

Senator Lindsey Graham, Ranking Member
Questions for the Record
Benjamin Cheeks

Nominee to be United States District Judge for the Southern District of California

1. **While in private practice you wrote a column in *Trial Bar News* criticizing President Trump’s zero tolerance policy for illegal entry into the United States. You wrote that while the defendants “technically” broke the law, they “deserve a pass from prosecution.” You also describe the policy as “unjust.” President Trump has stated that one the priorities for his administration is to crack down on illegal immigration. How can we trust that you will apply all laws—even the ones you say you disagree with—to the cases before you?**

Response: I am currently a United States magistrate judge, and I am dutybound to apply the laws of the United States. I have done so ever since I took the bench. As a sitting federal magistrate judge, I set aside any personal feelings, follow the law, apply the law to the facts, and make decisions without favor or bias. If I am so fortunate to be confirmed as a district judge, I will continue to do the same. Moreover, I previously represented the United States as an Assistant United States Attorney and prosecuted crimes, including for illegal entry. As both a prosecutor and a sitting judge, I understand the need for border security, particularly as it pertains to issues such as public safety.

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

Response: Yes

3. **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: See my response to Question 3 above.

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

Response: See my response to Question 3 above.

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

Response: See my response to Question 3 above.

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 oral argument? If yes, please describe in which circumstances such consideration would be appropriate.**

Response: No.

- 5. 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.

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

Response: No, except where expressly authorized by the Supreme Court. *See, e.g., New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 34-47 (2022), where the Court examined English common law when interpreting the Second Amendment. 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.

- 7. 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: Disagree. Judges must faithfully apply the law to the facts with an open mind and without bias. A judge’s own independent value judgments play no role in evaluating cases.

- 8. 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. *See Medellin v. Texas*, 128 S. Ct. 1346, 1369 (2008).

- 9. Please define the term “prosecutorial discretion.”**

Response: Prosecutorial discretion is “a prosecutor’s power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court.” Black’s Law Dictionary (12th ed. 2024).

10. **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 must faithfully apply the laws to the facts and render unbiased opinions.

11. **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.

12. **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.

13. **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: There are a number of ways a prisoner may seek and receive relief from a sentence. First, a prisoner may file a direct appeal under 28 U.S.C. § 1291. The prisoner may also move to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. A petition for a writ of habeas corpus under 28 U.S.C. § 2241 is another way a prisoner can get a sentence reduction. In addition, a prisoner may file a motion to modify a term of imprisonment under 28 U.S.C. § 3582(c). Lastly, a prisoner may seek a presidential pardon under Article II, Section 2 of the Constitution.

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

Response: The Supreme Court examined whether the use of race to determine student admission into the two schools was constitutional. The Court held that doing so was race-based discrimination that did not survive strict scrutiny, thus violating the Equal Protection Clause of the 14th Amendment.

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

Response: Yes.

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

Response: I hired law clerks in Summer 2024.

16. **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.

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

Response: No.

18. **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.

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: See my response to Question 18 above.

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

Response: Yes.

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

Response: In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held that under the First Amendment, a web designer could not be forced to make a website for a same-sex couple where the designer’s religious views oppose same-sex marriage.

21. 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 in *303 Creative LLC v. Elenis* essentially applied this principle by not forcing the web designer to design a website that went against her religious values.

22. 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 has stated a content-based regulation “targets speech based on its communicative content” or subject matter and is “presumptively unconstitutional” unless it survives strict scrutiny. *Vidal v. Elster*, 602 U.S. 286 (2024). A regulation is content-neutral if it is “agnostic as to content,” does not discriminate on the basis of viewpoint, and survives intermediate scrutiny. *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022). A facially content-neutral regulation can be content-based if there is evidence that an impermissible purpose or justification exists. *Id.* at 77.

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

Response: To establish that a statement is a “true threat” unprotected by the First Amendment, the government must prove that the defendant had some subjective understanding of the statements’ threatening nature, based on a showing no more demanding than recklessness. *Counterman v. Colorado*, 600 U.S. 66, 69 (2023).

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

Response: In *U.S. Bank National v. Village at Lakeridge, LLC*, 583 U.S. 387 (2018), the Supreme Court stated that a “‘basic’ or ‘historical’ fact” involves “addressing questions of who did what, when or where, how or why.” A question of fact is reviewed for clear error, since the trial judge knows the facts best. A question of law is reviewed de novo so that the appellate judge can review the legal issue and not be bound by the trial judge’s rulings.

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

Response: 18 United States Code § 3553(a) does not indicate one of these factors being more important than the others. If I am fortunate to be confirmed as a district judge, I will apply the statute as written to any criminal defendants that I sentence.

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

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, I am precluded from opining on the quality or correctness of a decision rendered by the Supreme Court because I am dutybound to apply its precedents. 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 identify a Ninth Circuit judicial opinion from the last 50 years that you think is particularly well-reasoned and explain why.**

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, I am precluded from opining on the quality or correctness of a decision rendered by the Ninth Circuit Court of Appeals, as I am dutybound to apply its precedents. 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.

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

Response: 18 United States Code §1507 states the following: “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.”

29. Is 18 U.S.C. § 1507 constitutional?

Response: I am unaware 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. However, the Supreme Court has upheld a similar Louisiana statute. *See Cox v. Louisiana*, 379 U.S. 559 (1965). As a sitting federal magistrate judge and judicial nominee for a district judge position, it would not be appropriate for me to discuss an issue that might come before me.

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

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

Response: As a sitting federal magistrate judge and judicial nominee for a district judge position, 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, I may confirm that, yes, the decision was correctly decided.

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

Response: As a sitting federal magistrate judge and judicial nominee for a district judge position, 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 whether individuals of different races can marry would come before me, I may confirm that, yes, the decision was correctly decided.

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

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, 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 sitting federal magistrate judge and a judicial nominee for a district judge position, it would be inappropriate for me to opine on the

correctness of a Supreme Court decision. In *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), the Supreme Court overruled *Roe v. Wade*.

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

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, it would be inappropriate for me to opine on the correctness of a Supreme Court decision. In *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), the Supreme Court overruled *Planned Parenthood v. Casey*.

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

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, 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 sitting federal magistrate judge and a judicial nominee for a district judge position, 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 sitting federal magistrate judge and a judicial nominee for a district judge position, 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 sitting federal magistrate judge and a judicial nominee for a district judge position, 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 sitting federal magistrate judge and a judicial nominee for a district judge position, 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 sitting federal magistrate judge and a judicial nominee for a district judge position, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

1. **Were *Students for Fair Admissions, Inc. v. University of North Carolina and Students for Fair Admissions Inc. v. President & Fellows of Harvard College* correctly decided?**

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

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

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, it would be inappropriate for me to opine on the correctness of a Supreme Court decision.

31. **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*, 597 U.S. 1, 17 (2022) the Supreme Court ruled that the standard is whether the regulation “is consistent with this Nation’s historical tradition of firearm regulation.”

32. **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.

33. 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.

34. 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.

Response: See my answer to Question 34a above.

- 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.

Response: See my answer to 34b above.

- 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.**

Response: See my answer to 34c above.

35. **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.

36. **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.

37. 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.

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

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

Response: No.

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

Response: No.

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

Response: No.

39. **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: In the January 2021, Johanna Schiavoni, a member of the local chapter of the American Constitution Society, asked me to participate in virtual meetings with three individuals applying to be the United States Attorney for the Southern District of California, as well as two individuals applying to be judges for the Ninth Circuit Court of Appeals. These individuals were seeking support from the American Constitution Society. I am unaware if any person received support, and I am confident that none of them were nominated to the positions to which they were applying. My involvement in this process concluded in September 2021.

- 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: See my answer to Question 39a above.

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

Response: On January 21, 2021 and February 21, 2021, I submitted my application for the United States District Court, Southern District of California to then-Senator Dianne Feinstein and Senator Alex Padilla, respectively. On March 12, 2021, I was interviewed by Senator Feinstein's selection committee. On April 22, 2024, I was interviewed by Senator Padilla's selection committee. On September 6, 2024, I was interviewed by the statewide chair of Senator Padilla's selection committee. On September 12, 2024, I interviewed with counsel for Senator Padilla. On September 13, 2024, I was interviewed by the statewide chair of Senator Butler's selection committee. On September 17, 2024, I interviewed with Senator Padilla himself. On September 20, 2024, I interviewed with attorneys from the White House Counsel's Office. Since that time, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On October 23, 2024, the President announced his intent to nominate me.

41. **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.

42. **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.

43. **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.

44. **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.

45. 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.

46. 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.

47. 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.

48. 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: See my answer to Question 48 above.

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

Response: See my answer to Question 48 above.

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

Response: See my answer to Question 48 above.

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

Response: On March 12, 2021, I was interviewed by Senator Feinstein's selection committee. On April 22, 2024, I was interviewed by Senator Padilla's selection committee. On September 6, 2024, I was interviewed by the statewide chair of Senator Padilla's selection committee. On September 12, 2024, I interviewed with counsel for Senator Padilla. On September 13, 2024, I was interviewed by the statewide chair of Senator Butler's selection committee. On September 17, 2024, I interviewed with Senator Padilla himself. On September 20, 2024, I interviewed with attorneys from the White House Counsel's Office. Since that time, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On October 23, 2024, the President announced his intent to nominate me.

50. 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 November 27, 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
November 20, 2024
Questions for the Record
Senator Amy Klobuchar**

For Benjamin Jerome Cheeks, Nominee to the U.S. District Court for the Southern District of California

From 2010 to 2013, you served as an Assistant United States Attorney for the United States Attorney's Office for the Southern District of California. In this role, you prosecuted crimes such as importation of drugs, human smuggling, fraud and firearms trafficking.

- **How have these experiences prepared you to serve as a federal district court judge?**

Response: My time working as an Assistant United States Attorney from 2010 to 2013 was an eye-opening experience. Prior to that time, I had only worked as an assistant district attorney at the New York County District Attorney's Office using only New York state law. As an Assistant United States Attorney, I was exposed to all of the intricacies of federal law and federal practice. The laws and procedures were completely different from my time in New York. On a daily basis, I was trained in these areas by my colleagues and mentors, as well as through my weekly appearances in federal court. The crimes that I prosecuted were serious, and I placed great emphasis on protecting the public.

For those three years, I soaked up all of this new information. The utilization and application of the federal sentencing guidelines was by far the most difficult aspect of transitioning from New York state practice to federal practice. I used the federal sentencing guideline manual daily and mastered it over time. A federal district judge must consult the federal sentencing guideline manual when sentencing criminal defendants, including having the obligation to correctly calculate the applicable guideline range. My time as an Assistant United States Attorney was demanding and required hard work and dedication to the rule of law. All of these experiences have prepared me to serve as a federal district court judge.

- **How have your past professional experiences informed your view of the criminal justice system?**

Response: I have been fortunate to have experience in the criminal justice system in three significant areas. I worked a prosecutor for 10 years, spending 7 years at the New York County District Attorney's Office and 3 years at the U.S. Attorney's Office for the Southern District of California. I then opened my own firm and spent the next 10 years as a defense attorney, working primarily in federal court as a member of the Criminal Justice Act panel and representing indigent individuals. Since July 2024, I have been working as a United States magistrate judge for the Southern District of California.

As a prosecutor, my clients were the People of the State of New York and the United States of America, and my primary goal was protecting public safety. As a defense attorney, my primary goal was to protect the constitutional rights of my clients. As a federal magistrate judge, I faithfully apply the law to the facts and render open-minded and unbiased decisions.

With these experiences in mind, I believe that our criminal justice system is the best in the world. There are intelligent people working on both sides, zealously advocating for their clients and their clients' rights. In my experience, the prosecutors that I have worked with have been the most upstanding and ethical professionals with whom I have ever worked. Although prosecutors have power and discretion, it does not go unchecked. The prosecution cannot simply proclaim that a person should be charged with a crime; they have to go through the filter of a grand jury for felonies. In addition, there are laws that prohibit prosecutorial misconduct and *Brady* violations. The system also provides a criminal defendant with a mechanism to challenge any charges against him/her: the jury trial. For those that choose to go to trial, an impartial jury of peers determines the facts of the case. Even after a guilty verdict, or after a guilty plea, I have only experienced fair and unbiased judges at sentencing.

The system works. And I am proud to have worked in it for over twenty years.

Senator Hirono Questions for the Record for the November 20, 2024, Hearing in the Senate Judiciary Committee entitled “Nominations.”

QUESTIONS FOR BENJAMIN J. CHEEKS

Sexual Harassment

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

QUESTIONS:

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

Response: No.

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

Response: No.

Senator Mike Lee
Questions for the Record
Benjamin Jerome Cheeks nominated to serve as U.S. District Judge for the Southern
District of California

1. How would you describe your judicial philosophy?

Response: If I am so fortunate enough to be confirmed, I will diligently research the applicable laws and apply them to the facts with an open mind and without bias. I will faithfully apply the Supreme Court and Ninth Circuit Court of Appeals precedents. As a sitting federal magistrate judge, I treat all parties with respect and give them an opportunity to be heard before evaluating the merits of each case impartially and objectively, thoroughly researching the applicable law, and applying the law to the facts to reach a decision.

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

Response: I would first look at the plain language of the statute itself, as well as Supreme Court and Ninth Circuit Court of Appeals cases that examine the statute. If the plain language of the statute was clear, I would apply that meaning. If the meaning was not clear, I would apply Supreme Court and Ninth Circuit precedent concerning what sources to consult to best interpret the statute. I would also consult other circuits that have analyzed similar statutes, if necessary. Lastly, I would look at legislative history to the extent authorized by the Supreme Court and Ninth Circuit precedent if any ambiguity remained.

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

Response: I would first look at the plain language of the constitutional provision itself, as well as Supreme Court and Ninth Circuit Court of Appeals cases that examine the provision. If the plain language of the provision was clear, I would apply that meaning. If the meaning was not clear, I would apply Supreme Court and Ninth Circuit precedent concerning what sources to consult to best interpret the provision. I would also consult other circuits that have analyzed similar constitutional provisions.

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

Response: In *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the Supreme Court explained that when construing the Constitution, the analysis begins with looking to its text and the original meaning of the provision at issue. *See also District of Columbia v. Heller*, 554 U.S. 570, 576 (2008).

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: See my response to Question #2 above.

- 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: In *Bostock v. Clayton County*, 590 U.S. 644 (2020), the Supreme Court stated, “This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.”

6. **What are the constitutional requirements for standing?**

Response: According to Article III of the U.S. Constitution, to have standing to sue in federal court, a plaintiff must demonstrate: (1) a concrete and particularized injury in fact, (2) that the injury is fairly traceable to the defendant's conduct, and (3) that a favorable judicial decision is likely to redress the injury. *See e.g. Lujan v. Defender of Wildlife*, 504 U.S. 555 (1992).

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

Response: In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court held that Congress has implied powers that are beyond those that are enumerated in the Constitution based on the Necessary and Proper Clause of Article I, Section 8 (providing Congress with the authority to “make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any Department or Officer thereof.”).

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: The Supreme Court has stated that the “question of the constitutionality of action taken by Congress does not depend on the recitals of power that it undertakes to exercise.” *National Federation v. Sebelius*, 567 U.S. 519, 570 (2012) (internal quotations omitted). In reviewing the constitutionality of a federal law without specific reference to any enumerated power in the Constitution, I would apply Supreme Court and Ninth Circuit precedent to determine whether the Constitution permits Congress to enact the law through an enumerated power, the Necessary and Proper Clause, or other sources of authority granted to Congress, such as the Commerce Clause.

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

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court held 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.” Examples of these unenumerated rights are the right to marry (*Loving v. Virginia*, 388 U.S. 1 (1967)) and the right to contraception (*Griswold v. Connecticut*, 381 U.S. 479 (1965)). As a sitting federal magistrate judge and as a judicial nominee for a district judge position, it would not be appropriate for me to comment on any rights the Supreme Court may identify in the future.

10. What rights are protected under substantive due process?

Response: See my response in Question #9 above.

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 *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), the Supreme Court ruled that there is no fundamental right to an abortion. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), overturned *Lochner v. New York*, 198 U.S. 45 (1905), rendering the economic rights at stake in *Lochner* unprotected. If I am so fortunate to be confirmed, I will faithfully apply current law to the facts before me and render an open-minded and unbiased decision.

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

Response: In *Taylor v. United States*, 579 U.S. 301, 306 (2016), the Supreme Court has held that Congress’s power under the Commerce Clause 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.”

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

Response: Race, national origin, and religion are suspect classes such that laws affecting those groups must survive strict scrutiny. See e.g. *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023).

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

Response: The principle of checks and balances and separation of powers within the Constitution ensures that the executive, legislative, and judicial branches each have their own enumerated powers separate and distinct from the other. No branch of government can become too powerful because each branch has the ability to limit the actions of the other branches.

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 a case in which one branch assumed an authority not granted to it by the text of the Constitution. *See e.g. Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

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

Response: A district judge must diligently research the applicable laws and apply them to the facts with an open mind and without bias. Personal feelings must be cast aside.

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

Response: They are both situations that should be avoided at all costs.

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: I have not studied this topic and have no opinion on it.

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

Response: *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.”

- 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: Elected officials are required to support the Constitution and are bound by federal court decisions. *See Cooper v. Aaron*, 358 U.S. 1, 18-20 (1958). As a sitting federal magistrate judge and judicial nominee for a district judge position, 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: It emphasizes that the judiciary's power lies solely in interpreting the law and applying it to individual cases, without the ability to independently enforce their decisions or impose their own agenda. This concept is vital for maintaining an impartial and independent judiciary, preventing the courts from becoming overly political, or exceeding their constitutional authority.

- 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 as a district judge, my obligation would be to follow Supreme Court and Ninth Circuit binding precedent with an open mind and without bias, and without any judgments about the accuracy of said precedent.

- 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.

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 have no personal definition of equity.

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

Response: *Black’s Law Dictionary* (12th ed. 2024) defines equity as “fairness, impartiality, or evenhanded dealing,” while it defines equality as “[t]he quality, state, or condition of being equal; esp., likeness in power or political status.”

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 14th Amendment does not reference the term “equity.”

27. **How do you define “systemic racism?”**

Response: I have no personal definition of systemic racism, nor is this a topic that I have studied.

28. **How do you define “critical race theory?”**

Response: I have no 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: See my responses in Question 27 and Question 28 above.

30. **In every article you authored for the *Trial Bar News* that my office has reviewed, you make numerous spelling and grammatical mistakes. While no writer is perfect, the job of a federal district judge requires you to write extensively and requires an attention to detail.**

- a. **Have you taken any remedial steps to correct the deficiencies in your writing?**

Response: As a federal magistrate judge, I have the time to edit and proofread my written work, since this is one of my primary duties. When I wrote the Trial Bar News articles years ago, I was a solo practitioner, business owner, and an advocate, whose primary responsibility was protecting the constitutional rights of my clients, making weekly court appearances, meeting with clients, and reviewing discovery. I did not have a lot of time, nor did I have editing or proofreading support. Now, as a federal magistrate judge without the many obligations of an advocate, I have more time to carefully proofread any written document that I may produce multiple times myself and with the aid of law clerks. As a matter of course, I continually strive to improve my writing and communication skills.

b. If you have, what steps have you taken?

Response: See my answer in Question 30a above.

c. If you have not, why have you not?

Response: See my answer in Question 30a above.

d. And if you have not, what steps will you take to ensure that your written orders meet the standards expected of a federal district judge?

Response: See my answer in Question 30a above.

31. In the past you have written that the American immigration system under President Trump was “unfair” and that the zero-tolerance policy of the Trump Department of Justice did “not feel right.” In reality, all President Trump did was enforce existing federal immigration law. Please explain how enforcing existing immigration law is unfair.

Response: The articles referenced in this question were written years ago when I was advocate. I am no longer an advocate. As a federal magistrate judge, I have an obligation to faithfully apply the laws to the facts and render decisions with an open mind and without bias. I have done so ever since taking the bench and will continue to do so if confirmed. Moreover, I previously represented the United States as an Assistant United States Attorney and prosecuted crimes, including for illegal entry. As both a prosecutor and a sitting judge, I understand the need for border security, particularly as it pertains to issues such as public safety.

32. In your writings you often mention the terms “explicit bias” and “implicit bias”.

a. What is explicit bias?

Response: Merriam-Webster Dictionary defines bias as “a personal and sometimes unreasoned judgment or prejudice.” Given the definition in 37b below, an explicit bias is one that a person is aware of.

b. What is implicit bias?

Response: Merriam-Webster Dictionary defines implicit bias as “a bias or prejudice that is present but not consciously held or recognized.”

c. Are you implicitly or explicitly biased?

Response: Not that I am aware of.

i. If so, what are those biases?

Response: See my response in Question 32c above.

ii. If so, how does that affect your ability to be a federal judge?

Response: See my response in Question 32c above.

33. What role would either explicit or implicit bias play in your sentencing of defendants?

Response: None.

34. While serving on the board of the San Diego Federal Bar Association, that board provided continuing education courses targeted at removing biases in the legal profession.

a. In one of the courses provided during your tenure on the board the subject focused on unconscious bias.

i. What is unconscious bias?

Response: I am unfamiliar with this term and have no recollection of planning or attending this course.

ii. What, if any, formerly unconscious biases of yours have you discovered?

Response: None.

b. Another continuing education course focused on macroaggressions.

i. What is a macroaggression?

Response: I am unfamiliar with this term and have no recollection of planning or attending this course.

ii. What is a microaggression?

Response: I am unfamiliar with this term and have no recollection of planning or attending this course.

- 35. After the death of George Floyd, you wrote that “mostly peaceful protest[s] broke out” in Minneapolis. David Dorn, a 77-year-old retired St. Louis police captain, was shot by looters at a pawn shop when he responded to a burglar alarm, and the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms, and Explosives tracked more than 160 structure fires from arson. Do you still stand by those protests being “mostly peaceful”?**

Response: When I wrote the article in 2020, my limited data set was confined to the reporting in the news that I was seeing from afar in San Diego. My article acknowledged that there was violence. Hence, my use of the term “mostly peaceful.” Based on the news I viewed, violence was not the predominate impression I had at the time I wrote the article. That said, I abhor violence in any form and condemn actions such as those taken by the looters described above. I believe those who break the law, including through looting, must be held accountable for their actions.

SENATOR TED CRUZ

U.S. Senate Committee on the Judiciary

Questions for the Record for Benjamin J. Cheeks nominated to serve as U.S. District Judge for the Southern District of California

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 held 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). Examples of these unenumerated rights are the right to marry (*Loving v. Virginia*, 388 U.S. 1 (1967)) and the right to contraception (*Griswold v. Connecticut*, 381 U.S. 479 (1965)). As a sitting federal magistrate judge and as a judicial nominee for a district judge position, 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 I am so fortunate enough to be confirmed, I will diligently research the applicable laws and apply them to the facts with an open mind and without bias, after giving all parties an opportunity to be heard. I will faithfully apply the Supreme Court and 9th Circuit precedents. I have not studied the judicial philosophies of the justices who served on the Warren, Burger, Rehnquist, and Roberts Courts. Thus, I am not able to determine which justice’s philosophy is most like mine.

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

Response: According to Black’s Law Dictionary (12th ed. 2024), originalism is 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.”) 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: Yes.

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: In *Bostock v. Clayton County*, 590 U.S. 644 (2020), the Supreme Court held that it “normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” *See also District of Columbia v. Heller*, 554 U.S. 570, 605 (2008).

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*, 597 U.S. 1, 28 (2022), the Supreme Court stated 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.” *See, e.g., United States v. Jones*, 565 U.S. 400, 404-405 (2012).

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

Response: Yes.

- a. **Was it correctly decided?**

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, 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.

a. Was it correctly decided?

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, 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.

a. Was it correctly decided?

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, 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.

a. Was it correctly decided?

Response: As a sitting federal magistrate judge and judicial nominee for a district judge position, 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, I may confirm that, yes, the decision was correctly decided.

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

Response: Yes.

a. Was it correctly decided?

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, 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.

a. Was it correctly decided?

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, 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.

a. Was it correctly decided?

Response: As a sitting federal magistrate judge and a judicial nominee for a district judge position, 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 held that the federal courts must have independent judgment when it comes to interpreting an ambiguous statute. This overruled *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

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

Response: This presumption applies to a defendant charged with any crime of violence or act of terrorism with a statutory maximum term of imprisonment of 10 years or more, any drug offense with a statutory maximum term of imprisonment of 10 years or more, any felony involving a minor victim, any felony involving the use or possession of a firearm or destructive device, a charge for Failure to Register as a Sex Offender, any felony with a statutory maximum sentence of life or death, or any felony if the defendant has at least two prior felony convictions for one of the above-noted offenses at the federal, state, or local level. 18 U.S.C. § 3142(e).

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

Response: The statute does not provide any policy rationales, but instead states that for individuals charged with the crimes in Question 17 above, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and protect the safety of the community.

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. In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court held that a closely held, for-profit corporation could deny its employees' health coverage because the owners had religious objections to contraception. In addition, in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held that under the First Amendment, a web designer could not be forced to make a website for a same-sex couple where the designer's religious views oppose same-sex marriage, despite a Colorado law to the contrary.

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

Response: It is only permissible if the government intrusion survives strict scrutiny, in that it is narrowly tailored to a compelling government interest, using the least restrictive means. *See, e.g., Carson v. Makin*, 596 U.S. 767, 780-81 (2022).

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

Response: In *Tandon v. Newsom*, 593 U.S. 61 (2021), the Supreme Court granted an injunction after California, via an emergency order, restricted the number of families that could gather under one roof for religious purposes during the COVID pandemic, but the same limitation was not applied to secular activities. The Court ruled that the government intrusion did not survive strict scrutiny.

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

Response: Yes. *See Kennedy v. Bremerton School District*, 597 U.S. 507 (2022).

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*, 584 U.S. 617 (2018), the Supreme Court held that, based on the First Amendment, the Colorado Civil Rights Commission could not force a baker to make a same-sex wedding cake when the baker's religious views did not support same-sex marriage. The Court also noted that the Commission was particularly hostile towards the baker's sincerely held religious beliefs.

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

Response: In *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), the Supreme Court held

that under the First Amendment, a web designer could not be forced to make a website for a same-sex couple where the designer's religious views oppose same-sex marriage, despite a Colorado anti-discrimination law to the contrary.

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, protections of the Free Exercise Clause apply to any "sincerely held religious belief." See *Frazee v. Illinois Department of Employment Security*, 489 U.S. 829, 834 (1989).

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

Response: Yes. In *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court explained 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: Yes. See my answer in 24a above.

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

Response: I am unaware of the Catholic Church's position on abortion.

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 *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732 (2020), the Supreme Court used the ministerial exception found in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012), which prevents courts from hearing employment discrimination claims from employees of religious institutions that provide ministerial functions. The Court found that the work the plaintiffs did -- teaching religious education -- qualified for the ministerial exception. Therefore, the employees could not pursue employment discrimination claims under Title VII.

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*, 593 U.S. 522 (2021), the Supreme Court held that the City of Philadelphia violated the Free Exercise Clause of the First Amendment by refusing to contract with Catholic Social Services because it would not certify same-sex couples as foster parents, which was a violation of its stated religious beliefs. The Court held that Philadelphia law was not neutral and generally applicable because it allowed for exceptions to the anti-discrimination requirement at the sole discretion of the Commissioner. The Court ruled that the law did not survive strict scrutiny.

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*, 596 U.S. 767, 780-81 (2022), the Supreme Court held that Maine could not choose to subsidize some private schools but not others on the basis of religious character, as it was a violation of the Free Exercise clause. The Court ruled that the law did not survive strict scrutiny.

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*, 597 U.S. 507 (2022), the Supreme Court held that a football coach praying after the games, while the players were engaged in other activities, was protected private speech, and the school district could not regulate the exercise of his religion.

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*, 141 S. Ct. 2430 (2021), Justice Gorsuch expressed concern that Fillmore County’s requirement that the Swartzentruber Amish community install septic tanks or face sanctions could not satisfy strict scrutiny, given that the requirement went against their sincerely held religious beliefs. Strict scrutiny required the government to state a compelling interest that is narrowly tailored. Justice Gorsuch noted, “the question in this case “is not whether the [County] has a compelling interest in enforcing its [septic system requirement] generally, but whether it has such an interest in denying an exception” from that requirement to the Swartzentruber Amish specifically.” Justice Gorsuch also noted that other individuals were given exemptions from the governments plumbing requirement, such as “campers, hunters, fishermen, and owners and renters of rustic cabins.” The Amish community provided a mulch basin alternative, which the County rejected even though that alternative was used elsewhere. The County questioned whether that alternative would work, but “strict scrutiny

demands more than supposition.”

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: 18 United States Code § 1507 states:

“Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both. Nothing in this section shall interfere with or prevent the exercise 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 or the Ninth Circuit Court of Appeals addressing the constitutionality of 18 U.S.C. § 1507. However, the Supreme Court has upheld a similar Louisiana statute. *See Cox v. Louisiana*, 379 U.S. 559 (1965). As a sitting federal magistrate judge and judicial nominee for a district judge position, 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 sitting federal magistrate judge and judicial nominee for a district judge position, 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 act thereafter.

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

Response: In *Washington v. Davis*, 426 U.S. 229 (1976), the Supreme Court ruled that disparate outcome can be evidence of racial discrimination, but a discriminatory purpose is also required.

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 sitting federal magistrate judge and judicial nominee for a district judge position, it would not be appropriate for me to provide an opinion on this policy matter.

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

Response: No.

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

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

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

Response: In his dissent, Justice Thomas argued that the majority’s decision to preclude the possession of firearms from individuals found to be a credible threat to another was not “consistent with the Nation’s historical tradition of firearm regulation.” *United States v. Rahimi*, 144 S. Ct. 1889. Justice Thomas found that the statute at issue, 18 United States Code § 922(g)(8), violated the Second Amendment of the Constitution.

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*, 597 U.S. 1, 17 (2022) the Supreme Court ruled that any restriction that is inconsistent “with the Nation’s historical tradition of firearm regulation” should not be upheld.

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

Response: Yes. The Supreme Court made this clear in *District of Columbia v. Heller*, 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.

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

Response: No.

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 sitting federal magistrate judge and judicial nominee for a district judge position, it would be inappropriate for me to discuss 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" under the Administrative Procedure Act refers to a modification made by a government agency to an existing rule that significantly alters the underlying policy or legal requirements it imposes, essentially changing the substance of how a law is implemented, as opposed to just procedural or technical adjustments.

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

Response: No.

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*, 594 U.S. 758 (2021), the Supreme Court vacated the U.S. District Court for the District of Columbia’s stay, finding that the nationwide moratorium on evictions imposed by the Director of the Centers for Disease Control and Prevention (CDC) was unlawful since the CDC’s actions were not specifically authorized by Congress.

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 held that a President of the United State has absolute immunity from prosecution for actions taken pursuant to his exclusive constitutional powers, such as pardoning offenses or removing executive officers. This absolute immunity exists because Congress cannot criminalize the President’s exercise of these core constitutional authorities. For official actions outside the President’s exclusive constitutional powers, there is at least a presumptive immunity from prosecution.