abortion is not protected under the Due Process Clause of the Fourteenth Amendment. 597 U.S. 215, 231 (2022) ("We hold that *Roe* and *Casey* must be overruled."). If I am fortunate to be confirmed, I will faithfully apply these decisions and any additional Supreme Court and Ninth Circuit Court of Appeals precedent if faced with a question concerning constitutional rights.

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

Response: Article I, Section 8, Clause 3 of the Constitution states that Congress has the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The Supreme Court has held that Congress's power is limited to regulating "(1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and (3) those activities having a substantial relation to interstate commerce." *Taylor v. United States*, 579 U.S. 301, 306 (2016) (citation and quotation marks omitted).

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

Response: The Supreme Court has identified race, religion, national origin and alienage as suspect classes in its decisions. *See City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (identifying "race, religion, or alienage" as suspect classes); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (identifying "race, alienage, or national origin" as suspect classes). The Supreme Court has also explained that suspect classes are those groups "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio Indep. Sch. Dist. v. Rodriquez*, 411 U.S. 1, 28 (1973).

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

Response: The checks and balances and separation of powers principles set forth in the Constitution ensure that the legislative, executive, and judicial branches have clearly enumerated powers exclusive to each branch that cannot be exercised by the other co-equal branches and ensure that no one branch exceeds its powers. *See, e.g.*, *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (explaining that the Constitution's separation of powers and system of checks and balances "was regarded by the Framers as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other").

15. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: If I am fortunate to be confirmed, I would look to the text of the Constitution and faithfully apply Supreme Court and Ninth Circuit Court of Appeals precedent in deciding any case in which a party claims that one branch has assumed authority not granted to it by the Constitution. *See, e.g.*, *Bond v. United States*, 564 U.S. 211 (2011) (citing various Supreme Court cases resolving separation of powers disputes).

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

Response: A judge must research the applicable law and apply that law, including precedent, to the facts of the case to render a decision impartially and without consideration of the judge's personal beliefs.

17. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: A judge should avoid both situations.

18. 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: The Supreme Court's history of striking down federal statutes as unconstitutional over time is not a topic that I have studied, and I have not formed an opinion on this topic. If I am fortunate to be confirmed, my role as a district court judge would be to thoroughly research the applicable law, including precedent from the Supreme Court and Ninth Circuit Court of Appeals, and apply that law to the facts of the case to impartially render a decision.

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

Response: In *Marbury v. Madison*, 5 U.S. 137 (1803), the Supreme Court established the principle of judicial review as the power of the courts to determine whether laws and regulations are constitutional. *Black's Law Dictionary* (12th ed. 2024) defines judicial review as "[a] court's power to review the actions of other branches or levels of government; esp., the court's power to invalidate legislative and executive actions as being unconstitutional," while it defines judicial supremacy as "[t]he doctrine that interpretations of the Constitution by the federal judiciary in the exercise of judicial review, esp. U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." *See also Cooper v. Aaron*, 358 U.S. 1, 18 (1958) ("[T]he federal judiciary is supreme in the exposition of the law of the Constitution.").

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

Response: Article VI of the Constitution states that the Constitution and laws made pursuant to it are the "supreme Law of the Land" and requires elected officials, members of the judiciary, and federal and state Officers to take an oath "to support this Constitution." In *Cooper v. Aaron*, the Supreme Court explained that "the federal judiciary is supreme in the exposition of the law of the Constitution." 358 U.S. 1, 18 (1958). As a judicial nominee, it would be inappropriate for me to opine on how elected officials should balance their obligations.

21. 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: This statement is a reminder that the judicial branch's enumerated powers under the Constitution do not include making or enforcing the laws, and that the judiciary must adhere to its limited role of applying the law to the cases and controversies before it.

22. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?

Response: If I am fortunate to be confirmed, I will faithfully apply precedent from the Supreme Court and the Ninth Circuit Court of Appeals to render a decision impartially and without consideration of any personal opinions about the constitutional underpinnings of such precedent. That is the role of a district court judge. *See Mallory v. Norfolk Southern Railway, Co.*, 600 U.S. 122, 136 (2023) (explaining that lower courts "should follow the case which directly controls, leaving to the [Supreme Court] the prerogative of overruling its own decisions" and that this principle applies "even if the lower court thinks the precedent is in tension with some other line of decisions" (citation and quotation marks omitted)).

23. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: None; rather, a judge should apply the factors set forth in 18 U.S.C. § 3553 when sentencing a criminal defendant.

24. 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 have a personal definition of equity, nor is this a topic that I have studied.

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

Response: Please see my response above to Question 24.

26. Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?

Response: The Equal Protection Clause of the Fourteenth Amendment guarantees "equal protection of the laws" and does not explicitly reference "equity." If I am fortunate to be confirmed, I will faithfully apply precedent from the Supreme Court and the Ninth Circuit Court of Appeals construing the Equal Protection Clause.

27. How do you define "systemic racism?"

Response: I do not have a personal definition of systemic racism, nor is this a topic that I have studied.

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

Response: I do not have a personal definition of critical race theory, nor is this a topic that I have studied.

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

Response: Please see my responses above to Questions 27 and 28.

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

Questions for the Record for Sharad Harshad Desai nominated to serve as U.S. District Judge for the District of Arizona

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.

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: In *Washington v. Glucksberg*, the Supreme Court set forth the applicable standard governing unenumerated rights, holding that the Due Process Clause protects "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty such that neither liberty nor justice would exist if they were sacrificed." 521 U.S. 702, 720-21 (1997) (citation and quotation marks omitted). If I am fortunate to be confirmed, I will faithfully apply precedent from the Supreme Court and the Ninth Circuit Court of Appeals in matters of constitutional interpretation. As a judicial nominee, it would not be appropriate for me to comment on any rights the Supreme Court may identify in the future.

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: If am fortunate to be confirmed, my judicial philosophy would be to evaluate the merits of each case impartially and objectively, thoroughly researching the applicable law, and applying the law to the facts to reach a decision. In doing so, I would faithfully apply the Constitution and applicable law, as interpreted by the Supreme Court and Ninth Circuit Court of Appeals. I have not studied the judicial philosophies of the justices who served on the Warren, Burger, Rehnquist, and Roberts Courts, and therefore I am not able to determine which justice's philosophy is most analogous to mine.

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

Response: Originalism is defined in Black's Law Dictionary (12th ed. 2024) as the "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." The Supreme Court has adopted this approach when construing certain constitutional provisions. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (interpreting the Second Amendment based on "*the public understanding* of a legal text in the period after its enactment or ratification." (emphasis in original)). I do not subscribe to any particular label regarding the method for interpreting the Constitution. If I am fortunate to be confirmed, I will faithfully apply precedent from the Supreme Court and the Ninth Circuit Court of Appeals in matters of constitutional

interpretation.

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

Response: Living constitutionalism is defined in Black's Law Dictionary (12th ed. 2024) as the "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 regarding the method for interpreting the Constitution. If I am fortunate to be confirmed, I will faithfully apply precedent from the Supreme Court and the Ninth Circuit Court of Appeals in matters of constitutional interpretation.

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: To reach a decision involving the interpretation of a constitutional provision, I would start with the text of the Constitution and any Supreme Court or Ninth Circuit Court of Appeals precedent interpreting the constitutional provision. I would faithfully apply any such precedent. In the unlikely event there is no applicable precedent, I would look to the text of the constitutional provision to interpret it. If the original public meaning of the text is clear and resolves the issue, I would be bound by that meaning. If not, I would utilize canons of interpretation and persuasive authority from outside the Ninth Circuit Court of Appeals.

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: The Supreme Court has explained that the plain meaning of a statute or constitutional provision refers to the public's understanding of the pertinent language at the time it was enacted. *Bostock v. Clayton County*, 590 U.S. 644 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."); *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (explaining that the inquiry focuses on "*the public understanding* of a legal text in the period after its enactment or ratification." (emphasis in original)).

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

Response: In *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Supreme Court explained that while the Constitution's "meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." 597 U.S. 1, 28

(2022).

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

Response: Yes, the Supreme Court's decision in *Dobbs* is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

10. **Is the Supreme Court's ruling in *Cooper v. Aaron* settled law?**

Response: Yes, the Supreme Court's decision in *Cooper v. Aaron* is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

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

Response: Yes, the Supreme Court's decision in *Bruen* is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

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

Response: Yes, the Supreme Court's decision in *Brown v. Board of Education* is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: Yes. As a judicial nominee, it would generally be inappropriate for me to opine on the correctness of a Supreme Court decision. Because it is unlikely that an issue regarding racial segregation would come before me, however, I may confirm that the decision was correctly decided.

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

Response: Yes, the Supreme Court's decision in *Students for Fair Admissions* is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

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

Response: Yes, the Supreme Court's decision in *Gibbons v. Ogden* is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

15. **Is the Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo* settled law?**

Response: Yes, the Supreme Court's decision in *Loper Bright* is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: As a judicial nominee, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

16. **Is it appropriate for courts to defer to an agency interpretation of a law when a statute is ambiguous?**

Response: No. In *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), the Supreme Court overruled *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), eliminating the two-step framework set forth in that case for interpreting statutes administered by federal agencies, including the second step requiring courts to defer to an agency's interpretation of an ambiguous statute if the interpretation was based on a permissible construction of the statute. In *Loper Bright*, the Court held that the Administrative Procedure Act requires that "courts decide legal questions by applying their own judgment" and does not prescribe any "deferential standard for courts to employ in answering those legal questions." 144 S. Ct. at 2261. Although a court may not defer to an agency's interpretation, it may consider an agency's "body of experience and informed judgment . . . to the extent it rests on

factual premises within the agency's expertise." *Id.* at 2267 (citations and quotation marks omitted).

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

Response: Under 18 U.S.C. Section 3142(e), the offenses for which there is a rebuttable presumption in favor of pretrial detention include drug offenses carrying a possible sentence of 10 or more years in prison, certain violent offenses, and certain offenses involving minor victims.

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

Response: Although 18 U.S.C. Section 3142(e) does not expressly state the policy rationale underlying this presumption, it does state that detention is appropriate when "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community." *See also United States v. Salerno*, 481 U.S. 739, 748 (1987) (noting "the Government's regulatory interest in community safety" in discussing the Bail Reform Act of 1984).

18. **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: Yes. The Supreme Court has identified limitations on what the government may impose or require of organizations. *See, e.g.*, *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (holding that under the First Amendment, Colorado's public accommodation law could not compel a website creator to create a website that expressed opinions with which the creator disagreed); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (holding that the Religious Freedom Restoration Act permits a closely-held, for-profit corporation to deny its employees health coverage based on religious objections of the corporation's owners).

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

Response: Any government regulation that discriminates against religious organizations or religious people must satisfy strict scrutiny. *See, e.g.*, *Carson v. Makin*, 596 U.S. 767, 780-81 (2022) ("A law that targets religious conduct for distinctive treatment . . . will survive strict scrutiny only in rare cases." (citation and quotation marks omitted)).

20. **Explain your understanding of the U.S. Supreme Court's holding and reasoning in *Tandon v. Newsom*.**

Response: In *Tandon v. Newsom*, the Supreme Court granted an injunction against a

California emergency order limiting the size of religious gatherings issued due to the Covid epidemic. 593 U.S. 61 (2021). Applying the four-part test for granting preliminary relief, the Supreme Court found that the applicants had a substantial likelihood of prevailing on the merits because the emergency order treated comparable secular activity more favorably than religious activity, triggering strict scrutiny because it was not neutral, and was not likely to satisfy strict scrutiny because it was not narrowly tailored in pursuit of a compelling government interest. *Id.* at 62-65.

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

Response: Yes.

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

Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Supreme Court held that under the First Amendment, the Colorado Civil Rights Commission could not require a baker to make a wedding cake for a same-sex couple. 584 U.S. 617 (2018). The Court explained that a government agency may not act in a manner that is hostile to an individual's religion or religious viewpoint, and instead must act neutrally. *Id.* at 640 ("The Commission's hostility was inconsistent with the First Amendment's guarantee that our laws be applied in a manner that is neutral toward religion.").

23. **Explain your understanding of the U.S. Supreme Court's holding and reasoning in *303 Creative LLC v. Elenis.***

Response: In this case, the Supreme Court held that under the First Amendment, Colorado's public accommodation law could not compel a website creator to create a website that expressed opinions with which the creator disagreed. The Court explained that compelling such conduct was inconsistent with First Amendment right to freedom of speech. *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

24. **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. The Supreme Court explained in *Burwell v. Hobby Lobby Stores, Inc.*, that "it is not for us to say that their religious beliefs are mistaken or insubstantial," and that the test is whether the belief is a sincere belief based on "an honest conviction." 573 U.S. 682, 725 (2014).

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

Response: The Supreme Court explained in *Burwell v. Hobby Lobby Stores, Inc.*, that the test is whether a religious belief is a sincere belief based on "an honest

conviction." 573 U.S. 682, 725 (2014).

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

Response: The Supreme Court explained in *Burwell v. Hobby Lobby Stores, Inc.*, that "it is not for us to say that their religious beliefs are mistaken or insubstantial," and that the test is whether the belief is a sincere belief based on "an honest conviction." 573 U.S. 682, 725 (2014).

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

Response: I am not familiar with the official positions of the Catholic Church regarding abortion or other topics.

25. **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 U.S. Supreme Court's holding and reasoning in the case.**

Response: In *Morrisey-Berru*, the Supreme Court applied the ministerial exception set forth in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012) to hold that employees who performed religious duties—in this case teachers—could not pursue employment discrimination claims under Title VII. 591 U.S. 732 (2020). The Court explained that under this exception, "courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions," and explained that the analysis involves understanding what the employee does to see if the ministerial exception applies. *Id.* at 746, 753-54.

26. **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 your understanding of the U.S. Supreme Court's holding and reasoning in the case.**

Response: In *Fulton v. City of Philadelphia*, the Supreme Court held that the City of Philadelphia violated the First Amendment's Free Exercise Clause by declining to contract with a Catholic institution to provide foster care unless the institution agreed to certify same-sex couples to serve as foster parents. 593 U.S. 522 (2021). The City's policy burdened the Catholic organization's religious exercise and was not neutral, triggering strict scrutiny, and the Supreme Court found that it did not satisfy that standard.

27. **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 U.S. Supreme Court's holding and reasoning in the case.**

Response: In *Carson v. Makin*, the Supreme Court held that a regulation prohibiting the expenditure of school district funds for sectarian schools violated the Free Exercise Clause of the First Amendment. 596 U.S. 767, 780-81 (2022). The Court found that the regulation was not neutral and did not satisfy strict scrutiny. *Id.* at 786 ("As we held in *Espinoza*, a State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious." (citation omitted)).

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

Response: In *Kennedy v. Bremerton School District*, the Supreme Court held that a school district violated the First Amendment free exercise and free speech rights of a football coach who was engaged in private speech while employed by the school district by disciplining him for that conduct. 597 U.S. 507 (2022). The Court rejected the district's argument that its policy satisfied strict scrutiny and its argument that the policy was designed to comport with the Establishment Clause of the First Amendment.

29. **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 *Mast v. Fillmore County*, the Supreme Court vacated a lower-court decision denying an Amish community a declaratory judgment that Fillmore County's septic-system regulation violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) in light of its decision in *Fulton v. Philadelphia*, 593 U.S. 522 (2021). 141 S. Ct. 2430 (2021). In his concurring opinion, Justice Gorsuch stated that the lower court "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" because *Fulton* held that "strict scrutiny demands 'a more precise analysis.'" *Mast*, 141 S. Ct. at 2432 (citation omitted). Justice Gorsuch further explained that the lower court "failed to give due weigh to exemptions other groups enjoy" because strict scrutiny requires a "compelling explanation why the same flexibility extended to others cannot be extended to the [plaintiff]," *id.*, and also noted that the lower courts "failed to give sufficient weigh to rules in other jurisdictions," *id.* at 2433.

30. **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: Section 1507 of Title 18 of the United States Code 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 of any court of the United States of its power to punish for contempt."

I am not aware of any case decided by the Supreme Court of the United States or the Ninth Circuit Court of Appeals addressing the constitutionality of 18 U.S.C. § 1507, but the Supreme Court has upheld a similar Louisiana statute. See *Cox v. Louisiana*, 379 U.S. 559 (1965). As a judicial nominee, it would not be appropriate for me to opine on an issue that might come before me.

31. **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.

32. **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.

33. **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.

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

Response: As a judicial nominee, it would not be appropriate for me to provide an opinion on how the President should exercise the authority to make appointments and how the Senate should exercise its authority to provide advice and consent.

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

Response: In *Coleman v. Ct. of Appeals of Maryland*, the Supreme Court explained that "[a]lthough disparate impact may be relevant evidence of discrimination such evidence alone is insufficient to prove a constitutional violation even where the Fourteenth Amendment subjects state action to strict scrutiny." 566 U.S. 30, 42 (2012) (citation and quotation marks omitted). If I am fortunate to be confirmed and face a question concerning racial discrimination, I will faithfully apply Supreme Court and Ninth Circuit Court of Appeals precedent to the facts of the case to impartially render a decision.

36. **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 not be appropriate for me to provide an opinion on this policy matter reserved to the legislative and executive branches.

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

Response: No. Each member of the Supreme Court was nominated and confirmed pursuant to the Constitution.

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

Response: In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment guarantees "the individual right to possess and carry weapons in case of confrontation." 554 U.S. 570, 592 (2008).

39. **Explain your understanding of Justice Thomas's dissent in the U.S. Supreme Court's decision in *United States v. Rahimi*.**

Response: Justice Thomas disagreed with the majority's conclusion that the regulation at issue, 18 U.S.C. Section 922(g)(8), was "consistent with the Nation's historical tradition of firearm regulation" because, in his view, "[n]ot a single historical regulation justifies [that] statute." *United States v. Rahimi*, 144 S. Ct. 1889, 1930 (2024) (Thomas, J., dissenting).

40. **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*, *New York State Rifle & Pistol Association v. Bruen*, and *United States v. Rahimi*?**

Response: In *New York State Rifle & Pistol Association v. Bruen*, the Supreme Court explained that the analysis for determining whether a regulation infringes on the right to keep and bear arms under the Second Amendment is not a "means-end" analysis, but instead is a one-step analysis where courts must determine whether the regulation "is consistent with this Nation's historical tradition of firearm regulation." 597 U.S. 1, 17 (2022). In conducting this analysis, courts should consider "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified." *Id.* at 29. A regulation need not be identical to a historical regulation, however, to satisfy this standard if it has a historical analog. *See United States v. Rahimi*, 144 S. Ct. 1889 (2024).

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

Response: Yes. In *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment guarantees "the individual right to possess and carry weapons in case of confrontation." 554 U.S. 570, 592 (2008).

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

Response: No. The Supreme Court has stated that "[t]he Constitutional right to bear arms in public for self-defense is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 70 (2022) (citation and quotation marks omitted).

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

Response: No. *See New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 70 (2022) ("The Constitutional right to bear arms in public for self-defense is not a second-class right . . . ." (citation and quotation marks omitted)).

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

Response: Article II, Section 3 of the Constitution states that the president "shall take Care that the Laws be faithfully executed." As a judicial nominee, it would be inappropriate for me to opine on the executive branch's refusal to enforce a law.

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

Response: *Black's Law Dictionary* (12th ed. 2024) defines prosecutorial discretion as 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." A substantive administrative rule change involves an agency's action to make or amend a rule under the Administrative Procedure Act. *See Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 95-96 (2015) ("The [Administrative Procedure Act] establishes the procedures federal administrative agencies use for 'rule making,' defined as the process of 'formulating, amending, or repealing a rule.'" (quoting 5 U.S.C. § 551(5)).

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

Response: No. Under Article II of the Constitution, the President does not have the power to enact or repeal a statute; rather, that power is reserved to the legislative branch.

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

Response: In *Alabama Association of Realtors v. HHS*, the Supreme Court vacated the lower court's stay of its ruling finding that the nationwide moratorium on evictions imposed by the Director of the Centers for Disease Control and Prevention (CDC) was unlawful. 594 U.S. 758 (2021). The Court applied the four traditional stay factors and found that the plaintiff was likely to succeed on the merits because Congress had not specifically authorized the action taken by the CDC. *Id.*

48. **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.

49. **Explain your understanding of the U.S. Supreme Court's holding and reasoning in *Trump v. United States*.**

Response: In *Trump v. United States*, 144 S. Ct. 2312 (2024), the Supreme Court addressed whether a former president has immunity for actions taken while they served as president. The Court held that former presidents are absolutely immune for the exercise of core constitutional powers, presumptively immune for official actions, and

not immune for non-official actions. To rebut the presumption of immunity for official actions, the government has the burden to establish that "applying a criminal prohibition to that act would pose no dangers of intrusion on the authority and functions of the Executive Branch." *Id.* at 2331-32 (citation and quotation marks omitted). Additionally, the Supreme Court held that evidence concerning the president's immune conduct is not admissible to prosecute the president for unofficial and non-immune conduct. *Id.* at 2341.

50. **In your view, what powers does the Commerce Clause, Article 1, Section 8, grant to Congress?**

Response: Article I, Section 8, Clause 3 of the Constitution states that Congress has the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The Supreme Court has held that Congress's power is limited to regulating "(1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and (3) those activities having a substantial relation to interstate commerce." *Taylor v. United States*, 579 U.S. 301, 306 (2016) (citation and quotation marks omitted).

51. **In your view, what are the limits to Congress's power to regulate commerce?**

Response: The Supreme Court has held that Congress's power is limited to regulating "(1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and (3) those activities having a substantial relation to interstate commerce." *Taylor v. United States*, 579 U.S. 301, 306 (2016) (citation and quotation marks omitted).

52. **You are being nominated for a federal trial court judgeship. Do you believe that a nominee for a federal trial court judgeship should have experience practicing as a trial lawyer in front of a federal trial court judge?**

Response: Yes. As both a litigator at Osborn Maledon, P.A. I directly appeared in federal court as counsel of record and as in-house counsel at Honeywell International, Inc. I have directed strategy in matters pending in federal court.

53. **Have you yourself ever presented a motion before a trial court judge? If yes, how many times? Please provide all applicable citation(s).**

Response: Yes, I have presented over a dozen motions before trial court judges. These are proceedings for which I no longer have records identifying the specific matters.

54. **Have you yourself ever delivered an opening statement before a trial court judge? If yes, how many times? Please provide all applicable citation(s).**

Response: Yes. I have delivered over a dozen opening statements in mental health evidentiary hearings held before trial court judges. These are proceedings for which I no longer have records identifying the specific matters.

55. **Have you yourself ever delivered a closing statement before a trial court judge? If yes, how many times? Please provide all applicable citation(s).**

Response: Yes. I have delivered over a dozen closing arguments in mental health evidentiary hearings held before trial court judges. These are proceedings for which I no longer have records identifying the specific matters.

56. **Have you yourself ever delivered an opening statement before a jury? If yes, how many times? Please provide all applicable citation(s).**

Response: No. As both a litigator at Osborn Maledon, P.A. and in-house counsel at Honeywell International, Inc. I have participated in the drafting of and preparation for opening statements before a jury.

57. **Have you yourself ever delivered a closing statement before a jury? If yes, how many times? Please provide all applicable citation(s).**

Response: No. As both a litigator at Osborn Maledon, P.A. and in-house counsel at Honeywell International, Inc. I have participated in the drafting of and preparation for closing arguments before a jury.

58. **Since going in-house at Honeywell International, have you ever appeared in court as counsel of record, either as litigation counsel or general counsel? If yes, please provide all applicable citation(s).**

Response: No. In my various roles as in-house counsel for Honeywell International Inc. I have directed litigation and trial strategy that was then executed by outside counsel.