Senator Lindsey Graham, Ranking Member
Questions for the Record
Serena R. Murillo
Nominee to be United States District Judge for the Central District of California

1. **In *California v. Luis, Arley* (XCNBA503897-01), it appears that you released an accused sex offender on his own recognizance around Thanksgiving 2023. According to Los Angeles County Superior Court's website, this defendant remains released on his own recognizance. Please answer each of the questions below individually.**
   a. **What was the defendant in this case charged with?**

      Response: Publicly available information reflects that the defendant is charged with the following crimes, alleged to have occurred on November 23, 2015: California Penal Code sections 288.7(b), 288(a), 288.7(b), and 288(a).

   b. **Did you release this defendant on his own recognizance?**

      Response: No, the defendant's pretrial detention order subjects him to non-financial conditions of release: house arrest, an ankle monitor, stay away and protective orders, and a waiver of rights afforded by the Fourth Amendment and the California Electronic Communications Privacy Act (against search and seizure by any peace officer or probation officer of his person, home, and all electronic devices). Any reference to 'own recognizance' is to his custodial status, not the terms of his non-financial conditions of release.

   c. **What findings did you make that supported that decision?**

      Response: Public records reflect that the defendant, having appeared at all pretrial hearings for the last year, is pending trial in an open criminal matter in the department to which I am assigned as a California state court judge. Under the California Code of Judicial Ethics, Canon 3B (9), "a judge shall not make any public comment about a pending or impending proceeding in any court." However, "the restrictions on public comment by judges are narrowly drawn to apply only to proceedings that are pending or impending…" and does not prohibit judges "from explaining for public information the procedures of the court." *Broadman v. Commission on Judicial Performance*, 18 Cal.4th 1079, 1103 (1998).

      In all cases involving pretrial release, I make an individualized assessment of the relevant factors. These factors include but are not limited to, the protection of the public as well as the victim, the seriousness of the charged offense, the age of the offense, whether a defendant has a criminal record, whether a defendant has re-offended pending trial, whether the defendant has sustained strike convictions, his history of compliance with court orders, and the likelihood that the arrestee will

appear at future court proceedings. *See In re Brown*, 76 Cal.App.5th 296 (2022), citing *In re Humphrey*, 11 Cal.5th 135 (2021). In addition, reviewing courts instruct trial courts to "focus instead on risks to public or victim safety or to the integrity of the judicial process that are reasonably likely to occur." (citation.)" *Id*. at 307.

According to California's constitutional and statutory provisions, a defendant charged with a bailable offense who seeks pretrial release from custody typically has two options: post bail and obtain release or seek the privilege of OR release. *In re York*, 9 Cal.4th 1133, 1141 (1995). In those cases where the arrestee poses little or no risk of flight or harm to others, the court may offer OR release. (See Pen. Code, § 1270.) Alternatively, posting bail may include financial or non-financial conditions of release. Where the record reflects the risk of flight or a risk to public or victim safety, reviewing courts require trial courts to first consider whether nonfinancial conditions of release may reasonably protect the public and the victim or reasonably assure the arrestee's presence at trial. *See In re Humphrey* 11 Cal.5th 135, 154 (2021). "Releasing arrestees under appropriate nonfinancial conditions—such as electronic monitoring, supervision by pretrial services, community housing or shelter, stay-away orders, and drug and alcohol testing and treatment [citations]—may often prove sufficient to protect the community." *In re Brown*, 76 Cal.App.5th 296, 305 (2022). Subsequently, if the court concludes that non-financial conditions are insufficient, and financial conditions are reasonably necessary, then the court must consider the individual arrestee's ability to pay, along with the seriousness of the charged offense and the arrestee's criminal record, and—unless there is a valid basis for detention—set bail at a level the arrestee can reasonably afford. *See In re Humphrey*, 11 Cal.5th 135, 154 (2021).

Finally, like the federal system, the state court may preventively detain a defendant if it finds by clear and convincing evidence that no less restrictive condition or combination of conditions can reasonably assure the arrestee's appearance in court or safety in the community. *Id*. at 153. *See United States v. Salerno*, 481 U.S. 739 (1987); *Yedinak v. Superior Court*, 92 Cal.App.5th 876 (2023). These findings would also have to be made by the court if it set unaffordable bail. *In re Kowalczyk*, 85 Cal.App.5th 667, 689 (2022) ("the court must find clear and convincing evidence that no other conditions of release, including affordable bail, can reasonably protect the state's interests in assuring public and victim safety and the arrestee's appearance in court.")

During the 17 years I served as a prosecutor in Los Angeles County, I was at one time uniquely assigned to prosecute writs of mandate involving California's Sexually Violent Predator Act. *See e.g*., *Flores v. Superior Court*, California Supreme Court Case No. S205054; California Court of Appeal No. B242826. I am thus acutely aware of the dangers posed by alleged sex offenders and undertake to meaningfully consider the harm they may pose to the public or any

victim in adhering to the authority promulgated by California's reviewing courts in making pretrial release decisions in every case.

d. **Please provide the Committee a transcript or recording of the 11/21/2024 and 11/22/2024 pretrial conferences in this case.**

Response: There were no pretrial conferences in the case cited, on the dates listed. There were pretrial conferences on November 21, 2023, and November 22, 2023, however, there is no recording. Because the state did not seek appellate review of the pretrial detention order, a transcript was not produced.

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?**
    a. **If yes, list all countries of citizenship and dates of citizenship.**
    b. **If you are currently a citizen of a country besides the United States, do you have any plans to renounce your citizenship?**
        i. **If not, please explain why.**

Response to Question 3 and all subparts: I have never been a citizen of another country.

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: Generally, foreign law should not be considered in constitutional interpretation. The Supreme Court, however, has in limited circumstances, considered foreign law in construing the Constitution. *See, e.g.*, *Atkins v. United States*, 536 U.S. 304, 316 (2002) ("within the world community the imposition of the death penalty for

crimes committed by mentally retarded offenders is overwhelmingly disapproved"); *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). If I am confirmed as a district court judge, I will apply binding Supreme Court and Ninth Circuit precedent as it relates to 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: 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 opinions and values. If I am confirmed as a district court judge, I will apply binding Supreme Court and Ninth Circuit precedent.

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.

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

   Response: The term "prosecutorial discretion" is defined as the "discretion a prosecutor exercises when he decides what if any, charges to bring against a criminal suspect. Such discretion is an integral feature of the criminal justice system, and is appropriate, so long as it is not based upon improper factors." *United States v. Labonte*, 520 U.S. 751, 762 (1997).

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 should faithfully apply precedent to the facts of a case and impartially render a decision.

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: In federal court, there are four statutory means for requesting relief from a sentence: (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). A prisoner may also pursue non-statutory relief through a petition for clemency from the president 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: Petitioners, Students for Fair Admissions, Inc. sued Harvard College and the University of North Carolina in separate actions over their admissions processes, alleging that they violated Title VI of the Civil Rights Act of 1964 by discriminating against Asian American applicants in favor of white applicants. Both universities admitted that they used race as one of many factors in their admissions processes but argued that its processes adhered to the requirements for race-based admissions outlined in the Supreme Court's decision in *Grutter v. Bollinger,* 539 U.S. 306 (2003). These cases were consolidated for oral argument. The Supreme Court held that these practices violated the Equal Protection Clause of the Fourteenth Amendment of the Constitution.

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: As a judge, I selected my chamber staff.

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, 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 to Question 18.

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

    Response: Yes. The Supreme Court and Ninth Circuit apply strict scrutiny to race-based differentiations. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023); *Saud v. Days* 50 F.4th 705, 709-710 (9th Cir. 2022).

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

    Response: The Supreme Court held that under the First Amendment, the Colorado Anti-Discrimination Act (CADA) could not compel a website creator to create a website that expressed opinions with which the creator disagreed. The Supreme Court concluded that

enforcement of the CADA violated the free speech rights of a web designer because it would have compelled the designer's speech. The Supreme Court explained that the state law impermissibly sought "to force an individual to speak in ways that align with its views but defy her conscience about a matter of major significance." *303 Creative LLC v. Elenis*, 600 U.S. 570, 602–03 (2023).

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.

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: Under the First Amendment, courts must consider the text of the law. If a law regulating speech is "content-based" then the law is subject to strict scrutiny. If a law regulating speech is "content-neutral," then the law is subject to intermediate scrutiny. Key questions that would inform the analysis include whether enforcement of the law in question turns upon the topic of the speech, the identity of the speaker, or the viewpoint of the expression. 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." *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (citation omitted). Another question that may inform the analysis is whether there is evidence of an impermissible purpose for the law. 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.

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

    Response: True threats are not protected by the First Amendment and they occur when an individual means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. 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. *Counterman v. Colorado*, 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.").

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: Facts are "questions of who did what, when or where, how or why." *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 394 (2018). Alternatively, questions of law involve "questions about whether settled facts satisfy a legal standard." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 228 (2020). "Perhaps much of the difficulty in this area stems from the practical truth that the decision to label an issue a "question of law," a "question of fact," or a "mixed question of law and fact" is sometimes as much a matter of allocation as it is of analysis. (Citation omitted). At least in those instances in which Congress has not spoken and in which the issue falls somewhere between a pristine legal standard and a simple historical fact, the fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question."" *Miller v. Fenton*, 474 U.S. 104, 114 (1985).

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

    Response: Under Section 3553 of Title 18 of the United States Code, Congress has identified all four purposes as goals of sentencing without directing that any one purpose be entitled to greater weight than another. If confirmed, I will apply binding Supreme Court and Ninth Circuit precedent and the section 3553(a) factors when making sentencing decisions.

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 state court judge, I am prohibited from commenting on the quality of the reasoning of any particular Supreme Court decision under the California Code of Judicial Ethics, and as a judicial nominee under the Code of Conduct for United States Judges. If confirmed, I would faithfully follow Supreme Court precedent without regard to any personal view I might have.

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 California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am prohibited from commenting on the quality of the reasoning of any particular Ninth Circuit decision. If confirmed, I would faithfully follow Ninth Circuit precedent without regard to any personal view I might have.

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

    Response: The conduct prohibited by 18 U.S.C. § 1507 includes picketing, parading, using a "sound-truck or similar device," and "resort[ing] to any other demonstration" in or near a federal courthouse or any building used by a federal judge, juror, witness, or court officer "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."

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

    Response: I am not aware of any case decided by the Supreme Court or the Ninth Circuit addressing the constitutionality of 18 U.S.C. § 1507. However, In *Cox v. Louisiana*, 379 U.S. 559 (1965), the Supreme Court upheld the constitutionality of a similarly worded state statute. As a sitting California state court judge, I am required to maintain an open mind and avoid bias when considering cases that may come before me under the California Code of Judicial Ethics. As a judicial nominee under Canon 2 of the Code of Conduct for United States Judges, I am similarly required to ensure impartiality in my decision-making by not commenting upon a case that may 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: Yes. As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. Consistent with the practice of prior judicial nominees, however, *Brown v. Board of Education* falls within a small class of cases that is so unlikely to ever come before me and I can therefore state that *Brown v. Board of Education* was correctly decided.

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

       Response: Yes. As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of

Conduct for United States Judges and am precluded from commenting on the merits of precedent. If confirmed as a district court judge, I will apply all binding precedents. Consistent with the practice of prior judicial nominees, however, *Loving v. Virginia* falls within a small class of cases that is so unlikely to ever come before me and I can therefore state that *Loving v. Virginia* was correctly decided.

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I will fairly and impartially apply all binding authority and precedent, including *Griswold v. Connecticut*.

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

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health* overturned *Roe v. Wade*. As a sitting California state court judge and a federal judicial nominee, I am bound the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I will fairly and impartially apply all binding authority and precedent, including *Dobbs v. Jackson Women's Health.*

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

Response: The Supreme Court's decision in *Dobbs v. Jackson Women's Health* overturned *Planned Parenthood v. Casey*. As a sitting California state court judge and a federal judicial nominee, I am bound the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I will fairly and impartially apply all binding authority and precedent, including *Dobbs v. Jackson Women's Health.*

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I will fairly and impartially apply all binding authority and precedent, including *Gonzales v. Carhart.*

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

Response: As a sitting California state court judge and a federal judicial nominee,

I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I will fairly and impartially apply all binding authority and precedent, including *District of Columbia v. Heller.*

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I will fairly and impartially apply all binding authority and precedent, including *McDonald v. City of Chicago*.

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I will fairly and impartially apply all binding authority and precedent, including *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC.*

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I will fairly and impartially apply all binding authority and precedent, including *New York State Rifle & Pistol Association v. Bruen.*

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I will fairly and impartially apply all binding authority and precedent, including *Dobbs v. Jackson Women's Health.*

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for

United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I will fairly and impartially apply all binding authority and precedent, including *Students for Fair Admissions, Inc. v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*.

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I will fairly and impartially apply all binding authority and precedent, including *303 Creative LLC v. Elenis.*

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

Response: I would apply the standard upheld 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 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).

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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

    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, not to my knowledge.

    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, not to my knowledge.

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, not to my knowledge.

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

Response: Please see my answer to Question 34(a).

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, not to my knowledge.

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

Response: Please my answer to Question 34(b).

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, not to my knowledge.

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

Response: Please see my answer to question 34(c).

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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

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

   Response: No, not to my knowledge.

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, not to my knowledge.

    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, not to my knowledge.

    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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

    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, not to my knowledge.

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

       Response: No, not to my knowledge.

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: No, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

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: In 2021, I was contacted by the Chair of Senator Alex Padilla's Central District of California Judicial Commission about a vacancy on the United States District Court for the Central District of California. In June 2021, I applied for the position to Senator Alex Padilla's commission. In December 2021, I was interviewed by Senator Padilla's Judicial Commission for the Central District of California. On November 20, 2023, I was interviewed by the chair of Senator Padilla's commission. On August 14, 2024, I met with Senator Padilla. On August 21, 2024, I was interviewed by the chair of Senator Laphonza Butler's Judicial Advisory Process. On August 27, 2024, the White House Counsel's Office advised me that I was being considered for an opening in the Central District of California. On August 28, 2024, I interviewed with the White House Counsel's Office. Since August 28, 2024, 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. On November 18, 2024, my nomination was submitted to the Senate.

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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

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, not to my knowledge.

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: Please see my answer to Question 48.

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

Response: Please see my answer to Question 48.

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

Response: No.

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 August 27, 2024, the White House Counsel's Office advised me that I was being considered for an opening in the Central District of California. On August 28, 2024, I interviewed with the White House Counsel's Office. Since August 28, 2024, 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. On November 18, 2024, my nomination was submitted to the Senate.

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

Response: I received these questions from the Office of Legal Policy on the afternoon of November 27, 2024. I reviewed the questions and prepared a draft of my responses. I sent the draft to the Office of Legal Policy and had one conversation in which I was given feedback on the draft. I then finalized the draft and sent it to the Office of Legal Policy for submission to the Senate Judiciary Committee.

Senate Judiciary Committee
Nominations Hearing
November 20, 2024
Questions for the Record
Senator Amy Klobuchar

For Serena Raquel Murillo, Nominee to the U.S. District Court for the Central District of California

Since 2015, you have served as judge in the Los Angeles County Superior Court. During your tenure on the bench, you have served in the civil, criminal, and appellate divisions. You have presided over approximately 55 jury trials and have issued thousands of written decisions.

- **What have you learned in your time as a state court judge and how will that inform your approach if confirmed as a federal district court judge?**

  Response: Having served nearly ten years as a judge in both trial and appellate courts across various disciplines, I have gained valuable practical insights that will guide my approach if confirmed as a federal district court judge. Chief among these insights is the critical importance of communication. Effective communication is essential in three key areas: 1) establishing clear expectations with my chambers staff regarding workflow; 2) conveying consistent and transparent policies to court users on matters such as filings, hearings, and trials; and 3) issuing rulings that are clear, efficient, timely, and beneficial to the litigants. I have learned that there are many important people involved in the fair administration of justice and that well-communicated expectations, policies, and decisions strengthen the integrity of the court.

  The second important lesson I have learned is the value of humility. To prospective jurors and court users, I represent one of the faces of our democratic system of government. I strive to be mindful of this obligation by treating people with respect, ensuring the efficiency of my courtroom, being transparent in my decisions, and, importantly, not placing myself above the law. I am intentional in recognizing that my role is to serve others, and that I am obligated to make the law accessible and my decisions plain. In interacting with litigants, I have found that when I treat people with dignity and respect, they often respond in kind. I hope to carry these lessons with me to the federal bench.

- **How has your experience on the bench informed your view on the role of a judge?**

  Response: My time on the bench has been the most rewarding professional experience of my life. Each day, I have the privilege of interacting directly with the public, staying informed of new cases and statutes, teaching principles of law across the state, collaborating with other judges and justices on court policies, meeting with students to discuss the Constitution, and having the responsibility to make the best possible decision in every case, without fear or favor.

In Federalist No. 78, Alexander Hamilton described the role of an independent judiciary as a “citadel of public justice and public security,” tasked with “guarding the Constitution and the rights of individuals.” I have worked tirelessly to uphold these ideals with honesty and sincerity through my service to the people of my state, approaching each responsibility with joy and purpose. I wrote long ago that I owe my life to those who have sought and believed in America’s promise. If confirmed as a federal district court judge, I am committed to continuing my service with the same joy and intention.

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

QUESTIONS FOR SERENA R. MURILLO

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
Serena Raquel Murillo nominated to serve as U.S. District Judge for the Central District of California

1. **How would you describe your judicial philosophy?**

   Response: Having served as a judge for nearly ten years, my judicial philosophy is a practical one: I recognize the limitations of my power; I strive to make rulings that are clear and useful to the parties; through formality and civility, I make sure everyone has a right to be heard; I am efficient and prepared; I don't rule based upon emotion; I am transparent; I use precedent from the Supreme Court and the Ninth Circuit Court of Appeals to impartially apply the law; and I recognize that as a trial court, I am the face of democracy to the litigants who come into my court so I do my best to treat everyone with dignity and respect.

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

   Response: First, I would determine whether the Supreme Court or Ninth Circuit had previously interpreted the specific statutory provision at issue. If there was no such precedent, I would begin by reviewing the text of the statute, relying on its plain meaning and including any relevant statutory definitions. I would next consider the context of the statute based upon other statutes and consider any applicable canons of construction. If necessary, I would consider persuasive authority from other circuits, and finally, I would consider the legislative history to the extent permitted by the Supreme Court and Ninth Circuit precedent.

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

   Response: As a District Court Judge, I would first determine whether the Supreme Court or Ninth Circuit had previously interpreted the constitutional provision at issue. If so, I would faithfully apply the interpretation in the manner prescribed first by the Supreme Court, and next, by the Ninth Circuit.

   If the interpretation of the constitutional provision at issue was a case of first impression, I would consider the text of the provision and the meaning of the terms at issue. If the meaning of the text is clear and resolves the issue–and if there is no Supreme Court or Ninth Circuit precedent interpreting said provision, which is unlikely–I would stop there. *See Bostock v. Clayton County*, 590 U.S. 644, 654 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.") If not, I would use the most analogous circumstance and any persuasive authority from other jurisdictions.

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

Response: Interpreting a constitutional provision by how it would have been understood or was intended to be understood at the time it was written is the key way to review a provision. In *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 3 (2022), the United States Supreme Court stated (in its analysis of the Second Amendment) that the "Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated, even though its meaning is fixed according to the understandings of those who ratified it." But in most cases, reviewing courts have already done that and as a district court, I would be bound by the United States Supreme Court and Ninth Circuit precedent as to whether that precedent relied upon original meaning or not.

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: My approach to reading statutes is described in my response to Question 2. In reviewing the text of the statute, I would begin by giving words their ordinary meaning. In *Moskal v. United States*, 498 U.S. 103, 108 (1990), the United States Supreme Court stated (in its analysis of a penal statute) that "[i]n determining the scope of a statute we look first to its language," (citation omitted) "giving the 'words used' their 'ordinary meaning.'" *Id.*

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 plain meaning of a statute refers to the public understanding of the relevant language at the time of enactment. *Bostock v. Clayton Cty.*, 590 U.S. 644, 654 (2020).

6. What are the constitutional requirements for standing?

Response: Article III standing is established when a plaintiff shows they have a concrete and particularized injury that was caused by the defendant, and the plaintiff's injury will likely be redressed by a favorable decision in the action. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (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, 324 (1819), the Supreme Court interpreted Article I, Section 8 of the Constitution as authorizing Congress "to pass all laws 'necessary and proper' to carry into execution the powers conferred on it." The authority for those implied powers is stated in Article I, Section 8: Congress has the

power "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 held that the "question of the constitutionality of action taken by Congress does not depend on recitals of the power it undertakes to exercise." *National Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). I would evaluate the constitutionality of that law by the method outlined in my response to Question 5.

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

Response: The Supreme Court has held that rights not expressly enumerated in the Constitution are protected. In *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228, 2242 (2022), the Supreme Court held that the Due Process Clause of the Fourteenth Amendment protects certain unenumerated rights that are "'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" Examples of these rights include the right to marry, and to use contraception. *See Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *Griswold v. Connecticut*, 381 U.S. 479, 485-86 (1965).

10. What rights are protected under substantive due process?

Response: The Supreme Court has interpreted the Fifth and Fourteenth Amendments' Due Process Clauses—which prohibit the government from depriving any person of life, liberty, or property without due process of law—to protect certain fundamental constitutional rights from government interference. These protected rights, though not listed in the Constitution, are deemed so fundamental that courts must subject government actions infringing on them to closer scrutiny.

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: The Supreme Court held that abortion is not a protected right under the Constitution and the issue should be left to the people and their representatives. *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 231 (2022). The Supreme Court overturned by implication *Lochner v. New York*, 198 U.S. 45 (1905) in *West Coast Hotel Co. v. Parrish,* 300 U.S. 379 (1937), which upheld the state's ability to limit a substantive due process right to contract. While the Court now holds that the Fourteenth Amendment does not provide substantive due process in the

economic sphere (such as a right to freely contract labor), it also holds that the amendment may provide a "substantive" due process in the social sphere (such as the right to freely use contraceptives -- see, e.g., *Griswold v. Connecticut*, 381 U.S. 479 (1965). In both contexts, as a District Court judge, I would follow Supreme Court precedent as it pertained to substantive due process rights.

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

Response: The Commerce Clause, Article I, Section 8, Clause 3 of the United States Constitution gives Congress the power to regulate commerce and restricts states from impairing interstate commerce. In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court described the three categories of activity Congress may regulate: "the channels of interstate commerce," "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and activities that "substantially affect interstate commerce." *Id.* at 558-59.

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

Response: A particular group is a "suspect class" if the classification is based upon race, religion, national origin, or alienage. In *City of Cleburn v. Cleburn Living Center, Inc*., the Supreme Court held, "[w]hen social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude [citations omitted] and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes. The general rule gives way, however, when a statute classifies by race, alienage, or national origin. These factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy -- a view that those in the burdened class are not as worthy or deserving as others." *City of Cleburn v. Cleburn Living Center, Inc*., 473 U.S. 432, 440 (1985).

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

Response: In Federalist No. 51, titled "The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments," James Madison described that "[i]n order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others."

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: I would begin by reviewing the plain language of the statute or regulation at issue and any relevant provisions in the Constitution. I would review and apply binding precedent from the Supreme Court and the Ninth Circuit both regarding the substantive legal question at issue in the case, and any guidance as to how to determine whether a branch of government exceeded its constitutional authority.

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

Response: Empathy should have no role in a judge's consideration of the merits of a case. Empathy may have a role, along with courteousness and civility, in how the judge manages the day-to-day interactions the judge may have with court users.

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

Response: Both outcomes appear to violate the constitution. I would strive not to do either.

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 am unfamiliar with the data supporting the premise that the Supreme Court's invalidation of federal statutes has become more common. I have not researched nor written on this issue and thus, have no information that would be responsive to this question. I have been a judge for nearly ten years, and I strive to apply the law to the facts of each case before me. I will continue to do so if confirmed as a district judge.

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

Response: In *Marbury v. Madison*, Chief Justice John Marshall famously stated, "It is emphatically the province and duty of the judicial department to say what the law is," essentially establishing the courts' authority to interpret the Constitution and strike down laws that violate it. Judicial review was described as the judiciary's power to declare laws unconstitutional. *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

Alternatively, "judicial supremacy is the idea that the Supreme Court should be viewed as the authoritative interpreter of the Constitution and that its decisions are binding on the other branches and levels of government, until and unless a constitutional amendment or subsequent decision overrules them." Erwin

Chemerinsky, In Defense of Judicial Supremacy, 58 Wm. & Mary L. Rev. 1459 (2017), https://scholarship.law.wm.edu/wmlr/vol58/iss5/3.

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: There is no authority that I know of that supports the premise that an elected official's obligation to follow the Constitution is independent of their duty to respect duly rendered judicial decisions. As early as 1809, the Supreme Court grappled with this idea and held, "[i]f the legislatures of the several States may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery, and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals." *United States v. Peters*, 9 U.S. 115, 136 (1809). This authority was reiterated with greater emphasis in *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) wherein the court held that "[n]o state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." Thus, part of an elected official's obligation in following the Constitution is to respect duly rendered judicial decisions.

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: In Federalist 78, Alexander Hamilton describes that an independent judiciary does not have the power of force or will but was designed to serve as a "citadel of public justice and public security," in providing "a barrier to the despotism of the prince, or in a republic, as a barrier to the encroachments and oppressions of the representative body." For this reason, he warned, "Liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments…"

This is important to keep in mind while judging because the power of the judiciary lies not only in their judgment but also in their independence from the other departments. Because the judiciary serves as an intermediate body between the people and the legislature, it is "requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous

innovations in the government, and serious oppressions of the minor party in the community."

Moreover, Hamilton reasons that their sustained independence reinforces confidence in a representative democracy: "considerate men, of every description, ought to prize whatever will tend to beget or fortify that temper in the courts: as no man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer today. And every man must now feel that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress."

As such, an independent judiciary does not have the power of force or will, but was designed to provide "a steady, upright, and impartial administration of the laws."

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: In *Agostini v. Felton*, 521 U.S. 203, 237 (1997), the Supreme Court reaffirmed that "if a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." Thus, as a federal district court judge, I would follow binding precedent from the Supreme Court and the Ninth Circuit Court of Appeals.

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: No defendant should ever be given a sentence of any length based on his or her group identities, such as race or the race of other people. Sentencing in such a manner would violate the Constitution.

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: Equity may be defined in financial terms, in terms of value, or as the Supreme Court has defined it within the meaning of an equitable remedy. Based upon the latter, equity contemplates a response that is no "more burdensome to the defendant than necessary to [redress] the plaintiff's injuries," or one that is "… limited to the inadequacy that produced the injury in fact that the plaintiff has established.'" *Labrador v. Poe*, 144 S. Ct. 921, 923 (2024) (citations omitted).

Black's Law Dictionary defines "equity" as "[f]airness; impartiality; evenhanded dealing." (11th ed. 2019). Based upon these authorities, as a judge I have strived to be evenhanded and treat all people with fairness and impartiality and I would continue to do so as a federal district court judge.

As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on how I would define equity as a judge. *See* Canon 3(A)(6). If confirmed, I will fairly and impartially apply all binding authority and precedent from the Supreme Court or the Ninth Circuit on this issue.

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

Response: I am not aware of any Supreme Court or Ninth Circuit authority that contemplates the differences between "equity" and "equality." My understanding of equity is described in question 24. I generally understand the word equality to mean the state of things being equal, drawn from *Brown v. Board of Education*, 347 U.S. 483 (1954). If confirmed, I will apply binding Supreme Court and Ninth Circuit precedent, including any cases that require me to define or distinguish between the terms equity or equality.

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

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on any administration's policy, in this case, as it may define equity or its application within the Fourteenth Amendment's Equal Protection Clause. *See* Canon 3(A)(6). However, I am unaware of any decision of the Supreme Court or Ninth Circuit holding that the Fourteenth Amendment's Equal Protection Clause guarantees equity as defined in Question 24. If I am confirmed as a district court judge, I will apply binding Supreme Court and Ninth Circuit precedent as it relates to any case that requires me to contemplate this definition.

27. How do you define "systemic racism?"

Response: I am not aware of a legal definition of the phrase "systemic racism" nor am I aware of any Supreme Court or Ninth Circuit precedent that defines "systemic racism." If confirmed, I will apply binding Supreme Court and Ninth Circuit precedent, including as it relates to any cases that require me to define the phrase "systemic racism."

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

Response: I am not aware of a legal definition of the phrase "critical race theory," nor am I aware of any Supreme Court or Ninth Circuit precedent that defines "critical race theory." In addition, having served as a judge for nearly ten years, I do not recall any cases requiring me to contemplate or define the phrase "critical race theory." As a federal court judge, I will apply binding Supreme Court and Ninth Circuit precedent, including as it relates to any cases that require me to define the term "critical race theory."

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

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

30. During interviews and in your writings, you've mentioned bias in the profession.

a. What is explicit bias?

Response: My limited understanding of explicit bias is that it is a conscious preference or aversion towards a person or group.

b. What is implicit bias?

Response: My limited understanding of implicit bias is that it refers to unconscious bias. This would refer to an unconscious preference or aversion toward a person or a group.

c. Are you either implicitly or explicitly biased?

Response: I do not harbor explicit bias. My limited understanding of implicit bias is that it refers to unconscious preferences or aversion toward a person or a group. I am not aware of any such biases. Additionally, in my nearly ten years as a judge, I have treated each and every person before me with dignity and respect and applied the law fairly and faithfully to each case no matter the identity of the parties.

i. If so, what are those biases?

Response: Please see my response to question 30(c).

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

Response: Please see my response to Question 30(c).

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

Response: None.

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

Questions for the Record for Serena Raquel Murillo Nominated to Serve as U.S. District Judge for the Central 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 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 confirmed, I would remain dedicated to approaching each case with integrity and will apply all relevant Supreme Court and Ninth Circuit precedents, including those that address rights that may not be explicitly listed in the Constitution.

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: Having served as a judge for nearly ten years, my judicial philosophy is a practical one: I recognize the limitations of my power; I strive to make rulings that are clear and useful to the parties; through formality and civility, I make sure everyone has a right to be heard; I am efficient and prepared; I don't rule based upon emotion; I am transparent; I use precedent from the Supreme Court and the Ninth Circuit Court of Appeals to impartially apply the law; and I recognize that as a trial court, I am the face of democracy to the litigants who come into my court so I do my best to treat everyone with dignity and respect. As for the judicial philosophies of past justices—like those on the Warren, Burger, Rehnquist, and Roberts Courts—I haven't deeply studied their approaches, so I can't confidently say whose philosophy aligns most closely with my own.

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

   Response: Black's Law Dictionary (12th ed. 2024) defines "originalism" as the "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." For some constitutional provisions, the Supreme Court has taken an originalist approach. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008) (interpreting the Second Amendment); *United States v. Jones*, 565 U.S. 400 (2012) (interpreting the Fourth Amendment); *Crawford v. Washington*, 541 U.S. 36 (2004) (interpreting the Sixth Amendment). I would not use any specific term to describe my

method of interpreting the Constitution. If confirmed, I would commit to faithful application of Supreme Court and Ninth Circuit precedent when interpreting the Constitution.

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

Response: Black's Law Dictionary (12th ed. 2024) defines "living constitutionalism" as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." I would not use any specific term to describe my method of interpreting the Constitution, nor am I aware of any Supreme Court case that directs lower courts to use "living constitutionalism" in their interpretation of authority. If confirmed, I would commit to faithful application of Supreme Court and Ninth Circuit precedent when interpreting the Constitution.

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: I would approach the analysis of any constitutional issue, whether it is one of first impression or otherwise, by starting with the text and plain language of the provision at issue. If the meaning of the text is clear and resolves the issue–and if there is no Supreme Court or Ninth Circuit precedent interpreting said provision, which is unlikely–I would stop there. *See Bostock v. Clayton County*, 590 U.S. 644, 654 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."). However, if there is Supreme Court or Ninth Circuit precedent, I would faithfully apply it.

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 reasoned 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)). Elsewhere, the Supreme Court has observed that the public's current understanding is relevant in some limited situations, including when a statute references "contemporary community standards." *See, e.g.*, *Ashcroft v. ACLU*, 535 U.S. 564, 567 (2002) (addressing use of "contemporary community standards" in the Communications Decency Act of 1996, 47 U.S.C. §§ 223 et seq.).

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

Response: No. In *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 3 (2022), the Supreme Court observed that the "Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated, even though its meaning is fixed according to the understandings of those who ratified it."

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

Response: It is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I would fully and faithfully apply *Dobbs v. Jackson Women's Health Organization* to the cases before me.

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

Response: It is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I would fully and faithfully apply *Cooper v. Aaron* to the cases before me.

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

Response: It is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I would fully and faithfully apply *New York Rifle & Pistol Association v. Bruen* to the cases before me.

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

Response: It is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: Yes. As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. Consistent with the practice of prior judicial nominees, however, *Brown v. Board of Education* falls within a small class of cases that is so unlikely to ever come before me and I can therefore state that *Brown v. Board of Education* was correctly decided.

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

Response: It is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I would fully and faithfully apply *Students for Fair Admissions v. Harvard* to the cases before me.

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

Response: It is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am precluded from commenting on the merits of precedent. *See* Canon 3(A)(6). If confirmed, I would fully and faithfully apply *Gibbons v. Ogden* to the cases before me.

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

Response: It is binding precedent and must be followed by lower courts.

a. **Was it correctly decided?**

Response: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am prohibited from sharing my views on legal matters that are currently before the courts or that may come before me in the future. *See* Canon 3(A)(6). If confirmed, I would fully and faithfully apply *Loper Bright Enterprises v. Raimondo* to the cases before me.

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), and eliminated the framework outlined in that case for interpreting statutes administered by federal agencies, including the portion 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. The Supreme Court further 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: There is a "rebuttable presumption" in favor of pretrial detention when a person has been charged with an offense listed in 18 U.S.C. § 3142(f)(1)-(2), which includes, but is not limited to crimes of violence or offenses for which the maximum sentence is life imprisonment or death.

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

Response: The statute does not expressly state the policy rationale underlying the presumption, and I am not aware of any Supreme Court or Ninth Circuit precedent that describes any such policy rationale. However, if those circumstances are alleged, detention is presumed unless the defendant, based upon individualized factors, can show by clear and convincing evidence that there is a less restrictive condition, or combination of conditions, that will reasonably assure the appearance of the person as required and the safety of any other person and the community. "To this end, § 3141(a) of the Act requires a judicial officer to determine whether an arrestee shall be detained. Section 3142(e) provides that '[i]f, after a hearing pursuant to the provisions of subsection (f), the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, he shall

order the detention of the person prior to trial.'" *United States v. Salerno*, 481 U.S. 739, 742 (1987).

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 government is limited by the First Amendment, which states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." The Supreme Court has made several rulings that limited government regulations that were applied to private institutions or small businesses, finding in some instances that the regulations at issue violated the Free Exercise Clause. *See, e.g.*, *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (creation of a custom wedding website for same-sex couples); *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014) (insurance coverage that included contraception). If confirmed, I would fully and faithfully apply the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb *et seq*. to the cases before me.

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

Response: Under the Free Exercise Clause of the First Amendment, it is impermissible for the government to discriminate against a religious organization or religious people by treating secular activity more favorably than non-secular activity. *See Tandon v. Newsom*, 593 U.S. 61 (2021). Further, any government regulation that appears to discriminate against religious organizations or religious people must be given the highest level of 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 this case, the Supreme Court enjoined a California emergency order imposed during the COVID-19 pandemic that limited the size of religious gatherings. The Supreme Court concluded that the state's emergency order treated comparable secular activity more favorably than religious activity, which would both trigger and be unlikely to satisfy strict scrutiny. *Tandon v. Newsom*, 593 U.S. 61, 62-65 (2021).

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

Response: Yes. *See, e.g.*, *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 this case, 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 in contravention of the baker's sincerely held religious beliefs. *Masterpiece Cakeshop, Ltd., v. Colorado Civil Rights Commission*, 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.

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 Colorado's public accommodation law could not compel a website creator to create a website that expressed opinions with which the creator disagreed as doing so was inconsistent with the 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. Even if a person's sincerely held religious belief does not correspond to the tenets of a particular religious denomination, that belief is protected by the First Amendment. *See Frazee v. Ill. Dep't of Employment Security Div*., 489 U.S. 829, 834 (1989) ("[W]e reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization. Here, Frazee's refusal was based on a sincerely held religious belief. Under our cases, he was entitled to invoke First Amendment protection"); *see also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) ("it is not for us to say that their religious beliefs are mistaken or insubstantial," the test is whether the belief is sincere and 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: 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 sincere and 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. 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 sincere and 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: My understanding is that the Catholic Church does not support the position that abortion is acceptable and morally righteous.

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 this case, the Supreme Court concluded that the "ministerial exception" set forth in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012) precludes courts from adjudicating employment discrimination claims involving teachers at religious school. *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 737 (2020). The Court reasoned 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 this case, the Supreme Court held that the City of Philadelphia violated the First Amendment by declining to contract with a religious institution for foster care services unless that institution agreed to certify same-sex couples as foster parents. *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021). Applying strict scrutiny, the Court held that the City failed to meet its burden to show that it had a compelling interest in denying the religious institution an accommodation that would allow it to continue to serve foster children consistent with its religious beliefs, especially where the City had permitted certain discretionary exceptions. *Id*. at 541-42.

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 this case, the Supreme Court held that a regulation limiting state payments to "nonsectarian" schools (and therefore prohibiting such payments to sectarian schools) violated the First Amendment. *Carson v. Makin*, 596 U.S. 767, 780-781

(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 this case, the Supreme Court held that a school district violated the First Amendment rights of a football coach when the school district disciplined him for giving "thanks through prayer on the playing field" at the end of each game. *Kennedy v. Bremerton School District*, 597 U.S. 507, 514 (2022). In doing so, the Court rejected the school 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. *Id*. at 514-25.

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), the Supreme Court vacated the judgment of a lower court, which rejected an Amish community's request for relief from a county septic system ordinance. The Amish community challenged Fillmore County's refusal to grant them an exception to the ordinance under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). Justice Gorsuch issued a separate concurrence stating that the County's refusal to grant an exception permitting the Amish community to dispose of wastewater in a manner consistent with their religious beliefs (using a mulch system instead of a modern septic system) did not pass strict scrutiny analysis under RLUIPA. *Id*. at 2434. 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 "strict scrutiny demands 'a more precise analysis.'" *Id*. at 2432 (citation omitted).

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: Eighteen U.S.C. § 1507 states, in pertinent part, "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." As a sitting state court judge and a nominee for a federal district court position, beyond acknowledging the applicable law, it is generally not appropriate for me to express an opinion on an issue that may come before me. *See* Canon 3(A)(6). If confirmed, I will apply all binding precedent from the United States Supreme Court and the Ninth Circuit, including precedent that relates to the application of 18 U.S.C. § 1507.

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: Article II, Section II of the Constitution gives the President the power to make political appointments with the advice and consent of the Senate. If a challenge to

the constitutionality of a political appointment came before me, I would apply all binding precedent from the Supreme Court and Ninth Circuit to impartially render a decision.

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

Response: The Supreme Court explained in *Coleman v. Ct. of Appeals of Maryland* 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). Elsewhere, the Court has stated, "Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq., as amended, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Title VII prohibits both intentional discrimination (known as "disparate treatment") as well as, in some cases, practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities (known as "disparate impact")." *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009); *see also Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 534 (2015) (holding the Fair Housing Act "encompasses disparate-impact claims"). I am unaware of Supreme Court or Ninth Circuit precedent that addresses subconscious racial discrimination. If confirmed, I will apply all binding precedent from the Supreme Court and the Ninth Circuit 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: The number of justices on the Supreme Court is a question for policymakers. As a sitting state court judge and nominee for a federal district court position, I am precluded from offering an opinion on a political decision. *See* Code of Conduct for United States Judges*,* Canon 3(A)(6) and Canon 5.

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: The Supreme Court has considered the original public meaning of the Second Amendment in several cases and has held that the Second Amendment guarantees the right of law-abiding citizens to possess a handgun in the home for self-defense and to public carry for self-defense. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 13 1 (2022); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008). If I am confirmed, I will apply all

binding precedent from the Supreme Court and the Ninth Circuit to impartially render a decision.

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 did not agree with the majority's conclusion that the regulation at issue in the case, 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: The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008) that the Second Amendment guarantees a law-abiding person's right to keep and bear arms, unrelated to whether that person is serving in the military. *See also McDonald v. City of Chicago*, 561 U.S. 742 (2010) (holding the Second Amendment right to keep and bear arms applies to the states through the Fourteenth Amendment). Later, the Court held that the Second Amendment applies outside the home, and if the government is going to restrict the rights of law-abiding persons' rights to carry firearms for self-defense, the government must demonstrate that the regulation is consistent with "this Nation's historical tradition of firearm regulation." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 33 (2022). 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). If confirmed, I will apply all binding precedent from the United States Supreme Court and the Ninth Circuit, including precedent regarding the Second Amendment.

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

Response: Yes. *See McDonald v. City of Chicago*, 561 U.S. 742 (2010); *see also District of Columbia v. Heller*, 554 U.S. 570, 592 (2008) (holding that the Second Amendment guarantees "the individual right to possess and carry weapons in case of confrontation.").

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 ruled 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. The Supreme Court has ruled 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).

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 state court judge and nominee for a federal district court position, I am precluded from offering an opinion on issues pending in any court or that may come before me. *See* Code of Conduct for United States Judges, Canon 3(A)(6). If I am confirmed, I will apply all Supreme Court and Ninth Circuit binding precedent, including precedent related to the scope and application of executive power and discretion under Article II of the Constitution.

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 an act of "prosecutorial discretion" as one where prosecutors use their "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. Per Article II of the Constitution, the President does not have the power to enact or repeal a statute; 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 this case, the Supreme Court vacated a lower court's stay of judgment entered against the Centers for Disease Control and Prevention (CDC) finding that the nationwide moratorium on evictions imposed by the Director of the CDC was unlawful. *Alabama Association of Realtors v. Department of Health and Human Services*, 594 U.S. 758 (2021). The Court concluded that the CDC exceeded its delegated authority

when it extended a nationwide eviction moratorium. *Id*. at 764 (noting that even if the text of the regulation at issue was ambiguous, the magnitude of the CDC's claimed authority would counsel against the regulatory interpretation of the government, because the Court expects Congress to speak clearly when authorizing an agency to exercise power that has "vast 'economic and political significance'") (internal citations omitted).

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: As a sitting California state court judge and a federal judicial nominee, I am bound by the California Code of Judicial Ethics and the Code of Conduct for United States Judges and am prohibited from offering an opinion on issues pending in any court or that may come before me. *See* Canon 3(A)(6). If I am confirmed, I will apply all Supreme Court and Ninth Circuit binding precedent, including precedent that may apply to the issue noted in this question.

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

Response: In this case, the Supreme Court addressed whether a former president has immunity for actions taken while serving as president. *Trump v. United States*, 144 S. Ct. 2312 (2024). 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 must 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.