Senator Chuck Grassley, Ranking Member
Questions for the Record
David H. Urias
Nominee to be United States District Judge for the District of New Mexico

1. **In multiple petitions, you urged the New Mexico Supreme Court to adopt rules prohibiting federal law enforcement agents from arresting illegal immigrants in and around courthouses.**

    a. **Please describe your understanding of federal and state law with respect to any privilege against civil arrest an illegal immigrant may have while attending court proceedings.**
    b. **In your petition, you wrote that it is "retaliatory" for federal law enforcement to enforce immigration laws by making civil arrests near courthouses. Please explain how enforcing the law in this manner is retaliatory.**

    Response: The petitions referenced in the question were supported by me as an advocate on behalf of several clients who were concerned with civil arrests being made at state courthouses without judicial warrant and which, in my clients' views, interfered with open access to state courthouses and the administration of justice. The clients I represented on this issue included the Office of the New Mexico Attorney General, the First Judicial District Attorney's Office, the Law Office of the Public Defender, and other entities. The petitions asserted that civil arrests made without a judicial warrant violated several provisions of the New Mexico Constitution, ran afoul of New Mexico's common law privilege against civil arrests at state courthouses, and violated the Tenth Amendment's anti-commandeering principle. I understood the reference to retaliation to refer to the use of a victim's immigration status by perpetrators of crime to prevent victims from participating in state court proceedings.

    If confirmed as a federal district court judge, I would set aside any positions I may have asserted as an advocate on behalf of clients and faithfully, fully, and impartially apply the law to the facts of each case that comes before me.

2. **In 2011, New Mexico implemented a Residency Certification Program because, according to the administration of then-Governor Susana Martinez, the state had become "a magnet for organized crime gangs that seek profit from selling New Mexico licenses to unauthorized immigrants in other states." The Governor's administration cited as examples a Chinese crime ring that used fraudulent documents to obtain driver's licenses for undocumented Chinese immigrants living in other states and a heroin trafficker who was charged with creating fake documents to obtain driver's licenses for immigrants. In a law suit against New Mexico, you described efforts to reduce fraud as an "extraordinary waste of state resources" and suggested that the Residency Certification Program was "really not warranted."**

a. **Why do you believe that state efforts to combat driver's license fraud are a waste of resources?**
b. **In your view, is it permissible for state governments to investigate whether immigrants with New Mexico driver's licenses still reside in the state? Why or why not?**

Response: The statements referred to in the question were made by me as an advocate on behalf of clients who opposed the Foreign National Residency Certification Program implemented by the New Mexico Taxation and Revenue Department and which targeted residents based on national origin, a class protected by both the United States Constitution and the Constitution of New Mexico. I represented several New Mexico State Senators and a permanent legal resident of New Mexico who challenged the program as discriminatory and in violation of the principle of separation of powers found in the New Mexico Constitution. The program was promptly enjoined by a state district court judge who applied strict scrutiny analysis to the program and found it to be unconstitutional under the Equal Protection Clause of the New Mexico Constitution.

The statements I made on behalf of my clients regarding the waste of resources was based on the lack of evidence of widespread fraud in the obtainment of New Mexico driver's licenses, as found by the state district court in that case. I have no view on whether it would ever be permissible for a state government to investigate whether individual driver's license holders still reside in the state, but as an advocate for my clients I asserted the position that any state or local law or program that targets individuals based on national origin is unconstitutional. *See* U.S. CONST. amend. XIV.

If confirmed as a federal district court judge, I would set aside any positions I may have asserted as an advocate on behalf of clients and any personal views I may have, and faithfully, fully, and impartially apply the law to the facts of each case that comes before me.

3. **Do illegal immigrants have an unconditional right to obtain a driver's license in New Mexico? If so, what is the source of this right?**

Response: New Mexico law allows for residents of the State of New Mexico who meet the qualifications set forth in state statutes and regulations to obtain a valid standard driver's license, regardless of immigration status. *See* NMSA 1978 § 66-5-9.

4. **In 2017, the Santa Fe City Council passed a so-called Sanctuary City resolution that prohibited local authorities from sharing immigration information with the federal government. Reacting to the resolution, you said that "this anti-discrimination resolution will help cities like Santa Fe affirm their right to determine the best way to use their local resources against threats from the federal government. It is a powerful legal tool that cities across the country can replicate as they fight to protect their residents, regardless of immigration status."**

a. **How is enforcing immigration law a "threat from the federal government?"**
b. **How is impeding law enforcement a "powerful legal tool?"**

Response: The statement referred to in the question was made by me as an advocate on behalf of organizational clients who supported the passage of the City of Santa Fe's Anti-Discrimination Resolution, which was passed unanimously by the Santa Fe City Council in 2017. To my knowledge and recollection, I have never taken the position, as an advocate or otherwise, that the enforcement of immigration laws itself is a threat, unless the attempted enforcement of such laws by local authorities is unconstitutional. *See, e.g., Arizona v. United States,* 567 U.S. 387 (2012) (striking down several state provisions related to the enforcement of federal immigration laws because they were preempted by federal law). To my knowledge and recollection, I have also never taken the position, as an advocate or otherwise, that anyone should impede law enforcement.

If confirmed as a federal district court judge, I would set aside any positions I may have asserted as an advocate on behalf of clients and faithfully, fully, and impartially apply the law to the facts of each case that comes before me.

5. **Is it ever permissible for local law enforcement to question persons to determine whether they are in the United States without legal authorization? If so, under what circumstances is it permissible? If not, why not?**

Response: As a judicial nominee, it would be inappropriate for me to comment on hypothetical legal scenarios that may arise before me if I am fortunate enough to be confirmed as federal district court judge. If I was faced with the issue referenced in the question, I would thoroughly research the existing precedent of the Supreme Court and the Tenth Circuit Court of Appeals and strictly apply the law to the particular facts of the case before me.

6. **You have served on the Legal Panel of the American Civil Liberties Union of New Mexico since 2016. In your Questionnaire, you note that, as a member of the panel, you participate in "monthly meetings with ACLU attorneys and other panel members," "advise the ACLU on various litigation matters," and "participate in cases brought by the organization as a cooperating attorney." The ACLU of New Mexico notes that its Legal Panel "guides the organization's legal efforts." In the Fall/Winter 2019 issue of *The Torch*, the ACLU of New Mexico's newsletter, Executive Director Peter Simonson wrote that "[t]he arc of the moral universe may ultimately bend toward justice, but it will be very long indeed if people of color have to rely on a white bourgeois class to set the pace and scope of change." Your name appears next to Mr. Simonson's statement as a member of the Legal Panel. Do you agree that a "white bourgeois class" is prolonging progress towards justice in America? If you do not, did you ever condemn or express any disagreement with Mr. Simonson's statement?**

Response: I am not familiar with Mr. Simonson's statements or the context in which they were made. I am not and never have been a member of the Board of Directors of the ACLU of New Mexico, and have never played a role in reviewing, advising, creating, approving, or otherwise considering the policy positions taken by that organization or by Mr. Simonson. In 2016, I was asked to be part of the Legal Panel of the ACLU of New Mexico, which is a group of local civil litigators that primarily advise on legal procedural issues and substantive law. My role on that legal panel did not include asserting my personal views on any policy statements or positions taken by that organization or Mr. Simonson. To my knowledge and recollection, I have never expressed the view described above.

7. **In the Summer 2019 issue of *The Torch*, Mr. Simonson wrote: "Like it or not, each and every one of us is forced to reckon with the odious proposition that white people deserve to rule the nation." Your name appears next to Mr. Simonson's statement as a member of the Legal Panel. Do you agree with Mr. Simonson's view? If not, did you ever condemn or express any disagreement with his statement?**

   Response: I am not familiar with Mr. Simonson's statements or the context in which they were made. I am not and never have been a member of the Board of Directors of the ACLU of New Mexico, and have never played a role in reviewing, advising, creating, approving, or otherwise considering the policy positions taken by that organization or by Mr. Simonson. My role on the legal panel did not include asserting my personal views on any policy statements or positions taken by that organization or Mr. Simonson. To my knowledge and recollection, I have never expressed the view described above.

8. **In the same newsletter, Mr. Simonson called President Trump the "White Supremacist in Chief." Do you agree with that characterization of President Trump? If not, did you ever condemn or express any disagreement with Mr. Simonson's characterization?**

   Response: I am not familiar with Mr. Simonson's statements or the context in which they were made. I am not and never have been a member of the Board of Directors of the ACLU of New Mexico, and have never played a role in reviewing, advising, creating, approving, or otherwise considering the policy positions taken by that organization or by Mr. Simonson. My role on the legal panel did not include asserting my personal views on any policy statements or positions taken by that organization or Mr. Simonson. To my knowledge and recollection, I have never expressed the view described above.

9. **The Winter 2017 issue of *The Torch* lists you as a member of the ACLU's Legal Panel, ad describes in detail a case litigated by the ACLU of New Mexico against the City of Bloomfield. In this case, the ACLU represented Jane Felix, a witch who served as the "high priestess of the local Wiccan coven." Bloomfield residents decided to raise money from private sources to erect a monument of the Ten Commandments in front of City Hall. Ms. Felix argued that this monument would**

make her feel as though her "personal religious beliefs make [her] a second-class citizen." The ACLU successfully prevented Bloomfield's residents from displaying the Ten Commandments.

a. **Did you participate in this litigation? If so, please describe the nature and extent of your participation.**
b. **Is it legally permissible for private citizens to pay for a display of the Ten Commandments outside a city town hall? Why or why not?**
c. **Do you agree with Ms. Felix that a privately-funded display of the Ten Commandments should not be permitted if the display offends a local Wiccan coven?**

Response: I did not participate in the litigation described above and am not familiar and therefore cannot comment on any statements made or positions taken by the plaintiff in that case. Further, as a judicial nominee, it would be inappropriate for me to comment on hypothetical legal scenarios that may arise before me if I am fortunate enough to be confirmed as a federal district court judge. If I was faced with the issue referenced in the question, I would thoroughly research the existing precedent of the Supreme Court and the Tenth Circuit Court of Appeals and strictly apply the law to the particular facts of the case before me.

10. **The Spring 2021 issue of *The Torch* says that "[i]t's no secret that our 'justice system' often does not dispense justice," and that the "War on Drugs" has, "in effect, been a war on people."**

a. **Do you believe that the American justice system does not dispense justice?**
b. **Do you agree with the ACLU of New Mexico's views on the War on Drugs and the justice system?**

Response: I am not familiar with the statements referenced above or the context in which they were made. I am not and never have been a member of the Board of Directors of the ACLU of New Mexico, and have never played a role in reviewing, advising, creating, approving, or otherwise considering the policy positions taken by that organization. To my knowledge and recollection, I have never expressed the views described above.

11. **Federal judges must be fair and impartial to all litigants who appear before them. Given your affiliation with the ACLU of New Mexico and the organization's numerous incendiary statements attacking conservatives, religious liberties, and white people, how can we be confident in your ability to serve as a neutral arbiter of disputes?**

Response: I am not and never have been a member of the Board of Directors of the ACLU of New Mexico, and have never played a role in reviewing, advising, creating, approving, or otherwise considering the policy positions taken by that organization.

Further, I fully recognize that the role of an advocate is fundamentally distinct from the role of a federal district court judge. If I am fortunate enough to be confirmed, I will commit to setting aside any and all positions I may have asserted as an advocate for my former clients or any personal views I may have, and strictly apply the law to the facts presented in each individual case. I believe it is crucial to the administration of justice for a federal district court judge to be fair, impartial, and independent, and I intend to do so if I am confirmed.

12. **Is holding someone in solitary confinement a form of torture that violates the Eighth Amendment? Why or why not?**

Response: As a judicial nominee, it would be inappropriate for me to comment on hypothetical legal scenarios that may arise before me if I am fortunate enough to be confirmed as a federal district court judge. If I was faced with the issue referenced in the question, I would thoroughly research the existing precedent of the Supreme Court and the Tenth Circuit Court of Appeals and strictly apply the law to the particular facts of the case before me.

13. **In 2009, you said that "[a]s lawyers, we have an obligation to participate in our social environment and to strive to find solutions to the myriad social ills that plague our underprivileged communities today. The problems I am most interested in addressing during may law career are those associated with societal racism, including unequal opportunity in education, employment discrimination and inequitable criminal justice systems."**

    a. **As a federal judge, how will you address societal racism?**
    b. **In your view, what makes the American criminal justice system inequitable?**

Response: As a federal judge, it would not be my role to address social issues and I would strictly refrain from doing so. The statements referenced in the question were made as a lawyer and legal advocate. I fully recognize that the role of an advocate is fundamentally distinct from the role of a federal district court judge. I believe it is crucial to the administration of justice for a federal district court judge to be fair, impartial, and independent. If I am fortunate enough to be confirmed, I will commit to setting aside any and all positions I may have asserted as an advocate for my former clients or any personal views I may have, and strictly apply the law to the facts presented in each individual case.

14. **What legal standard would you use to evaluate a claim that a facially neutral law impermissibly targets religious exercise?**

Response: If faced with a case involving a claim that a facially neutral law impermissibly targets religious practice, I would be guided by relevant United States Supreme Court decisions, including the recent decision in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). In *Tandon*, the Court held that governmental regulations are not neutral and generally applicable, and therefore trigger strict scrutiny analysis under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise.

15. **If you are faced with a Free Exercise Clause claim, what are the Supreme Court cases you will consult to analyze the matter?**

Response: I would consult and be bound by the Supreme Court precedent most applicable to the facts of the particular case before me. Among the more recent Supreme Court cases that may be relevant would be *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n,* 138 S.Ct. 1719 (2018), and *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014).

16. **What legal standard and Ninth Circuit precedents would you apply in evaluating whether a regulation or statute infringes on Second Amendment rights?**

Response: If faced with a case involving a claim that a regulation or statute infringes on Second Amendment rights, I would be guided by relevant United States Supreme Court decisions including the decisions in *District of Columbia v. Heller,*554 U.S. 570 (2008), and *McDonald v. City of Chicago, Ill*., 561 U.S. 742 (2010). As a federal district court judge in New Mexico, I would not be bound by Ninth Circuit precedent, but I would follow and apply applicable Tenth Circuit precedent, including *Peterson v. Martinez*, 707 F.3d 1197 (10th Cir. 2013) (holding that the carrying of concealed weapons did not fall within the scope of the Second Amendment's protections), and *Bonidy v. U.S. Postal Serv*., 790 F.3d 1121 (10th Cir. 2015) (determining that Second Amendment right to carry firearms did not apply in parking lot of United States Postal Office).

17. **Do you believe that "[t]here is no such thing as a non-racist or race-neutral policy"?**

Response: No. I believe non-racist and race-neutral policies can and do exist.

18. **What legal standard would you apply in evaluating whether a redistricting map is racially gerrymandered?**

Response: If faced with a case that required me to evaluate whether a redistricting map is racially gerrymandered, I would first determine the nature of the legal claim brought before the court. If the case involved a claim that a map violated Section 2 of the Voting Rights Act, for instance, I would review and follow relevant Supreme Court decisions in determining whether such a violation occurred. The Supreme Court has identified three threshold conditions for establishing a § 2 violation: (1) the racial group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the racial group is "politically cohesive"; and (3) the majority "vot[es] sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate." *League of United Latin Am. Citizens v. Perr*y, 548 U.S. 399, 425–26 (2006) (internal quotations omitted); *Johnson v. De Grandy,* 512 U.S. 997, 1006–1007 (1994); *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986). These are the so-called *Gingles* requirements. If all three *Gingles* requirements are established, the statutory text of the Voting Rights Act would direct me

to consider the "totality of circumstances" to determine whether members of a racial group have less opportunity than do other members of the electorate under the redistricting map. *De Grandy*, *supra*, at 1011–1012; *see also* 42 U.S.C. § 1973(b).

19. **Under existing Supreme Court precedent, what are the legal contours of the president's ability to remove executive-branch employees?**

Response: The contours of the power of the President to remove executive-branch employees is set forth in the Supreme Court's decision in *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183 (2020). In *Seila*, the Supreme Court confirmed that the power of the President to remove those who wield power on his behalf follows from the text of Article II of the Constitution, and that only two exceptions to the President's unrestricted removal power have been recognized. *See id*. at 2191–92. The exceptions include the ability of Congress to create expert agencies led by a group of principal officers removable by the President only for good cause, and the ability of Congress to provide tenure protections to certain inferior officers with limited duties. *See id*.

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

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

    Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

    Brown v. Board of Ed. of Topeka, 347 U.S. 483 (1954), which ended racial segregation in public schools, did not involve issues that would likely come before me as a federal judge and so, for that reason, I make an exception to that general practice and acknowledge my agreement with the holding in that case and the rejection of the doctrine of "separate but equal."

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

    Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a

federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

Loving v. Virginia, 388 U.S. 1 (1967), rejected the "equal application" theory and held that race-based restrictions on marriage ran afoul of the Equal Protection Clause. The issues involved in that case are unlikely to come before me if I am confirmed as a federal district court judge. For that reason, I make an exception to that general practice and acknowledge my agreement with the holding in that case.

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

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

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

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

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

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

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

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

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

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

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

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

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

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

j. **Was *Juliana v. United States* (9th Cir.) correctly decided?**

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any appellate court cases which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court. I would also note that I have been nominated to serve on the federal district court for New Mexico, which is governed by the law of the Tenth Circuit.

21. **Over the course of your career, how many times have you spoken at events sponsored or hosted by the following liberal, "dark money" groups?**

    a. **American Constitution Society**
    b. **Arabella Advisors**
    c. **Demand Justice**
    d. **Fix the Court**
    e. **Open Society Foundation**

Response: I have not spoken at events sponsored or hosted by Arabella Advisors, Demand Justice, Fix the Court, or Open Society Foundation. In March 2006, I participated in a panel at Howard University regarding the Supreme Court arguments in *League of United Latin Am. Citizens v. Perry*, which was hosted by the American Constitution Society. I noted this panel participation in my Senate Judiciary Questionnaire.

22. **Will you commit, if confirmed, to both seek and follow the advice of the Department's career ethics officials on recusal decisions?**

Response: If confirmed, I will make recusal decisions based on the Code of Conduct for United States Judges, the standards set forth in 28 U.S.C. § 455 and, any applicable decisions applying these standards. I would also consult, if necessary, with the Administrative Office of the United States Courts.

23. **Your firm, Freedman Boyd Hollander Goldberg Urias & Ward P.A., signed a letter dated May 10, 2021, that asks the Biden administration to settle claims by families that were separated under the prior administration's zero-tolerance enforcement priorities.**

    a. **As the president and a name partner of Freedman Boyd Hollander Goldberg Urias & Ward P.A., did you approve the firm signing the letter?**
    b. **Did you review the letter?**
    c. **Did anyone mention this letter during your nomination process?**

Response: I do not recall the letter referenced in the question, but if was signed by the firm or a partner at the firm, I likely reviewed it and approved it. No one mentioned this letter during my nomination process.

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

Response: I contacted the offices of the United States Senators who represent New Mexico on the week of May 17, 2021, to inquire about applying for the vacancies currently existing in the United States District Court for the District of New Mexico. Following those initial calls, the office of United States Senator Ben Ray Lujan provided me with an application, which I promptly completed and returned to his office. On June 2, 2021, I was interviewed by the Chief of Staff for Senator Lujan's office and a representative from the office of Senator Martin Heinrich. On June 14, 2021, I was provided a secondary application by the office of Senator Heinrich, which I completed and returned. On June 17, 2021, I was interviewed by the Chief of Staff for Senator Heinrich's office and the Chief of Staff for Senator Lujan's office. Thereafter, I was contacted by the office of White House Counsel and interviewed on June 22, 2021. On June 24, 2021, I was contacted by the U.S. Department of Justice, Office of Legal Policy (OLP), and was asked to complete a SF86 form, an FBI waiver, and other documents. The DOJ Office of Legal Policy also requested that I complete and submit a Senate Judiciary Questionnaire. Between June 24, 2021, and the date of my nomination, I had several communications with the OLP regarding the nomination process.

25. **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.

26. **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.

27. **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, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

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

    Response: No.

29. **During 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.

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

    Response: Please see my response to Question 24, which provides all the information I recall regarding the dates of all interviews and communications I had with White House staff and the Justice Department leading up to my nomination.

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

    Response: I received these questions on November 10, 2021. I reviewed the questions and prepared answers based on my own experience, recollection, and knowledge. If necessary to answer any of the questions, I conducted legal research or reviewed relevant material. I submitted a draft of my responses to the Office of Legal Policy for feedback, and after receiving that feedback, I finalized my responses for their submission on November 15, 2021.

Senator Marsha Blackburn
Questions for the Record to David Urias
Nominee for the District of New Mexico

1. **You have previously expressed support for sanctuary cities. When the Santa Fe City Council passed a resolution prohibiting local authorities from sharing immigration information with the federal government, you praised this policy as a way for cities to use "local resources against threats from the federal government."[1] Moreover, you referred to this as a "powerful legal tool."[2] Please explain why federal enforcement of our nation's duly enacted immigration laws is a threat. In addition, please detail how impeding law enforcement is a "powerful legal tool."**

   Response: The statement referred to in the question was one made by me as an advocate on behalf of organizational clients who supported the passage of the City of Santa Fe's Anti-Discrimination Resolution, which was passed unanimously by the Santa Fe City Council in 2017. To my knowledge and recollection, I have never taken the position, as an advocate or otherwise, that the enforcement of immigration laws itself is a threat, unless the attempted enforcement of such laws by local authorities is unconstitutional. *See, e.g., Arizona v. United States,* 567 U.S. 387 (2012) (striking down several state provisions related to the enforcement of federal immigration laws because they were preempted by federal law). To my knowledge and recollection, I have also never taken the position, as an advocate or otherwise, that anyone should impede law enforcement.

   If confirmed as a federal district court judge, I would set aside any positions I may have asserted as an advocate on behalf of clients and faithfully, fully, and impartially apply the law to the facts of each case that comes before me.

2. **You served on the Legal Panel of the ACLU of New Mexico since 2016; the organization views state and federal partnerships as an "unholy alliance" and characterizes those who seek to protect unborn children as committing "acts of violence." In addition, this organization expresses hostile views of conservatives, and it accused the Trump administration of racism and white supremacy. To what extent do the views of the organization reflect yours? Please explain how you considered or contextualized any differences in your views vis-à-vis the organization's when you decided to serve on their Legal Panel.**

   Response: I am not familiar with the positions of the ACLU of New Mexico as characterized in the question. I am not and never have been a member of the Board of

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[1] *See Santa Fe Continues to Strengthen Inclusive Policies for the Undocumented*, EFE News Services, Feb. 14, 2017 ("esta resolución antidiscriminación ayudará a ciudades como Santa Fe a afirmar su derecho a determinar la mejor manera de usar sus recursos locales contra las amenazas del Gobierno federal. Es una poderosa herramienta legal que las ciudades de todo el país pueden replicar mientras luchan por proteger a sus residentes, independientemente del estatus migratorio") (translated from Spanish)

[2] *Id.*

Directors of the ACLU of New Mexico, and have never played a role in reviewing, advising, creating, approving, or otherwise considering the policy positions taken by that organization. In 2016, I was asked to be part of the Legal Panel of the ACLU of New Mexico, which is a group of local civil litigators who primarily advise on legal procedural issues and substantive law. My role on that legal panel did not include asserting my personal views on any policy statements or positions taken by that organization.

If confirmed as a federal district court judge, I would set aside any positions I may have asserted as an advocate on behalf of clients and any personal views I may have, and faithfully, fully, and impartially apply the law to the facts of each case that comes before me.

Nomination of David Herrera Urias
to be United States District Judge for the District of New Mexico Questions for the Record
Submitted November 10, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

   Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   Response: No.

3. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

4. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   Response: In *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), the Supreme Court held that the Second Amendment right to keep and bear arms is an individual right belonging to individual persons, without regard to militia service.

5. **Please describe what you believe to be the Supreme Court's holding in *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021).**

   Response: In *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021), the Supreme Court held that two policies - the State of Arizona's out-of-precinct policy and Arizona's HB 2023 - did not violate § 2 of the Voting Rights Act, and HB 2023 was not enacted with a racially discriminatory purpose. *See id*. at 2343-2344. Arizona's out-of-precinct policy required that ballots would only be counted if the voter submitted the

ballot in the precinct to which they were assigned based on their address, and HB 2023 made it a crime for any person other than a postal worker, an elections official, or a voter's caregiver, family member, or household member to knowingly collect an early ballot. In so holding, the Supreme Court clarified that the operative phrase of Section 2 of the Voting Rights Act meant that political processes must be "equally open" to minority and minority groups alike. *See id*. at 2338. The Supreme Court also set forth five non-exhaustive factors for courts to consider in the "totality of the circumstances analysis" to determine whether a violation of the Voting Rights Act has occurred, including 1) the size of the burden on voters beyond mere inconveniences, 2) the law's departure from standard practice when section 2 of the Voting Rights Act was amended in 1982, 3) the size of the disparity, 4) the means of voting other than the one burdened by the challenged policy, and 5) the state's interest in promulgating the electoral practice. *Id*. at 2336-2340.

6. **Please describe what you believe to be the Supreme Court's holding in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).**

   Response: In *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), the Supreme Court held that provisions of the Immigration and Nationality Act (INA) applicable to the detention of aliens, could not be interpreted as implicitly placing a six-month limit on detention or requiring periodic bond hearings. *See id*. at 844-846. The Supreme Court also determined that a provision of the INA, which carved out narrow conditions under which the Attorney General could release detained aliens on bond pending their removal based on criminal offenses or terrorist activities, could not be interpreted as implicitly placing six-month limit on detention or requiring periodic bond hearings. *See id*. at 847-848.

7. **Please describe what you believe to be the Supreme Court's holding in *Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021).**

   Response: In *Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021), the primary holding by the Supreme Court was that a provision of the Immigration and Nationality Act (INA) that applies "when an alien is ordered removed" and enters the "removal period," governs the detention of noncitizens seeking withholding of removal after reinstatement of removal orders, meaning those noncitizens are not entitled to individualized bond hearings while they pursue withholding of removal. *See id*. at 2285, 2289.

8. **Your law firm's website notes that your firm "represent[s] individuals who have been accused of breaking national security laws," and lists as examples your firm's representation of multiple terrorists detained at Guantanamo Bay. Have you worked on any cases involving Guantanamo Bay detainees? If so, please explain fully the nature of your practice in these cases.**

   Response: I have not worked on any cases involving Guantanamo Bay detainees.

9. **In the questionnaire that you submitted to the Judiciary Committee, you reference two applications that you submitted to Senator Lujan and Senator Heinrich for this nomination. Please provide the Committee with a copy of the answers and materials you submitted as part of those applications.**

   Response: I respectfully decline to do so, out of respect for my home state Senators' selection process. However, I would reiterate the commitment I made in my Senate Judiciary Questionnaire – at no point has anyone involved in the process of selecting or recommending me as a judicial nominee discussed with me any pending or specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

10. **What is your view of arbitration as a litigation alternative in civil cases?**

    Response: I have no particular views, either personal or professional, regarding arbitration as a litigation alternative in civil cases.

11. **Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.**

    Response: I received these questions on November 10, 2021. I reviewed the questions and prepared answers based on my own experience, recollection, and knowledge. If necessary to answer any of the questions, I conducted legal research or reviewed relevant material. I submitted a draft of my responses to the Office of Legal Policy for feedback, and after receiving that feedback, I finalized my responses for their submission on November 15, 2021.

12. **Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.**

    Response: No.

Senator Josh Hawley
Questions for the Record

David Urias
Nominee, U.S. District Court for the District of New Mexico

1. **Justice Thurgood Marshall famously described his philosophy as "You do what you think is right and let the law catch up."**

    a. **Do you agree with that philosophy?**

    Response: No.

    b. **If not, do you think it is a violation of the judicial oath to hold that philosophy?**

    Response: I believe that the proper role of a federal judge is to fully, faithfully, and impartially apply the law to the facts of each case that comes before the court.

2. **Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?**

    a. **If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.**

    Response: I have never worked on a legal case or representation in which I opposed a party's religious liberty claim.

3. **What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?**

    Response: The Supreme Court has considered and interpreted most of the provisions of the Constitution, and in many cases has determined what interpretive methodology courts should utilize in interpreting certain Constitutional provisions. I do not have a position about the role the original public meaning should play, as I would follow Supreme Court precedent on the matter when a constitutional provision is at issue in a case before me, both in terms of the methodology to be used in analyzing the provision and the substantive law regarding the provision.

4. **Do you consider legislative history when interpreting legal texts?**

    Response: If I am confirmed as a federal district judge, I would approach the interpretation of legislative text by first reviewing the plain language of the statute, giving

the language its usual, ordinary meaning. If the plain language of the statute resolves the issue and there is no ambiguity, that would be the end of the inquiry and no further judicial construction would be required. If the plain language of the statute is ambiguous and does not resolve the question, I would turn to other tools of interpretation, such as canons of construction, other court decisions interpreting analogous or similar language, the similarities or differences in the statutory language at issue and other related statutes, whether the contested provision was in the statute when originally enacted, and, if necessary, other interpretive tools including legislative history, but only in an effort to shed light on the meaning of the statutory language.

a. If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?

Response: I do not believe that all legislative history is the same. Some aspects of legislative history may be clearer than others, and I would apply Supreme Court and Tenth Circuit precedent regarding which types of legislative history are most instructive in any case where the statutory text was truly ambiguous. However, because changes can and are often made after legislative text is introduced, the focus must first and foremost be on the statutory text itself.

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: The laws of foreign nations are not relevant to interpreting the provisions of the U.S. Constitution. I would not consult the laws of foreign nations when interpreting any provision of the Constitution.

5. Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?

Response: The Supreme Court has clarified, in *Bucklew v. Precythe*, 139 S. Ct. 112 (2019), that "anyone bringing a method of execution claim alleging the infliction of unconstitutionally cruel pain must meet the Baze-Glossip test." That test provides that a prisoner must show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt it without a legitimate penological reason. *See Baze v. Rees*, 553 U.S. 35, 52 (2008). The Tenth Circuit Court of Appeals, prior to the Supreme Court's decision in *Bucklew*, similarly followed *Baze* and had held that "[a] stay of execution may not be granted" on the basis of an Eighth Amendment challenge to a State's lethal injection protocol "unless the condemned prisoner establishes that the State's lethal injection protocol creates a demonstrated risk of severe pain" and "that the risk is substantial when compared to the known and available alternatives." *Warner v. Gross*, 776 F.3d 721, 729 (10th Cir.), aff'd sub nom. *Glossip v. Gross*, 576 U.S. 863 (2015) (quoting *Baze*, 553 U.S. at 61).

6. **Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?**

   Response: Yes, that is my understanding of the holding in *Glossip v. Gross*.

7. **Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?**

   Response: I am aware that in, at least one case, the Supreme Court has noted that, "The availability of technologies not available at trial cannot mean that every criminal conviction, or even every criminal conviction involving biological evidence, is suddenly in doubt. The dilemma is how to harness DNA's power to prove innocence without unnecessarily overthrowing the established system of criminal justice. That task belongs primarily to the [state] legislature." *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 62 (2009). I am not aware of any binding precedent that recognizes a constitutional right to DNA analysis for habeas corpus petitioners from either the Supreme Court or the Tenth Circuit.

8. **Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?**

   Response: No.

9. **Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.**

   Response: The standards used to evaluate such claims can be found in Supreme Court cases interpreting and applying the Free Exercise Clause of the First Amendment. Because the question refers only to state governmental action, the Religious Freedom Restoration Act (RFRA) would not be applicable. *See*, *e.g.*, *Gonzales v. O Centro Espirita Beneficient Uniao do Vegetal*, 546 U.S. 418, 424 (explaining that the RFRA applies to claims that the federal government has substantially burdened the exercise of religion).

With regard to a claim brought pursuant to the First Amendment's Free Exercise Clause, the United States Supreme Court held that laws that are not neutral and generally applicable must be justified by a compelling interest and must be narrowly tailored to advance that interest. *Church of the Lukummi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993). Facial neutrality is not necessarily determinative of the question whether a law is neutral. If the object of the law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral. *Id*. at 533. Regulations are not deemed neutral and of general applicability, and therefore trigger strict scrutiny analysis, whenever they treat nonsecular activities more favorably than religious exercise. *See Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (citing *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67-68 (2020) (per curiam)). "It is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably that the religious exercise at issue." *Id.* at 1296. Courts must evaluate the risk various activities pose, not the reason why people gather. *Id.* Similarly, the Supreme Court has held that a restriction that burdens religious liberty is not generally applicable, and thus is subject to strict scrutiny analysis, when it authorizes the government to grant unrestricted discretionary exemptions and the government declines to grant them to those invoking religious liberty. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878 (2021). If a free exercise defense to application of a neutral law of general applicability is adjudicated by a state or local government body in a way that evinces hostility to religion, the religious neutrality required by the Constitution is compromised. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719, 1724 (2018).

10. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

See response to Question 9, above.

11. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: In *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), the Supreme Court held that President Trump's Presidential Proclamation 9645, 82 Fed. Reg. 45161 (2017), did not violate the Immigration and Nationality Act or the Establishment Clause by suspending the entry of aliens from several predominantly Muslim nations. The Court held that substantial deference must be accorded to the Executive in the conduct of foreign affairs and the exclusion of aliens, and that 8 U.S.C. § 1182(f) entrusted to the President the decisions whether and when to suspend entry whenever he finds that the entry of aliens would be detrimental to the national interest. *See id*. at 2408. The majority opinion referred to *Korematsu v. United States*, 323 U.S. 214 (1944), a case involving the forcible relocation of citizens to internment camps solely on the basis of their race, because the

dissent had relied upon it. The majority took the opportunity to state and clarify that "*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and – to be clear – has no place in law under the Constitution." *Id*. at 2423 (internal quotation and citation omitted). I have no independent understanding of the phrase used by the Supreme Court regarding the "court of history."

12. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: The Tenth Circuit Court of Appeals has discussed the evaluation whether a person's religious belief is sincerely held in cases involving the application of the Religious Land Use and Institutionalized Persons Act of 2000 (RUILPA). As stated by the Tenth Circuit, "When inquiring into a claimant's *sincerity,* then, our task is instead a more modest one, limited to asking whether the claimant is (in essence) seeking to perpetrate a fraud on the court—whether he actually holds the beliefs he claims to hold—a comparatively familiar task for secular courts that are regularly called on to make credibility assessments—and an important task, too, for ensuring the integrity of any judicial proceeding." *Yellowbear v. Lampert*, 741 F.3d 48, 54 (10th Cir. 2014) (internal citation omitted). "The practice burdened need not be central to the adherent's belief system, but the adherent must have an honest belief that the practice is important to his free exercise of religion." *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1316 (10th Cir. 2010) (internal citations omitted).

13. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: I believe that the referenced statement by Justice Holmes was clarified when he further stated that a constitution is not intended to embody a particular economic theory. I have never considered whether I agree or disagree with the statement made by Justice Holmes in his dissent in *Lochner*, and have no opinion on it.

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: *Lochner v. New York*, 198 U.S. 45 (1905), was abrogated in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) and subsequent Supreme Court cases. *See*, *e.g.*, *Ferguson v. Skrupa*, 372 U.S. 726, 729 (1963). It is no longer binding precedent and is thus not a decision I would follow or apply.

14. Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."

a. What do you understand this statement to mean?

Response: I understand this statement to mean that when a judge faithfully applies existing law to the facts of each case, as a judge is required to do, there may times when the judge does not personally like the result.

15. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

Response: I understand the statement to mean that judges interpret the law, they do not make it.

b. Do you agree or disagree with this statement?

Response: I completely agree with this statement.

16. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

Response: I am not familiar with this statement by Justice Holmes. I assume, without knowing the context of the statement, that he was referring to the role of a judge in interpreting and applying the law, regardless of whether the judge personally liked the result.

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: If the statement was intended to express the idea that judges must follow the law, even if they personally do not like the result, then I agree with the statement.

17. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

a. If so, what are they?

Response: Only the Supreme Court may overrule its precedent, and the Court has developed factors to consider whether it will consider doing so including the quality of the reasoning behind the prior decision, the workability of the rule established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision. *See Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478–79 (2018).

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: Yes.

18. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

Response: I have no opinion regarding Judge Learned Hand's statement. If confirmed as a federal judge, I would fully and faithfully follow the precedent of the Supreme Court, precedent of the Tenth Circuit Court of Appeals and existing federal law if I were to preside over a case involving a monopoly claim, including the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act.

b. If not, please explain why you disagree with Judge Learned Hand.

Response: See response to Question 18a, above.

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: See response to Question 18a, above. The recognized elements of monopolization are (1) the power to fix prices and exclude competitors within the relevant market; and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historical accident. *See, e.g.*, *Verizon Commc'ns Inc. v. L. Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398, 407 (2004).

19. Please describe your understanding of the "federal common law."

Response: I understand "federal common law" to refer to law derived from judicial decisions instead of statutes. While common law development is more frequent in state courts, it is rare in federal courts.

20. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

Response: State courts may interpret state constitutional provisions independently of provisions in the federal constitution, but often consider as persuasive authority judicial interpretations as to the scope of identical federal constitutional rights. A state

constitution may provide greater constitutional protections, but it may not be interpreted so as to interfere or curtail rights that are provided by the U.S. Constitution.

a. Do you believe that identical texts should be interpreted identically?

Response: See response to Question 20, above.

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Yes, states are free to provide greater protections than federal provisions.

21. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) was correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

Brown v. Board of Ed. of Topeka, 347 U.S. 483 (1954), which ended racial segregation in public schools, did not involve issues that would likely come before me as a federal judge and so, for that reason, I make an exception to that general practice and acknowledge my agreement with the holding in that case and the rejection of the doctrine of "separate but equal."

22. What is the standard for each kind of abstention in the court to which you have been nominated?

Response: The *Younger* abstention doctrine requires that when there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution. The Supreme Court has extended *Younger* abstention to particular state civil proceedings that are akin to criminal prosecutions. The doctrine applies when three factors are present: (1) there is an ongoing state proceeding; (2) the claim raises important state interests; and (3) the state proceedings provide an adequate opportunity to raise the federal constitutional claims.

Pullman abstention is a doctrine in which federal courts may choose not to hear a case, even if all the formal jurisdictional requirements are met, until the state law question can be resolved in a state court.

Burford abstention is a doctrine that allows federal courts to abstain from reviewing certain decisions of state administrative agencies or from otherwise assuming the functions of state courts in the development and implementation of a state' public policies.

Thibodaux abstention involves a federal court's act of declining to exercise its jurisdiction to allow a state court to decide difficult issues of importance in order to avoid unnecessary friction or tension between federal and state authorities.

The adequate and independent state ground doctrine provides that when a litigant petitions the United States Supreme Court to review the judgment of a state court which rests upon both federal and state law, the Supreme Court does not have jurisdiction over the case if the state ground is adequate to support the judgment and is independent of federal law.

23. Do federal courts have the legal authority to issue nationwide injunctions?

Response: The legal authority and basis under which to issue nationwide injunctions is currently being debated in the courts. *See Department of Homeland Security v. New York*, 140 S. Ct. 599 (2020) ("Injunctions like these thus raise serious questions about the scope of courts' equitable powers under Article III."). If confirmed as a federal district judge, I would strictly follow any existing precedent at the time concerning the propriety of such an injunction if the issue of a nationwide injunction came before me.

a. If so, what is the source of that authority?

Response: See response to Question 23, above.

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: See response to Question 23, above.

24. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: See response to Question 23, above.

25. What is your understanding of the role of federalism in our constitutional system?

Response: Federalism is an integral part of our system of government, wherein power is divided between the federal government and state or local governments. The Constitution has established a system of "dual sovereignty," under which the States have surrendered many of their powers to the federal government, but also retained some sovereignty.

26. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: See response to Question 22, describing various abstention doctrines.

27. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: I have no opinion on the relative advantages and disadvantages of awarding damages versus injunctive relief. If confirmed as a federal district judge, I would follow the law and award the appropriate relief under the facts of the case and as directed by the precedent of the Supreme Court and the Tenth Circuit Court of Appeals.

28. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: The Supreme Court has held that the due process clauses of the Fifth and Fourteenth Amendments protect fundamental rights and liberties that are not expressly stated in the text of the Constitution. In *Washington v. Glucksburg*, 521 U.S. 702 (1997), the Court described the substantive-due-process analysis as having two primary features. First it has deemed the Constitution to protect "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." *Id.* at 721 (citations and internal quotation marks omitted). Second, it has required in substantive-due-process cases a careful description of the asserted fundamental liberty interest. *Id*. Some of the substantive due process rights recognized by the Court to date include the right to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923), the right of married couples to use contraceptives (marital privacy), *Griswold v. Connecticut*, 381 U.S. 479 (1965), the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967), and the right to abortion, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

29. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: The Free Exercise Clause of the First Amendment to the United States Constitution is a foundational and important right that protects religious liberty. If confirmed as a federal district judge, I will strictly follow the precedents of the Supreme Court and the Tenth Circuit Court of Appeals concerning the scope of the right to free exercise.

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: The Free Exercise Clause of the First Amendment to the United States Constitution protects both freedom of worship or the right to believe in whatever religion one chooses, and the right to freely practice one's religion. The right to freely practice one's religion (free exercise of religion) is expansive and includes the right to change religion, to have schools and charitable institutions, and to participate in public discourse regarding religion, as well as other religious rights.

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: When determining whether governmental action is a substantial burden on the free exercise of religion, I would use and apply the standards set forth in the Religious Freedom Restoration Act (RFRA), and the Supreme Court and Tenth Circuit precedent which have addressed those standards. The RFRA prohibits "the federal government from taking any action that substantially burdens the exercise of religion unless that action constitutes the least restrictive means of serving a compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682, 690–91 (2014). The Supreme Court in *Burwell* noted its repeated admonition that courts must not presume to determine the plausibility of a religious claim. The court's narrow function is to determine whether the line drawn between complying with the law and having it violate their religious beliefs reflects an "honest conviction." If confirmed as a federal district judge, I would apply this legal precedent, as well as the legal precedent set forth in other decisions such as *Gonzales v. O Centro Espirita Beneficient Uniao do Vegetal*, 546 U.S. 418, 424, to cases involving action taken by the federal government that is alleged to substantially burden the free exercise of religion.

As to actions taken by state or local governments that are alleged to substantially burden the exercise of religion, I would apply the standards and precedent set forth in the response to Question 9, above, as well as any other applicable precedent from the Supreme Court and the Tenth Circuit Court of Appeals

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: Individuals who hold sincere religious beliefs that their religion prevents or requires certain action are entitled to invoke the Free Exercise Clause without a judicial evaluation of the validity of their interpretations. *See Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 833-34 (1989); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719 (2018).

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: The Religious Freedom Restoration Act prohibits "the federal government from taking any action that substantially burdens the exercise of religion unless that action constitutes the least restrictive means of serving a compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 690–91 (2014).

With respect to employment, in *Our Lady of Guadalupe v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that religious institutions are exempt from anti-discrimination laws, such as the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA), when hiring and firing employees who are deemed ministers. The Court held that the First Amendment protects the right of churches and other religious organizations to decide matters of faith and doctrine without governmental intrusion, including who should hold certain important positions.

With regard to education and state funding, *in Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), parents of students at a private Christian school brought action against the Montana Department of Revenue challenging a Department rule that excluded religiously affiliated private schools from state scholarship program for students attending private schools. The Supreme Court determined that a "no-aid" provision in the Montana Constitution, as applied in an income tax credit program, discriminated on a religious basis, and was subject to strict scrutiny. The Court applied the same principle in *Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012 (2017), which pertained to a denial of the church's application for a grant to purchase rubber playground surfaces. The Supreme Court held in that case that denying a generally available benefit solely on account of religious liberty imposes a penalty on the free exercise of religion that can only be justified by passing the strict scrutiny test.

If confirmed as a federal district judge, I would apply the precedents of the Supreme Court and the Tenth Circuit Court of Appeals in determining issues related to the relationship between the free exercise of religion and federal laws concerning education and employment.

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

30. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: The "beyond a reasonable doubt" standard has been the burden of proof in criminal cases since at least the time of the decision in *Miles v. United States*, 103 U.S. 304, 312 (1880). I am not aware of any specific numerical answer regarding a confidence threshold that has been set forth by the Supreme Court or any other binding precedent.

31. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

Response: As a nominee to be a federal judge, I must respectfully refrain from commenting on issues that may come before me if I were to be confirmed. Criminal defendants regularly file habeas corpus petitions in federal district court and the issue referenced in the question may be one that I will be asked to decide in future cases. I believe it would be inappropriate for me to provide an opinion on this issue.

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

Response: See response to Question 31a, above.

c. If you disagree with either of these statements, please explain why and provide examples.

32. Have you ever authored or edited a brief that was filed in court without your name on the brief?

a. If so, please identify those cases with appropriate citation.

Response: In 2005, I assisted in legal research and the writing of the appellate briefs in the case *GI Forum v. Perry*, which was argued before the Supreme Court in 2006 and reported as *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006), but my name was listed only on the Reply Brief for Appellants. (Brief for Appellants GI Forum at 2006 WL 63583; Reply Brief for Appellants GI Forum at 2006 WL 457830). With that exception, I cannot recall ever having authored or edited a brief that was filed in court without my name on it.

33. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

Response: Under Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit, unpublished opinions may be issued by that appellate court. If confirmed as a federal judge in the District of New Mexico, I would be bound by the law of the Tenth Circuit and it would be imprudent for me to opine on the appropriateness of the Circuit Court's rules.

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

Response: See response to Question 33a, above.

c. If confirmed, would you treat unpublished decisions as precedential?

Response: No.

d. If not, how is this consistent with the rule of law?

Response: Pursuant to Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit, unpublished opinions are not considered precedent but may be considered for their persuasive value.

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

Response: Pursuant to Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit, unpublished opinions may be considered for their persuasive value.

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

Response: Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit and Rule 32.1 of the Federal Appellate Rules state that a federal court must not prohibit citation to unpublished decisions.

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: No. Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit and Rule 32.1 of the Federal Appellate Rules state that a federal court must not prohibit citation to unpublished decisions.

34. In your legal career:

a. How many cases have you tried as first chair?

Response: I have tried approximately eight cases as first chair or sole counsel.

b. How many have you tried as second chair?

Response: I have tried approximately six cases as second chair or co-counsel.

c. How many depositions have you taken?

Response: I would approximate that I have taken over a hundred depositions.

d. How many depositions have you defended?

Response: I would approximate that I have defended over a hundred depositions.

e. How many cases have you argued before a federal appellate court?

Response: I have presented oral argument before one federal appellate court.

f. How many cases have you argued before a state appellate court?

Response: I have presented oral argument in one case before a state appellate court.

g. How many times have you appeared before a federal agency, and in what capacity?

Response: I cannot recall ever having appeared before a federal agency.

h. How many dispositive motions have you argued before trial courts?

Response: I would approximate that I have argued between ten to twenty dispositive motions before trial courts.

i. How many evidentiary motions have you argued before trial courts?

Response: I would approximate that I have argued ten to twenty evidentiary motions before trial courts.

35. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

a. If yes, please provide appropriate citations.

Response: As a legal advocate, I have asserted arguments on behalf of clients that certain governmental actions and programs were unconstitutional, but to my recollection, I have not taken the position that a federal or state statute was unconstitutional.

36. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: No.

37. What were the last three books you read?

Response: Dreamland, by Sam Quinones; Blood and Thunder, by Hampton Sides; Death Comes for the Archbishop, by Willa Cather.

38. Do you believe America is a systemically racist country?

Response: I do not have an opinion as to whether America is a systemically racist country. The issue of whether racial disparities or inequitable systems exist in our society is one of policy, not related to the role of a judge.

39. What case or legal representation are you most proud of?

Response: I have not previously considered this question and cannot identify any one representation that I would choose as the one in which I am most proud. I have been proud and honored to represent many clients over the years in many types of cases.

40. Have you ever taken a position in litigation that conflicted with your personal views?

Response: I cannot recall taken any position in litigation that conflicted with any personal views I may have. But even if that had occurred, as a legal advocate, I would have set aside my personal views and represented clients based solely on the claims I advocated on their behalf.

a. How did you handle the situation?

b. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: Yes.

41. What three law professors' works do you read most often?

Response: I do not regularly read the work of law professors, but have confined my knowledge of the law to published cases and treatises.

42. Which of the Federalist Papers has most shaped your views of the law?

Response: I cannot identify any of the Federalist Papers which most shaped my views on the law.

43. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: I cannot identify a particular opinion or article that changed my mind. I ordinarily use these materials to inform my knowledge of the law.

44. Do you believe that an unborn child is a human being?

Response: As a judicial nominee, I respectfully refrain from commenting on issues that are currently debated in the public and legal arena and which may come before me if I am fortunate enough to be confirmed. If confirmed, I will faithfully and diligently apply Supreme Court and Tenth Circuit precedent to such issues if they were to come before me.

45. The Second Amendment provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: In *District of Columbia v. Heller*, 554 U.S. 507 (2008), the Supreme Court held that the Second Amendment right to keep and bear arms is an individual right belonging to individual persons, without regard to militia service**.**

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: I am not a judge and have not issued any opinions, orders, or other adjudications.

46. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: The only other time I can recall testifying under oath was when I was deposed as a witness in a wrongful death lawsuit as the personal representative of my father's estate. The name of the case was *Urias v. Mojtahedzadeh*, No. D-202-CV-200303152 (Second Judicial District Court of New Mexico, filed in 2003). That deposition took place in 2003 or 2004, but I do not believe the deposition transcript is available online or as a record. I do not have a copy of the deposition transcript.

47. If any of your previous jobs required you to track billable hours:

a. What is the maximum number of hours that you billed in a single year?

Response: I do not know the maximum number of hours I billed in a single year, but I would estimate it was approximately 2,500 to 2,700 hours.

b. What portion of these were dedicated to pro bono work?

Response: I do not know exactly what portion of the hours I work are dedicated to pro bono work, but I would approximate that each year I dedicate at least 100 hours to such representation.

48. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade,* 410 U.S. 113 (1973)?

Response: No.

b. The Supreme Court's substantive due process precedents?

Response: No.

c. Systemic racism?

Response: No.

d. Critical race theory?

Response: No.

49. Do you currently hold any shares in the following companies:

a. Apple?

Response: No.

b. Amazon?

Response: No.

c. Google?

Response: No.

d. Facebook?

Response: No.

e. Twitter?

Response: No.

50. Have you ever confessed error to a court?

a. If so, please describe the circumstances.

Response: To the best of my recollection, I have not confessed error to a court.

51. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: A judicial nominee should be fully forthcoming and truthful in stating their views on judicial philosophy**.**

Questions for the Record for David Herrera Urias
From Senator Mazie K. Hirono

1. **As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:**

   a. **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.

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

      Response: No.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
November 03, 2021

David H. Urias
Nominee for U.S. District Court for the District of New Mexico

1. **Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

   Response: No.

2. **Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?**

   Response: No.

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

   Response: I have not been a judge, so I cannot identify an existing judicial philosophy that I may have. If confirmed as a federal judge, I would commit to upholding the oath of office and fully, faithfully, and impartially apply the law to the facts of each case or controversy that comes before me.

4. **Would you describe yourself as an originalist?**

   Response: I have not been a judge, so I have never identified with any judicial approach or ideology with respect to constitutional interpretation. If confirmed as a federal judge, I would follow Supreme Court precedent and the precedent of the Tenth Circuit Court of Appeals in determining the methodology to utilize in interpreting a constitutional provision or a statute.

5. **Would you describe yourself as a textualist?**

   Response: I have not been a judge, so I have never identified with any judicial approach or ideology with respect to constitutional or statutory interpretation. If I am confirmed as a federal judge, I would approach the interpretation of a statute by first reviewing the plain language of the statute, giving the language its usual, ordinary meaning. If the plain language of the statute resolves the issue and there is no ambiguity, that would be the end of the inquiry and no further judicial construction would be required.

6. **Do you believe the Constitution is a "living" document whose precise meaning can change over time? Why or why not?**

   Response: I have not been a judge, so I have never identified with any judicial approach or ideology such as the concept of a "living constitution." The Supreme Court has, however, recognized that certain provisions of the Constitution are broad enough to allow for their core principles to apply to new circumstances not considered or envisioned by the framers. *See*, *e.g.*, *Riley v. California*, 573 U.S. 373 (2014) (holding that Fourth Amendment's expectation of privacy protections extend to government access to cell-site records); *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786 (2011) (acknowledging that "video games qualify for First Amendment protection").

7. **Please name the Supreme Court Justice or Justices appointed since January 20, 1953 whose jurisprudence you admire the most and explain why.**

   Response: I cannot identify a Supreme Court Justice whose jurisprudence I admire the most.

8. **Was Marbury v. Madison correctly decided?**

   Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

   Marbury v. Madison, 5 U.S. 137 (1803), which established the core constitutional concept of judicial review, did not involve issues that would likely come before me as a federal judge and so, for that reason, I make an exception to that general practice and acknowledge my agreement with the holding in that case.

9. **Was Lochner v. New York correctly decided?**

   Response: *Lochner v. New York*, 198 U.S. 45 (1905), was abrogated in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) and subsequent Supreme Court cases. *See*, *e.g.*, *Ferguson v. Skrupa*, 372 U.S. 726, 729 (1963). It is no longer binding precedent and is thus not a decision I would follow or apply.

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

    Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court

judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

Brown v. Board of Ed. of Topeka, 347 U.S. 483 (1954), which ended racial segregation in public schools, did not involve issues that would likely come before me as a federal judge and so, for that reason, I make an exception to that general practice and acknowledge my agreement with the holding in that case and the rejection of the doctrine of "separate but equal."

11. Was Bolling v. Sharpe correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

Bolling v. Sharpe, 347 U.S. 497 (1954), which held that racial segregation in public schools in the District of Columbia was a denial of the due process of law guaranteed by the Fifth Amendment, did not involve issues that would likely come before me as a federal judge and so, for that reason, I make an exception to that general practice and acknowledge my agreement with the holding in that case.

12. Was Cooper v. Aaron correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

Cooper v. Aaron, 358 U.S. 1 (1958), did not involve issues that would likely come before me as a federal judge and so, for that reason, I make an exception to that general practice and acknowledge my agreement with the holding in that case that reaffirmed and upheld the principles articulated in *Brown v. Board of Education* and rejected the idea that state legislatures could nullify the constitutional rights of children not to be discriminated against in school admission on grounds of race or color. *See id*. at 17.

13. Was Mapp v. Ohio correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

14. Was Gideon v. Wainwright correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

Gideon v. Wainwright, 372 U.S. 335 (1963) is a decision that is foundational to our criminal law jurisprudence, holding that the Sixth Amendment right to counsel is a fundamental due process right applicable to criminal defendants in state court under the Fourteenth Amendment. For that reason, I make an exception to that general practice and acknowledge my agreement with the holding in that case

15. Was Griswold v. Connecticut correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

16. Was South Carolina v. Katzenbach correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases

that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

17. Was Miranda v. Arizona correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

18. Was Katzenbach v. Morgan correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

19. Was Loving v. Virginia correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

Loving v. Virginia, 388 U.S. 1 (1967), rejected the "equal application" theory and held that race-based restrictions on marriage ran afoul of the Equal Protection Clause. The issues involved in that case are unlikely to come before me if I am confirmed as a federal district court judge. For that reason, I make an exception to that general practice and acknowledge my agreement with the holding in that case.

20. Was Katz v. United States correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

21. Was Roe v. Wade correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

22. Was Romer v. Evans correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

23. Was United States v. Virginia correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

24. Was Bush v. Gore correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that

may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

25. Was District of Columbia v. Heller correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

26. Was Crawford v. Marion County Election Board correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

27. Was Boumediene v. Bush correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

28. Was Citizens United v. Federal Election Commission correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases

that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

29. Was Shelby County v. Holder correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

30. Was United States v. Windsor correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

31. Was Obergefell v. Hodges correctly decided?

Response: As a judicial nominee, I respectfully refrain from commenting on the propriety of any binding Supreme Court precedent which involved or may implicate issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I follow this practice to avoid giving the impression that I have prejudged cases that might come before me that require consideration of these precedents or the issues involved in such precedents. As a federal district court judge, it would be my duty to faithfully apply Supreme Court precedent whether I agreed or disagreed with any particular decision by the Court.

32. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for appellate court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: A panel of the Tenth Circuit is required to follow circuit precedent, absent *en banc* reconsideration or a superseding contrary decision by the Supreme Court. *See United States v. Hernandez-Rodriguez*, 352 F.3d 1325 (10th Cir. 2003). The United States Supreme Court has considered a number of factors in considering whether to overrule its

own precedent, including the quality of the reasoning behind the prior decision, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision. *See Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478–79 (2018).

33. In the absence of controlling Supreme Court precedent, what substantive factors determine whether it is appropriate for an appellate court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: See response to Question 32.

34. What role should extrinsic factors not included within the text of a statute, especially legislative history and general principles of justice, play in statutory interpretation?

Response: I would approach the interpretation of a statute by first reviewing the plain language of the statute, giving the language its usual, ordinary meaning. If the plain language of the statute resolves the issue and there is no ambiguity, that would be the end of the inquiry and no further judicial construction would be required. If the plain language of the statute is ambiguous and does not resolve the question, I would turn to other tools of interpretation, such as canons of construction, other court decisions interpreting analogous or similar language, the similarities or differences in the statutory language at issue and other related statutes, whether the contested provision was in the statute when originally enacted, and, if necessary, other interpretive tools including legislative history, but only in an effort to shed light on the meaning of the statutory language.

35. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant? If so, how so?

Response: 18 U.S.C. § 3553(a) provides the specific factors for federal district court judges to consider in imposing sentences, which include as one consideration the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. *Id.* § 3553(a)(6). In making sentencing determinations, I would review and apply the factors set forth in the statute, sentencing guidelines, and policy statements issued by the Sentencing Commission. Race is never an appropriate factor to consider in sentencing.

Questions from Senator Thom Tillis
for David Herrera Urias
Nominee to be United States District Judge for the District of New Mexico

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: It is my understanding that judicial activism occurs when a judge resolves cases based on his or her personal views or how the judge believes the law should be. It is never appropriate for judges to engage in this type of practice, as the proper role of a judge is to make decisions based solely on applying the existing law to the facts of each case. A judge should never allow personal opinions or biases to enter into his or her decision-making process.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: A judge must always be fair and impartial. This is not an aspiration, but a requirement defining the role of the judiciary.

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome**?

   Response: No.

5. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: Yes, interpreting the law may sometimes result in undesirable outcomes. It is not the role of a federal judge to reconcile an undesirable outcome with the law. A judge must faithfully interpret and apply the law wherever it leads, as that is the proper role of the judiciary.

6. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

7. **What will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?**

   Response: If confirmed, I will faithfully apply Supreme Court precedent regarding the rights secured by the Second Amendment, including the precedent set forth in *District of*

Columbia v. Heller, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), as well as applicable Tenth Circuit precedent.

8. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: If I, as a federal judge, presided over a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits, I would look first to the Supreme Court precedent set forth in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), as well as applicable Tenth Circuit precedent regarding the Second Amendment. I would also review all statutes or regulations pertaining to the process of obtaining handgun purchase permits and all binding precedent regarding the impact of crises such as the Covid-19 pandemic on an individual's constitutional and statutory gun rights.

9. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: I have not been a judge, so I have not previously considered qualified immunity cases. Supreme Court precedent, as well as Tenth Circuit precedent, requires that a court grant qualified immunity to law enforcement personnel performing discretionary functions so long as their conduct does not violate clearly established constitutional or statutory rights of which a reasonable person would have known. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Medina v. Cram*, 252 F.3d 1124, 1128 (10th Cir. 2001).

10. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: I have no opinion on whether qualified immunity provides sufficient protection to law enforcement officers. In *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), the Supreme Court set forth the standard to determine whether law enforcement officers are entitled to qualified immunity and that decision is binding precedent. My role as a judge will be to follow binding precedent, and thus I would apply the standard set forth in *Harlow* and its progeny unless the law changes, such as if Congress enacts a statute on the issue or if the United States Supreme Court abrogates, modifies, or overrules *Harlow*.

11. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: The role of a judge never includes determining what the law should be, but only what the law is. In *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), the Supreme Court set forth the standard to determine whether law enforcement officers are entitled to qualified

immunity and that decision is binding precedent. My role as a judge will be to follow binding precedent, and thus I would apply the standard set forth in *Harlow* and its progeny unless the law changes, such as if Congress enacts a statute on the issue or if the United States Supreme Court abrogates, modifies, or overrules *Harlow*.

12. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence?

Response: I have no opinion on the issue. If I am confirmed as a federal district judge and am faced with a case involving patent eligibility, I would follow and be bound by Supreme Court precedent and the applicable federal laws passed by Congress regarding the issue of patent eligibility.

13. How would you apply current patent eligibility jurisprudence to the following hypotheticals. Please avoid giving non-answers and actually analyze these hypotheticals.

a. *ABC Pharmaceutical Company* develops a method of optimizing dosages of a substance that has beneficial effects on preventing, treating or curing a disease or condition for individual patients, using conventional technology but a newly-discovered correlation between administered medicinal agents and bodily chemicals or metabolites. Should this invention be patent eligible?

Response: I must respectfully refrain from analyzing or commenting on hypothetical scenarios raising issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I refrain from doing so because I do not want to suggest how I might decide such a matter if it were to come before me. If I presided over such a matter, I would apply Supreme Court precedent and any applicable federal law to determine the issue. Such precedent would include *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), and *Mayo Collaborative Services v. Prometheus Laboratories, Inc*., 566 U.S. 66 (2012).

b. *FinServCo* develops a valuable proprietary trading strategy that demonstrably increases their profits derived from trading commodities. The strategy involves a new application of statistical methods, combined with predictions about how trading markets behave that are derived from insights into human psychology. Should *FinServCo's* business method standing alone be eligible? What about the business method as practically applied on a computer?

Response: I must respectfully refrain from analyzing or commenting on hypothetical scenarios raising issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I refrain from doing so because I do not want to suggest how I might decide such a matter if it were to come before me. If I presided over such a

matter, I would apply Supreme Court precedent and any applicable federal law to determine the issue. Such precedent would include *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), and *Mayo Collaborative Services v. Prometheus Laboratories, Inc*., 566 U.S. 66 (2012).

c. *HumanGenetics* Company wants to patent a human gene or human gene fragment as it exists in the human body. Should that be patent eligible? What if *HumanGenetics* Company wants to patent a human gene or fragment that contains sequence alterations provided by an engineering process initiated by humans that do not otherwise exist in nature? What if the engineered alterations were only at the end of the human gene or fragment and merely removed one or more contiguous elements?

Response: I must respectfully refrain from analyzing or commenting on hypothetical scenarios raising issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I refrain from doing so because I do not want to suggest how I might decide such a matter if it were to come before me. If I presided over such a matter, I would apply Supreme Court precedent and any applicable federal law to determine the issue. Such precedent would include *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), *Association for Molecular Pathology v. Myriad Genetics, Inc*., 569 U.S. 576 (2013), and *Mayo Collaborative Services v. Prometheus Laboratories, Inc*., 566 U.S. 66 (2012).

d. *BetterThanTesla ElectricCo* develops a system for billing customers for charging electric cars. The system employs conventional charging technology and conventional computing technology, but there was no previous system combining computerized billing with electric car charging. Should *BetterThanTesla's* billing system for charging be patent eligible standing alone? What about when it explicitly claims charging hardware?

Response: I must respectfully refrain from analyzing or commenting on hypothetical scenarios raising issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I refrain from doing so because I do not want to suggest how I might decide such a matter if it were to come before me. If I presided over such a matter, I would apply Supreme Court precedent and any applicable federal law to determine the issue. Such precedent would include *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), *Mayo Collaborative Services v. Prometheus Laboratories, Inc*., 566 U.S. 66 (2012), and *Bilski v. Kappos*, 561 U.S. 593 (2010).

e. *Natural Laws and Substances, Inc.* specializes in isolating natural substances and providing them as products to consumers. Should the isolation of a naturally occurring substance other than a human gene be patent eligible? What about if the substance is purified or combined with other substances to produce an effect that none of the constituents provide alone or in lesser combinations?

Response: I must respectfully refrain from analyzing or commenting on hypothetical scenarios raising issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I refrain from doing so because I do not want to suggest how I might decide such a matter if it were to come before me. If I presided over such a matter, I would apply Supreme Court precedent and any applicable federal law to determine the issue. Such precedent would include *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), *Association for Molecular Pathology v. Myriad Genetics, Inc*., 569 U.S. 576 (2013), and *Mayo Collaborative Services v. Prometheus Laboratories, Inc*., 566 U.S. 66 (2012).

f. A business methods company, *FinancialServices Troll,* specializes in taking conventional legal transaction methods or systems and implementing them through a computer process or artificial intelligence. Should such implementations be patent eligible? What if the implemented method actually improves the expected result by, for example, making the methods faster, but doesn't improve the functioning of the computer itself? If the computer or artificial intelligence implemented system does actually improve the expected result, what if it doesn't have any other meaningful limitations?

Response: I must respectfully refrain from analyzing or commenting on hypothetical scenarios raising issues that may come before if I am fortunate enough to be confirmed as a federal district court judge. I refrain from doing so because I do not want to suggest how I might decide such a matter if it were to come before me. If I presided over such a matter, I would apply Supreme Court precedent and any applicable federal law to determine the issue. Such precedent would include *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), *Mayo Collaborative Services v. Prometheus Laboratories, Inc*., 566 U.S. 66 (2012), and *Bilski v. Kappos*, 561 U.S. 593 (2010).

g. ***BioTechCo* discovers a previously unknown relationship between a genetic mutation and a disease state. No suggestion of such a relationship existed in the prior art. Should *BioTechCo* be able to patent the gene sequence corresponding to the mutation? What about the correlation between the mutation and the disease state standing alone? But, what if *BioTech Co* invents a new, novel, and nonobvious method of diagnosing the disease state by means of testing for the gene sequence and the method requires at least one step that involves the manipulation and transformation of physical subject matter using techniques and equipment? Should that be patent eligible?**

Response: I must respectfully refrain from analyzing or commenting on hypothetical scenarios raising issues that may come before if I am fortunate enough to be confirmed as a federal district court judge. I refrain from doing so because I do not want to suggest how I might decide such a matter if it were to come before me. If I presided over such a matter, I would apply Supreme Court precedent and any applicable federal law to determine the issue. Such precedent would include *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), *Association for Molecular Pathology v. Myriad Genetics, Inc*., 569 U.S. 576 (2013), *Mayo Collaborative Services v. Prometheus Laboratories,*

Inc., 566 U.S. 66 (2012), and *KSR International Co. v. Teleflex, Inc*., 550 U.S. 398 (2007).

h. Assuming *BioTechCo's* diagnostic test is patent eligible, should there exist provisions in law that prohibit an assertion of infringement against patients receiving the diagnostic test? In other words, should there be a testing exemption for the patient health and benefit? If there is such an exemption, what are its limits?

Response: As a nominee for the federal district court, I must respectfully refrain from commenting on whether there should exist provisions in patent law as described above. The consideration concerning whether any particular law should exist is strictly a policy issue, while the role of a federal judge is to fully, faithfully, and impartially apply the law to the facts to each case, not to make law.

i. *Hantson Pharmaceuticals* develops a new chemical entity as a composition of matter that proves effective in treating TrulyTerribleDisease. Should this new chemical entity be patent eligible?

Response: I must respectfully refrain from analyzing or commenting on hypothetical scenarios raising issues that may come before me if I am fortunate enough to be confirmed as a federal district court judge. I refrain from doing so because I do not want to suggest how I might decide such a matter if it were to come before me. If I presided over such a matter, I would apply Supreme Court precedent and any applicable federal law to determine the issue. Such precedent would include *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), and *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012).

j. *Stoll Laboratories* discovers that superconducting materials superconduct at much higher temperatures when in microgravity. The materials are standard superconducting materials that superconduct at lower temperatures at surface gravity. Should *Stoll Labs* be able to patent the natural law that superconductive materials in space have higher superconductive temperatures? What about the space applications of superconductivity that benefit from this effect?

Response: I must respectfully refrain from analyzing or commenting on hypothetical scenarios raising issues that may come before if I am fortunate enough to be confirmed as a federal district court judge. I refrain from doing so because I do not want to suggest how I might decide such a matter if it were to come before me. If I presided over such a matter, I would apply Supreme Court precedent and any applicable federal law to determine the issue. Such precedent would include *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), and *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012).

14. Based on the previous hypotheticals, do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: I have no opinion on the issue. If I am confirmed as a federal district judge and am faced with a case involving patent eligibility, I would follow and be bound by Supreme Court precedent and the applicable federal laws passed by Congress regarding the issue of patent eligibility.

15. Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the lawfulness of a use of digital content and technologies.

a. What experience do you have with copyright law?

Response: I have no experience with copyright law.

b. Please describe any particular experiences you have had involving the Digital Millennium Copyright Act.

Response: I have had no experiences involving the Digital Millennium Copyright Act.

c. What experience do you have addressing intermediary liability for online service providers that host unlawful content posted by users?

Response: I have had no experiences addressing intermediary liability for online service providers that host unlawful content posted by users.

d. What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?

Response: I have had some experience litigating First Amendment and free speech issues in the context of the right to peacefully protest. I have no experience addressing free speech and intellectual property issues.

16. The legislative history of the Digital Millennium Copyright Act reinforces the statutory text that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office recently reported courts have conflated statutory obligations and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

a. In your opinion, where there is debate among courts about the meaning of legislative text, what role does or should Congressional intent, as demonstrated

in the legislative history, have when deciding how to apply the law to the facts in a particular case?

Response: I would approach the interpretation of legislative text by first reviewing the plain language of the statute, giving the language its usual, ordinary meaning. If the plain language of the statute resolves the issue and there is no ambiguity, that would be the end of the inquiry and no further judicial construction would be required. If the plain language of the statute is ambiguous and does not resolve the question, I would turn to other tools of interpretation, such canons of construction, other court decisions interpreting analogous or similar language, the similarities or differences in the statutory language at issue and other related statutes, whether the contested provision was in the statute when originally enacted, and, if necessary, other interpretive tools including legislative history, but only in an effort to shed light on the meaning of the statutory language.

b. Likewise, what role does or should the advice and analysis of the expert federal agency with jurisdiction over an issue (in this case, the U.S. Copyright Office) have when deciding how to apply the law to the facts in a particular case?

Response: The Supreme Court has held that the interpretation of legislative text contained in an agency opinion letter, policy statement, agency manual, or enforcement guideline, does not warrant *Chevron*-style deference. *See Christensen v. Harris County*, 529 U.S. 576, 587 (2000). Instead, *Skidmore* deference, as set forth in *Skidmore v. Swift*, 323 U.S. 134 (1944), applies to such interpretations and provides that interpretations contained in such formats are entitled to respect, but only to the extent they are persuasive.

c. Do you believe that awareness of facts and circumstances from which copyright infringement is apparent should suffice to put an online service provider on notice of such material or activities, requiring remedial action?

Response: I have no pre-existing opinion as to what facts or circumstances should suffice to put an online service provider on notice of copyright infringement. If I am fortunate enough to be confirmed as a federal district judge and I was to preside over a case involving the obligations of an online provider in the context of possible copyright infringement, I would follow and apply applicable federal law, including the Digital Millennium Copyright Act of 1998, and any binding precedent from the Supreme Court and the Tenth Circuit to determine the issue.

17. The scale of online copyright infringement is breathtaking. The DMCA was developed at a time when digital content was disseminated much more slowly and there was a lot less infringing material online.

a. How can judges best interpret and apply to today's digital environment laws like the DMCA that were written before the explosion of the internet, the ascension of dominant platforms, and the proliferation of automation and algorithms?

Response: The role of a judge is to apply existing law. The necessity of enacting new laws to address evolving issues due to advancements in the digital environment is a policy matter left to lawmakers, not the courts.

b. How can judges best interpret and apply prior judicial opinions that relied upon the then-current state of technology once that technological landscape has changed?

Response: The role of a judge is to apply existing law to each case that comes before the court. The necessity of enacting new laws to address evolving issues due to technological advancements is a policy matter left to lawmakers, not the courts.