Senator Chuck Grassley, Ranking Member
Questions for the Record
The Honorable Ana de Alba
Judicial Nominee to the United States District Court for the Eastern District of California

1. **In the context of federal case law, what is the academic or scholarly definition of super precedent? Which cases, if any, count as super precedent?**

   Response: I have not found any United States Supreme Court or Ninth Circuit Court cases that use that term. If I am confirmed as a District Court Judge, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

2. **You can answer the following questions yes or no:**
   a. **Was *Brown v. Board of Education* correctly decided?**

      Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would generally be inappropriate for me to comment on the correctness of any United States Supreme Court decision. I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3, which require that a judge not make public comments on the merits of a matter pending or impending in any court. In light of the fact that the holding in this case is not likely to be relitigated, I can state that I believe the United States Supreme Court correctly decided it.

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

      Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would generally be inappropriate for me to comment on the correctness of any United States Supreme Court decision. I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3, which require that a judge not make public comments on the merits of a matter pending or impending in any court. In light of the fact that the holding in this case is not likely to be relitigated, I can state that I believe the United States Supreme Court correctly decided it.

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

      Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to comment on the correctness of any United States Supreme Court decision. I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3, which require that a judge not make public comments on the merits of a matter pending or impending in any court. The issues

or related issues raised in this case may come before me making it inappropriate for me to comment. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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

Response: Please see response to Question 2 c.

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

Response: Please see response to Question 2 c.

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

Response: Please see response to Question 2 c.

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

Response: Please see response to Question 2 c.

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

Response: Please see response to Question 2 c.

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

Response: Please see response to Question 2 c.

j. **Was *Sturgeon v. Frost* correctly decided?**

Response: Please see response to Question 2 c.

k. **Was *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* correctly decided?**

Response: Please see response to Question 2 c.

3. **Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

Response: I am unfamiliar with Justice Jackson's statement regarding a "living constitution" and therefore, do not feel it is appropriate for me to comment on it.

4. **Should judicial decisions take into consideration principles of social "equity"?**

   Response: No, principles of social equity are important decisions that are best left to policymakers. A judge's personal views and values have no place in the courtroom. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent irrespective of any personal views I may have regarding the issues presented.

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

   Response: I disagree with this statement because a judge's personal views and values have no place in the courtroom. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent irrespective of any personal views I may have regarding the issues presented.

6. **Is climate change real?**

   Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3, which require that a judge not make public comments on the merits of a matter pending or impending in any court. As this may one day be litigated in court and as my personal beliefs do not play a role in my decision-making, it would be inappropriate and irrelevant for me to opine on this issue. I will, however, agree to follow Federal Rule of Evidence 702, and adhere to *Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 (1993), and all other United States Supreme Court and Ninth Circuit precedent as it relates to the admissibility of any expert testimony on this issue should it come before my court.

7. **Do parents have a constitutional right to direct the education of their children?**

   Response: Yes, in *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923), the United States Supreme Court held that parents have a constitutional right to direct their children's education.

8. **Is whether a specific substance causes cancer in humans a scientific question?**

Response: Please see my response to Question 6.

9. **Is when a "fetus is viable" a scientific question?**

   Response: Please see my response to Question 6.

10. **Is when a human life begins a scientific question?**

    Response: Please see my response to Question 6.

11. **Can someone change his or her biological sex?**

    Response: Please see my response to Question 6.

12. **Is threatening Supreme Court justices right or wrong?**

    Response: I generally do not think about issues as "right" or "wrong," but rather, whether they violate the law. In this regard, 18 U.S.C. § 115 makes it unlawful to threaten a Supreme Court Justice "with intent to impede, intimidate, or interfere with such official, judge, or law enforcement officer while engaged in the performance of official duties, or with intent to retaliate against such official, judge, or law enforcement officer on account of the performance of official duties, shall be punished as provided in subsection (b)."

13. **Does the president have the power to remove senior officials at his pleasure?**

    Response: Yes, but with exceptions. In *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183 (2020), the United States Supreme Court looked at Article 2, section 1, clause 1 and Article 2, section 3 of the United States Constitution for support of the proposition that while all executive power is vested in the President and the President has the authority to remove those who assist him or her in carrying out their duties, Congress can create expert agencies led by a group of principal officers removable by the President only for good cause. *Id.*

14. **Do you believe that we should defund or decrease funding for police departments and law enforcement, including the law enforcement entities responsible for protecting the federal courthouses in Portland from violent rioters? Please explain.**

    Response: Any issues related to funding police departments and law enforcement entities responsible for protecting federal courthouses in Portland or anywhere in the United States are important issues for policymakers. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent that may touch upon these issues.

15. **Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.**

Response: Any issues related the level of funding police departments and other support services receive are important issues for policymakers. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent that may touch upon these issues.

16. **What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun re-offenders to the community?**

Response: This presents an important issue for policymakers. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent that may touch upon these issues.

17. **What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?**

Response: The United States Supreme Court articulated the various legal standards that lower courts must apply to a regulation or proposed legislation that infringes upon the Second Amendment. In *District of Columbia v. Heller,* 554 U.S. 570 (2008), the Supreme Court held that the right to bear arms is an individual right and in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), held that that right applies to the states. In *Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021), the Ninth Circuit held that in order to determine whether a regulation or legislation infringes on Second Amendment rights, one must first determine "if the challenged law affects conduct that is protected by the Second Amendment." *Id*. at 783. If it does, then one must determine the appropriate level of scrutiny that the government action must survive in order to be Constitutional. Under *Young, supra*, the Ninth Circuit noted, "[w]e have understood *Heller* to require one of three levels of scrutiny: If a regulation 'amounts to a destruction of the Second Amendment right,' it is unconstitutional under any level of scrutiny; a law that 'implicates the core of the Second Amendment right and severely burdens that right' receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny. *Id*. at 784. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

18. **Do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?**

Response: To establish a violation of Title II of the Americans with Disabilities Act of 1990, a plaintiff must, among other things, show that the school is a public entity as defined at 42 U.S.C. § 12132. A public entity is "any department, agency, special

purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. § 12132(1)(B). I have not found either United States Supreme Court nor Ninth Circuit precedent that definitively answers this question.

19. **Does a law restrict abortion access if it requires doctors to provide medical care to children born alive following failed abortions?**

    Response: If I were confirmed as a federal district judge and a case presenting this question came before me, I would look at all binding United States Supreme Court and Ninth Circuit precedent and would carefully consider the facts of the case before rendering a decision.

20. **Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."**
    a. **Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?**

       Response: In *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014), the United States Supreme Court held that the court determines whether a law "substantially burdens the exercise of religion" by looking at the record submitted to the court for review. *Id.* at 691.

    b. **How is a burden deemed to be "substantial[]" under current caselaw?**

       Response: In *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014), the United States Supreme Court made a case specific determination that as it related to the facts therein, the burden was deemed substantial because the respondents were having to face the choice between having to "engage in conduct that seriously violates their religious beliefs" or face severe economic consequences for noncompliance. *Id.* at 691.

21. **Judge Stephen Reinhardt once explained that, because the Supreme Court hears a limited number of cases each year, part of his judicial mantra was, "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?**

    Response: I am unfamiliar with the context of this quote. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

22. **As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?**

Response: I am unfamiliar with the proposition that "some civil clients don't deserve representation on account of their identity." When I was a practicing attorney prior to taking the bench in 2018, I was governed by the rules of professional conduct as they relate to the representation of clients and do not recall any such limitations.

23. **Do Blaine Amendments violate the Constitution?**

Response: As I understand them, Blaine Amendments refer to the failed attempt to amend the United States Constitution to prohibit direct government financial assistance to schools that are religiously affiliated. In *Espinoza v. Montana Dep't. of Rev.,* 140 S. Ct. 2246 (2020), the United States Supreme Court held that Montana's no-aid provision discriminated based on religious status, and thus was subject to strict scrutiny. *Id.* at 2257. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

24. **Is the right to petition the government a constitutionally protected right?**

Response: Yes, the First Amendment to the United States Constitution protects the right to petition the government for redress of grievances.

25. **What is the operative standard for determining whether a statement is not protected speech under the "fighting words" doctrine?**

Response: The United States Supreme Court first articulated the fighting words doctrine in *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), finding that, "[t]here are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Id*. at 571-72. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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

Response: In *Fogel v. Collins*, 531 F.3d 824 (9th Cir. 2008) the Ninth Circuit held that the true threat analysis is employed to determine if speech that is "an expression of an intention to inflict evil, injury, or damage on another" is entitled to First Amendment protection. *Id*. at 830, quoting *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1075 (9th Cir. 2002) (en banc)). The United States Supreme Court has held that "'[t]rue threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of

unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003). If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent on this issue.

27. **Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."**
    a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

       Response: No.

    c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

       Response: No.

28. **The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."**
    a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

       Response: No.

    b. **Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

       Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

29. **Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**
    a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund.**

    Response: No.

    b. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No.

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

    Response: No.

b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

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

    Response: No.

    b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

    Response: No.

    c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

    Response: No.

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

    Response: On December 30, 2020, I submitted an application to Senator Dianne Feinstein's Judicial Advisory Committee for a position on the United States District Court for the Eastern District of California. On January 15, 2021, I interviewed with Senator Feinstein's Committee. On January 27, 2021, I interviewed with the Committee's chair. On June 28, 2021, I submitted an application to Senator Alex Padilla's Judicial Advisory Committee. On June 30, 2021, I interviewed with Senator Padilla's Committee. On July 9, 2021, I interviewed with the Committee's chair. On July 29, 2021, I interviewed with Senator Padilla's staff. On August 17, 2021, I interviewed with Senator Padilla. On November 3, 2021, I interviewed with attorneys

from the White House Counsel's Office. Since November 4, 2021, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On January 19, 2022, my nomination was submitted to the Senate.

33. **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: I did not, and am unaware if anyone did so on my behalf.

34. **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: I did not, and am unaware if anyone did so on my behalf.

35. **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: I did not, and am unaware if anyone did so on my behalf.

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

Response: I did not, and am unaware if anyone did so on my behalf.

37. **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: I did not, and am unaware if anyone did so on my behalf.

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

Response: On December 30, 2020, I submitted an application to Senator Dianne Feinstein's Judicial Advisory Committee for a position on the United States District Court for the Eastern District of California. On January 15, 2021, I interviewed with Senator Feinstein's Committee. On January 27, 2021, I interviewed with the Committee's chair. On June 28, 2021, I submitted an application to Senator Alex

Padilla's Judicial Advisory Committee. On June 30, 2021, I interviewed with Senator Padilla's Committee. On July 9, 2021, I interviewed with the Committee's chair. On July 29, 2021, I interviewed with Senator Padilla's staff. On August 17, 2021, I interviewed with Senator Padilla. On November 3, 2021, I interviewed with attorneys from the White House Counsel's Office. Since November 4, 2021, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On January 19, 2022, my nomination was submitted to the Senate. Following my nomination, I was in contact with lawyers from the Office of Legal Policy and the White House Counsel's Office regarding preparing for my hearing before the Senate Judiciary Committee on April 27, 2022.

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

Response: The Office of Legal Policy provided me these questions on May 4, 2022. I submitted draft responses to the Office of Legal Policy for feedback and finalized my answers for submission.

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

Questions for the Record for Ana Isabel de Alba, Nominee for the Eastern District of California

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Is racial discrimination wrong?**

   Response: Yes, various federal statutes prohibit discrimination on the basis of race and under Supreme Court precedents, any laws that involve a suspect classification like race, are subject to strict scrutiny.

2. **In 2015, you gave an interview in an article called "Ana de Alba's Homegrown Activism" in the Northern California Super Lawyers Magazine. In it, you thanked your then-employer, your law firm, for hiring "a lefty liberal from Berkeley." Would you still describe yourself as a lefty liberal from Berkeley?**

Response: The quote, "lefty-liberal from Berkeley" was meant as a reference to how the attorneys in my law firm referred to me since I had attended UC Berkeley as both an undergraduate and law student. With regard to the substance of your question, however, I have never seen myself as a "lefty liberal from Berkeley." As a judge on the Fresno Superior Court, I approach each case with no preconceived notions, listen to the arguments, and faithfully apply the law to the facts presented. If I am fortunate enough to be confirmed to California's Eastern District, I would apply that same approach to the federal cases before me.

3. **What is the proper role, if any, for weighing feelings of empathy on the basis of race or gender for a federal judge?**

Response: A judge's personal views and values have no place in the courtroom. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent irrespective of any personal views I may have regarding the issues presented.

4. **How would you characterize your judicial philosophy? Identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.**

Response: I have had the great privilege of serving the Fresno County Superior Court as a judge since 2018. In that capacity, I approach each case with no preconceived notions, listen to the facts and arguments, and faithfully apply the law to the facts presented. I also work hard to ensure that I issue prompt, impartial, and fair decisions which are consistent with any binding precedent. I have not researched the philosophies of United States Supreme Court Justices and as such, I cannot speak to which is most analogous to mine.

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

Response: Black's Law Dictionary defines originalism as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." Originalism, *Black's Law Dictionary* (11th ed. 2019). Analyzing the original public meaning of a constitutional provision is one method of interpretation that the United States Supreme Court has used. If, as a district court judge, I were presented with a constitutional issue of first impression, I would look to the methods of interpretation the United States Supreme Court or Ninth Circuit have evaluated that would be most

analogous to the issue presented. If those courts used the original public meaning in the analogous decision, I would follow their lead.

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

Response: My understanding of "living constitution" derives from the 11th edition of Black's Law Dictionary which defines it as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Living Constitution, *Black's Law Dictionary* (11th ed. 2019). Analyzing a constitutional provision through the living constitutionalist interpretive method is one manner that the United States Supreme Court has used. If, as a district court judge, I were presented with a constitutional issue of first impression, I would look to the methods of interpretation the United States Supreme Court or Ninth Circuit have evaluated that would be most analogous to the issue presented. If those courts used the living constitutionalist interpretive method in the analogous decision, I would follow their lead.

7. **If you were to be presented with a constitutional issue of first impression— that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?**

Response: If, as a district court judge, I were presented with a constitutional issue of first impression, I would look to the methods of interpretation used by the United States Supreme Court or Ninth Circuit that would be most analogous to the issue presented. If those courts evaluated the original public meaning in the analogous decision, I would follow their lead.

8. **Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?**

Response: As an example, there have been occasions when the Supreme Court has looked to the evolving standards of decency to determine the meaning the Constitution. *See Trop v. Dulles*, 356 U.S. 86, 101 (1958) (finding that the Eighth Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society"). If I were fortunate enough to be confirmed to California's Eastern District, I would interpret the provision or text in a manner consistent with the methods of interpretation the Supreme Court and the Ninth Circuit have used. If it is an issue of first impression, I would look to methods of interpretation regarding statutes or provisions that were most analogous to the one at issue in the case before me.

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

Response: The Constitution is an enduring document that serves as the foundation of our country's jurisprudence. I do not believe that the meaning of the Constitution changes over time, but interpreting the meaning of the Constitution is a job for the United States Supreme Court. If, as a district court judge, I were presented with a constitutional issue of first impression, I would look to the methods of interpretation used by the United States Supreme Court or Ninth Circuit that would be most analogous to the issue presented.

10. **Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor or small businesses operated by observant owners?**

Response: Yes, the United States Supreme Court has placed limits on what a government may impose upon, or require of, private institutions as it relates to religion.

The right to freely exercise the religion of one's choice is a fundamental right in our society protected by the First Amendment of the United States Constitution. In addition, the Religious Freedom Restoration Act ("RFRA") of 1993, provides additional protection of exercise of religion at a federal level.

For example, relying on RFRA, the United States Supreme Court held that "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." *Burwell v. Hobby Lobby*, 573 U.S. 682, 694 (2014). It further noted that if the "[g]overnment substantially burdens a person's exercise of religion, under the Act that person is entitled to an exemption from the rule unless the Government 'demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'" *Id.* at 694-95 (2014). RFRA, therefore, requires that the federal government meet strict scrutiny standards even if a law is of general applicability.

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

Response: The United States Supreme Court has held that if the government discriminates against religion, it triggers strict scrutiny. In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the United States Supreme Court found that the Ninth Circuit's failure to grant an injunction was erroneous because the court had previously made it clear that any government regulation is not considered neutral and generally applicable if it treats a comparable secular activity more favorably than a religious one. *Id.* at 1296. As the law in question was neither neutral nor generally applicable, it triggered strict scrutiny analysis. *Id.* Additionally, to determine whether activities are "comparable" for this

purpose, the Supreme Court held that they must be judged "against the asserted government interest that justifies the regulation at issue." *Id.* Finally, it is the government who bears the burden to establish that the challenged law satisfies strict scrutiny. *Id.*

In *Masterpiece Cakeshop v. Colorado Civil Rights Commission,* 138 S. Ct. 1719 (2018), the Colorado Civil Rights Commission issued a cease-and-desist order to petitioners, Masterpiece Cakeshop and its owner, Jack Phillips, when petitioners refused to sell a wedding cake to a same sex couple citing that such refusal violated Colorado's Anti-Discrimination Act. *Id.* at 1720. In finding in petitioners' favor, the United States Supreme Court cited its holding in *Church of Lukumi Babalu Aye, supra*, "that the government, if it is to respect the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices. The Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion." *Id*. at 1731.

12. **In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues sued to block enforcement of an executive order restricting capacity at worship services within certain zones, while certain secular businesses were permitted to remain open and subjected to different restrictions in those same zones. The religious organizations claimed that this order violated their First Amendment right to free exercise of religion. Explain the U.S. Supreme Court's holding on whether the religious entity-applicants were entitled to a preliminary injunction.**

Response: Applicants, Roman Catholic Diocese of Brooklyn and Agudath Israel of America, applied to the United States Supreme Court for injunctive relief related to the enforcement of Executive Order 202.68's 10- and 25-person occupancy limits. *Roman Catholic Diocese of Brooklyn v. Cuomo,* 141 S. Ct. 63, 65 (2020). To succeed, the applicants must demonstrate: (1) likelihood of success on the merits; (2) irreparable harm; and (3) public interest necessitates that the court grant the application. *Id*. at 66-68. The Supreme Court held that the applicants were able to demonstrate all three elements. *Id.* As it relates to the likelihood of success on the merits, "the applicants have made a strong showing that the challenged restrictions violate 'the minimum requirement of neutrality' to religion." *Id.* quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (1993). Quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976), the Supreme Court held that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* at 67. Finally, in finding that public interest necessitates that the Supreme Court grant the application, they noted that "the State has not claimed that attendance at the applicants' services has resulted in the spread of the disease" nor has it "shown that public health would be imperiled if less restrictive measures were imposed." *Id.* at 68.

13. **Please explain the Supreme Court's holding and rationale in *Tandon v. Newsom*.**

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) the United States Supreme Court found that the Ninth Circuit's failure to grant an injunction was erroneous because the court had previously made it clear that any government regulation is not considered neutral and generally applicable if it treats a comparable secular activity more favorably than a religious one. *Id.* at 1296. As the law in question was neither neutral nor generally applicable, it triggered strict scrutiny analysis. *Id.* Additionally, to determine whether activities are "comparable" for this purpose, the Supreme Court held that they must be judged "against the asserted government interest that justifies the regulation at issue." *Id.* Finally, it is the government who bears the burden to establish that the challenged law satisfies strict scrutiny. *Id.*

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

Response: Yes.

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

Response: The Colorado Civil Rights Commission issued a cease-and-desist order to petitioners, Masterpiece Cakeshop and its owner, Jack Phillips, when petitioners refused to sell a wedding cake to a same sex couple citing that such refusal violated Colorado's Anti-Discrimination Act. *Masterpiece Cakeshop v. Colorado Civil Rights Commission,* 138 S. Ct. 1719, 1720 (2018). In finding in petitioners' favor, the United States Supreme Court cited its holding in *Church of Lukumi Babalu Aye, supra*, "that the government, if it is to respect the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices. The Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion." *Id*. at 1731.

16. **Under existing doctrine, are an individual's religious beliefs protected if they are contrary to the teaching of the faith tradition to which they belong?**

Response: Yes. In *Frazee v. Illinois Dep't of Emp. Sec*., 489 U.S. 829 (1989), the United States Supreme Court found that "[o]nly beliefs rooted in religion are protected by the Free Exercise Clause." *Id.* The Ninth Circuit in *Callahan v. Woods*, 658 F.2d 679 (9th Cir. 1981) required that "the claimant's proffered belief must be sincerely held; the First Amendment does not extend to 'so-called religions which ... are obviously shams and absurdities and whose members are patently devoid of religious sincerity.'" *Id.* at 683, citing *Theriault v. Carlson*, 495 F.2d 390, 395 (5th Cir. 1974), *cert. denied*, 419 U.S. 1003 (1974); see *Stevens v. Berger*, 428 F. Supp. 896, 899 (E.D.N.Y. 1977). Additionally, to

qualify for the protections of the Free Exercise Clause, claimants do not need to prove that they are "responding to the commands of a particular religious organization." 489 U.S. at 834.

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

Response: The major prohibition given is that purely secular beliefs do not qualify for Free Exercise Clause protections. In *Frazee v. Illinois Dep't of Emp. Sec*., 489 U.S. 829 (1989), the United States Supreme Court found that "[o]nly beliefs rooted in religion are protected by the Free Exercise Clause." *Id.* It also noted that to fall under Free Exercise Clause protections, appellants do not need to prove that they are "responding to the commands of a particular religious organization." *Id.* at 834.

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

Response: Please see response to Question 16 and 16 a.

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

Response: It is my general understanding that the Catholic Church opposes abortion.

17. **In *Our Lady of Guadalupe School v. Morrissey-Berru*, the U.S. Supreme Court reversed the Ninth Circuit and held that the First Amendment's Religion Clauses foreclose the adjudication of employment-discrimination claims for the Catholic school teachers in the case. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the United States Supreme Court reversed the Ninth Circuit's finding that the two religious schools in question were not subject to the ministerial exception as it related to their employment decisions to terminate two teachers who brought employment discrimination cases. In reversing the Ninth Circuit, the United States Supreme Court held that what was important was whether the employee in question was performing "vital religious duties" and not whether they held the title of "minister." *Id*. at 2066. By so doing, the Court gave a more thorough explanation of its holding in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC,* 565 U.S. 171 (2012), where it also articulated the "ministerial exception."

18. **In *Fulton v. City of Philadelphia*, the U.S. Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide**

foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Explain the Court's holding in the case.

Response: In finding that Philadelphia's refusal to contract with Catholic Social Services to provide foster care unless it agreed to certify same-sex couples, the United States Supreme Court held that "[t]he City's actions burdened CSS's religious exercise by forcing it either to curtail its mission or to certify same-sex couples as foster parents in violation of its religious beliefs." *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1871 (2021). It found that the City's actions were neither of general application nor neutral and as such, were subject to strict scrutiny analysis. *Id.* It further found that the actions did not survive strict scrutiny because "here, the City does not have a compelling interest in refusing to contract with CSS. CSS seeks only an accommodation that will allow it to continue serving the children of Philadelphia in a manner consistent with its religious beliefs; it does not seek to impose those beliefs on anyone else." *Id.* at 1882.

19. **Explain your understanding of Justice Gorsuch's concurrence in the Supreme Court's decision to grant certiorari and vacate the lower court's decision in *Mast v. Fillmore County*.**

Response: In *Mast v. Fillmore Cty., Minnesota*, 141 S. Ct. 2430 (2021), Justice Gorsuch outlined the state of the law as it related to the reach of the Religious Land Use and Institutionalized Person's Act ("RLUIPA") which prohibits the infringement of sincerely held religious beliefs except when the government can survive strict scrutiny. Of particular concern to Justice Gorsuch was the length of time this matter has taken to litigate as well as the attacks the Amish have sustained regarding their sincerely held religious beliefs.

20. **Would it be appropriate for the court to provide its employees trainings which include the following:**

a. **One race or sex is inherently superior to another race or sex;**

Response: I am not familiar with any such training being provided to court employees.

b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

Response: I am not familiar with any such training being provided to court employees.

c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

Response: I am not familiar with any such training being provided to court employees.

d. **Meritocracy or related values such as work ethic are racist or sexist?**

Response: I am not familiar with any such training being provided to court employees.

21. **Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?**

Response: I am not familiar with any such training being provided to court employees and am not aware of whether, if I am confirmed as a federal judge, I would have any role regarding such trainings.

22. **Will you commit that you will not engage in racial discrimination when selecting and hiring law clerks and other staff, should you be confirmed?**

Response: Yes.

23. **Is the criminal justice system systemically racist?**

Response: I believe that questions related to the overall operation of the criminal justice system are important issues for policymakers. If confirmed as a federal district court judge, in any case that came before me, I would strive to treat every litigant fairly with respect and without bias just as I do today as a judge on the Fresno County Superior Court.

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

Response: As a sitting judge and judicial nominee, it would be inappropriate for me to comment on this question because cases where individuals bring claims of employment discrimination based on race or sex could come before me. If faced with such a case, I would address it as I do all other cases before me by thoroughly researching the issues, listening to the arguments and facts presented, and strictly applying the law to the facts consistent with any binding precedent.

25. **Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: I believe that questions related to the size of the Supreme Court are best left for policymakers. I am bound by United States Supreme Court precedent regardless of the size or composition of the Court.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court held that "[t]here seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." *Id*. at 595. It further held that this right, like First Amendment rights, is not unlimited. *Id*. This right is applied to the states in *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

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

Response: The United States Supreme Court articulated the various legal standards that lower courts must apply to a regulation or proposed legislation that infringes upon the Second Amendment. In *District of Columbia v. Heller,* 554 U.S. 570 (2008), the Supreme Court held that the right to bear arms is an individual right and in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), held that that right applies to the states. In *Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021), the Ninth Circuit held that to determine whether a regulation or legislation infringes on Second Amendment rights, one must first determine "if the challenged law affects conduct that is protected by the Second Amendment." *Id*. at 783. If it does, then one must determine the appropriate level of scrutiny that the government action must survive in order to be Constitutional. Under *Young*, *supra*, the Ninth Circuit noted, "[w]e have understood *Heller* to require one of three levels of scrutiny: If a regulation 'amounts to a destruction of the Second Amendment right,' it is unconstitutional under any level of scrutiny; a law that 'implicates the core of the Second Amendment right and severely burdens that right' receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny. *Id*. at 784. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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

Response: No, please see response to Question 27.

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

Response: Under Article II, Section 3 of the United States Constitution, the president "shall take Care that the Laws be faithfully executed." In *United States v. Nixon*, 418 U.S. 683 (1974) the United States Supreme Court found that "the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case." *Id.* at 693.

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

Response: Review of current caselaw demonstrates that this area of law is not yet well settled. In *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979), the United States Supreme Court held that in order for a regulation to amount to a substantive administrative rule change, it has to have the "force and effect of law;" must be a "substantive" or "legislative-type" rule affecting individual rights and obligations; must be a product of a congressional grant of legislative authority; and promulgated in conformity with any procedural requirements imposed by Congress. *Id.* at 282. As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to comment on the correctness of any United States Supreme Court decision. I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3. Both require that a judge not make public comments on the merits of a matter pending or impending in any court.

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

Response: No, Congress established the death penalty pursuant to the Federal Death Penalty Act of 1994 at 18 U.S.C. § 3591(a). As Congress established it within its Article I powers, the President does not have the authority to unilaterally abolish it.

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

Response: In *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.,* 141 S. Ct. 2485 (2021), associations of real estate agents and property managers challenged a nationwide eviction moratorium for rental properties. *Id.* The Centers for Disease Control and Prevention ("CDC") imposed this moratorium in response to the COVID-19 pandemic. *Id.* at 2487. The associations requested an expedited summary judgment motion which the district court granted, but stayed pursuant to the CDC's request pending appeal. *Id.* The associations applied to vacate the stay and the United States Supreme Court ruled in their favor finding (1) they had a likelihood of success on the merits; and (2) that equities would not justify depriving the association of the District Court's judgment granting summary judgment because irreparable harm could happen to the

millions of landlords affected. *Id.* at 2489. The court found that the scope of CDC's claimed authority exceeded what the regulation actually provided for because the moratorium was an indirect attempt at decreasing transmission while the regulations itself dealt with more directly avoiding the spread of the virus. *Id.* at 2488 and see 86 Fed. Reg. 43248–43249.

Senator Josh Hawley
Questions for the Record

Ana de Alba
Nominee, U.S. District Court for the Eastern District of California

1. **Justice 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: I am not familiar with the full context of Justice Marshall's quote, but as it relates to whether I would allow my personal beliefs to impact my decision making, I do not agree with it.

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

    Response: Canon 2 of the Code of Conduct for United States Judges requires judges to "respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to the Code of Conduct and any applicable Supreme Court and Ninth Circuit precedent.

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

Response: Pullman Abstention. In *R.R. Comm'n of Tex. v. Pullman Co*., 312 U.S. 496 (1941), the United States Supreme Court held that abstention is appropriate where the constitutional issue "touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open. Such constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy." *Id.* at 498.

Younger Abstention. In *Younger v. Harris*, 401 U.S. 37 (1971) the United States Supreme Court held that abstention is appropriate where there is an ongoing state criminal proceeding. *Id.* at 44. This was given greater clarity in *Sprint Communications, Inc. v. Jacobs,* 571 U.S. 69 (2013), where the United States Supreme Court held that *Younger* abstention applied to the following three categories of state proceedings: (1) "ongoing state criminal prosecutions"; (2) "certain 'civil enforcement proceedings;'" and (3) "'civil proceedings involving certain orders ... uniquely in furtherance of the state

courts' ability to perform their judicial functions.'" *Id*. at 78 (quoting *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 368 (1989).)

Burford Abstention. In *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), the United States Supreme Court held that a federal court with jurisdiction may nonetheless refuse to hear a case if doing so would be prejudicial to the public interest. Specifically, the court held that it "is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy." *Id.* at 317–18.

Colorado River Abstention. In *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), the United States Supreme Court held that a federal court may stay or dismiss a federal action in deference to a pending parallel state court proceeding, but only if certain exceptional circumstances exist. *Id.* at 817. Citing *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185 (1959), the Court held that such exceptional circumstances exist "where the order to the parties to repair to the state court would clearly serve an important countervailing interest." *Id.* at 188-89. The Court further noted that this was done in acknowledgment of "(w)ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Id.*

Thibodaux Abstention. In *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959) the United States Supreme Court held that federal courts should abstain from hearing a case when jurisdiction is based solely on diversity, the crux of the case deals with an unsettled question of state law, and it is of such importance as to implicate important state interests. *Id.* at 30-31.

Rooker-Feldman Abstention Doctrine. The *Rooker-Feldman* abstention doctrine is based upon the United States Supreme Court holdings in *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923) and *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983). In essence, this abstention doctrine bars subject matter jurisdiction in federal district court where the losing party in a state court proceeding seeks review of an allegedly erroneous decision made by a state court. This doctrine consists of two steps. The first requires a court to determine if one of the claims in the federal case is "a forbidden de facto appeal of a state court decision." The second step requires a finding that if one of the claims does constitute a de facto appeal, the claim constituting that appeal is barred as is any claim "'inextricably intertwined' with the state court judicial decision." *Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013).

Wilton/Brillhart Abstention Doctrine. In *Brillhart v. Excess Insurance Co. of America*, 316 U.S. 491 (1942), the United States Supreme Court held that "a district court has discretion to dismiss a federal declaratory judgment action when 'the questions in controversy ... can better be settled in a pending state court proceeding.'" *Id*. at 495. In *Wilton v. Seven Falls Co.,* 515 U.S. 277, 289–90 (1995) the United

States Supreme Court held that "when state court proceedings 'present [ ] opportunity for ventilation of the same state law issues," a district court may decline to hear a federal declaratory judgment action. 515 U.S. at 290.

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

   Response: No.

   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: Not applicable.

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

   Response: Black's Law Dictionary defines originalism as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." Originalism, *Black's Law Dictionary* (11th ed. 2019). Analyzing the original public meaning of a constitutional provision is one method of interpretation that the United States Supreme Court has used. If, as a district court judge, I were presented with a constitutional issue of first impression, I would look to the methods of interpretation the United States Supreme Court or Ninth Circuit have evaluated that would be most analogous to the issue presented. If those courts used the original public meaning in the analogous decision, I would follow their lead.

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

   Response: In *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546 (2005) the United States Supreme Court held that legislative history should only be considered if the statutory text is ambiguous. *Id.* at 569-69. As such, I only consider legislative history if the statutory text is ambiguous and the ambiguity has not been otherwise clarified by a binding precedent.

   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: In *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546 (2005), the United States Supreme Court noted that "[n]ot all extrinsic materials are reliable sources of insight into legislative understandings, however, and legislative history in particular is vulnerable to two serious

criticisms." *Id*. at 568. The first is that "legislative history is itself often murky, ambiguous, and contradictory" and the second is that reliance on committee reports may give unrepresented committee members the incentive to manipulate legislative history since they are not subject to Article I. *Id.* Because of issues as noted above, the United States Supreme Court has treated Committee Reports on the bill as more probative than floor statements by individual legislatures. *Zuber v. Allen,* 396 U.S. 168, 186 (1969). In reviewing legislative history, I would follow their lead.

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

Response: Laws of foreign nations do not bind the United States in the interpretation of the United States Constitution. In *Trop v. Dulles*, 356 U.S. 86 (1958) and in *Roper v. Simmons,* 543 U.S. 551 (2005) the United States Supreme Court has looked to international authorities and laws of other countries "as instructive for its interpretation of the Eighth Amendment's prohibition of "'cruel and unusual punishments.'" 356 U.S. at 102–103. In so doing, the Supreme Court has always made it clear that while instructive, these foreign authorities are not binding on the United States. *Id.*

6. 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: In *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019), the United States Supreme Court held that an inmate making a constitutional challenge to a State's method of execution pursuant to the Eighth Amendment's prohibition of cruel and unusual punishments must make a showing that there is "an alternative that is feasible and readily implemented and that in fact significantly reduces a substantial risk of severe pain, which the State has refused to adopt without a legitimate penological reason." *Id.* at 1126.

7. 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.

8. **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: No, there is no recognized constitutional right to DNA analysis for habeas corpus petitioners. In *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52 (2009), a petitioner made the argument that such a right existed under substantive due process. *Id.* at 72. Citing *Collins v. Harker Heights*, 503 U.S. 115, 125, (1992), the United States Supreme Court states that "[a]s a general matter, the Court has always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this unchartered area are scarce and open-ended." 557 U.S. at 72. It further noted that "[t]he mere novelty of such a claim is reason enough to doubt that 'substantive due process' sustains it." *Id.*; quoting *Reno v. Flores*, 507 U.S. 292, 303 (1993).

9. **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.

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 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: In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520 (1993), the United States Supreme Court articulated 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. The Court held that if a law that is neutral and of general applicability places an incidental burden on a particular religious practice, the government need not justify the law by a compelling government interest. *Id.* citing *Employment Div., Dept. of Human Resources of Ore. v. Smith,* 494 U.S. 872 (1990). However, if a law is neither neutral nor of general applicability then strict scrutiny applies and the government must show that it has both a compelling governmental interest and that the law is narrowly tailored to meet that interest. *Id.* at 531-532. The Supreme Court has further articulated this standard in more recent cases. In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Court held that a government regulation is not considered neutral and generally applicable if it treats a comparable secular activity more favorably than a religious one. *Id.* at 1296. In *Masterpiece Cakeshop v. Colorado Civil*

Rights Commission, 138 S. Ct. 1719 (2018), the Supreme Court noted that "[t]he Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion." *Id*. at 1731. Additionally, in *Roman Catholic Diocese of Brooklyn v. Cuomo,* 141 S. Ct. 63 (2020), where the government sought to impose occupancy limits which impacted religious services, the United States Supreme Court recognized that that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," when it found that the church and synagogue were eligible for injunctive relief. *Id.* at 67. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent on this issue.

11. 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.

Response: Please see response to Question 10. Additionally, the Religious Land Use and Institutionalized Person's Act prohibits the government from imposing substantial burdens on religious exercise in specific circumstances related to land use and prisoners. Religious Land Use and Institutionalized Persons Act of 2000, § 2(2)(A), (B), 42 U.S.C.A. § 2000cc(2)(A), (B).

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: In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Court stated that in the context of determining whether a person's religious belief is held sincerely, the Court's "narrow function ... in this context is to determine" whether the line drawn reflects "an honest conviction," *Id.* at 725. In *Frazee v. Illinois Dep't of Emp. Sec*., 489 U.S. 829 (1989), the United States Supreme Court found that "[o]nly beliefs rooted in religion are protected by the Free Exercise Clause." *Id.* The Ninth Circuit in *Callahan v. Woods*, 658 F.2d 679 (9th Cir. 1981) required that "the claimant's proffered belief must be sincerely held; the First Amendment does not extend to 'so-called religions which ... are obviously shams and absurdities and whose members are patently devoid of religious sincerity.'" *Id.* at 683, citing *Theriault v. Carlson*, 495 F.2d 390, 395 (5th Cir. 1974); *see Stevens v. Berger*, 428 F. Supp. 896, 899 (E.D.N.Y. 1977). Additionally, to qualify for the protections of the Free Exercise Clause, claimants do not need to prove that they are "responding to the commands of a particular religious organization." 489 U.S. at 834.

13. 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 *D.C. v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court held that the right to keep and bear arms is an individual right, and that individuals have a right to have a lawful and operational firearm in their home. *Id.* at 595 & 635. The Supreme Court held that the right was not unlimited. For example, it did not call into question long standing prohibitions on the possession of firearms by felons. *Id.* at 627.

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: Yes. *People v. Duarte*, No. M18929466 (Fresno Cty. Sup. Ct.) There is no written opinion in this case, however, I ruled from the bench that California has the right to accept or reject another state's concealed carry weapons permit and that legislation regulating weapons does not, per se, violate the Second Amendment.

14. 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: In *Lochner v. New York*, 198 U.S. 45 (1905), the United States Supreme Court found a labor law that forbade bakers from working more than 60 hours per week or 10 hours per day unconstitutional. *Id.* In finding the law unconstitutional, the Court held "the general right to make a contract in relation to his business is part of the liberty of the individual protected by the 14th Amendment of the Federal Constitution." *Id.* at 53, citing *Allgeyer v. Louisiana*, 165 U.S. 578 (1897). Regarding Justice Holmes' statement, given the context, it appears to support the theory that "the Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of laissez faire." *Id.* at 75. In

other words, simply because a Justice may personally disagree with it, is insufficient to find it unlawful.

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

Response: As this Supreme Court noted in *Ferguson v. Skrupa*, 372 U.S. 726 (1963) states "'have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law.'" *Id.* at 730-731. As *Lochner* is no longer binding precedent, I would not apply it if I am so fortunate to be confirmed to California's Eastern District.

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

Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be generally inappropriate for me to comment on the correctness of any United States Supreme Court decision. I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3 which require that a judge not make public comments on the merits of a matter pending or impending in any court. If I am confirmed as a District Court Judge, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

a. If so, what are they?

Response: Please see response to Question 15.

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

Response: If I am confirmed as a District Court Judge, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

16. 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: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would generally be inappropriate for me to comment on the correctness of any United States Supreme Court decision. I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3, which require that a judge not make public comments on the merits of a matter pending or impending in any court. If I am confirmed as a District Court Judge, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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

Response: Please see response to Question 16a.

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: In *Image Tech. Servs., Inc. v. Eastman Kodak Co.*, 125 F.3d 1195, 1206 (9th Cir. 1997), the Ninth Circuit, interpreting the Supreme Court in *American Tobacco Co. v. United States,* 328 U.S. 781, 797 (1946) held that "[c]ourts generally require a 65% market share to establish a prima facie case of market power." *Id.* at 1206

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

Response: Federal common law refers to law that has resulted from decisions by federal courts. Prior to *Erie v. Tompkins*, 304 U.S. 64 (1938), all cases in federal court based on diversity jurisdiction were to be decided using federal common law. The Supreme Court in *Erie* changed that, finding that "there is no federal general common law" in diversity cases and instead, federal courts were to apply state substantive law where appropriate. *Id.* at 78.

18. 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: If I were confirmed as a federal judge in the Eastern District of California and had to determine the scope of a state constitutional right, I would look to state law. This is supported by the Supreme Court's holding in *Erie v. Tompkins*, 304 U.S. 64 (1938) which held that "[e]xcept in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And

whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern." *Id.* at 78.

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

Response: Please see response to Question 18.

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

Response: Since the United States Constitution is the "Supreme law of the land," state constitutional provisions may provide greater, but not lesser, protections than the United States Constitution. U.S. Const. art. VI, c. 2.

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

Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be generally inappropriate for me to comment on the correctness of any United States Supreme Court decision. I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3, which require that a judge not make public comments on the merits of a matter pending or impending in any court. In light of the fact that the holding in this case is not likely to be relitigated, I can state that I believe the United States Supreme Court correctly decided it.

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

Response: Yes.

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

Response: Federal Rule of Civil Procedure 65 governs injunctions and does not limit a court's ability to issue injunctions that impact nonparties. In *California v. Azar*, 911 F.3d 558 (9th Cir. 2018), the Ninth Circuit held that "[a]lthough 'there is no bar against ... nationwide relief in federal district court or circuit court," such broad relief must be "necessary to give prevailing parties the relief to which they are entitled." *Id.* at 582, quoting *Bresgal v. Brock*, 843 F.2d 1163, 1170–71 (9th Cir. 1987). However, in *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010), the Supreme Court further cautioned that "an injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Id.* at 165.

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

Response: Please see response to Question 20 a.

21. 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: Please see response to Question 20 a.

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

Response: Federalism plays a vital role in our constitutional system as it is the distribution of power between the federal and state governments. As noted by the Supreme Court in *Gregory v. Ashcroft*, 501 U.S. 452 (1991):

> [i]t assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry.

Id. at 458*, see generally* McConnell, Federalism: Evaluating the Founders' Design, 54 U. Chi. L. Rev. 1484, 1491–1511 (1987); Merritt, The Guarantee Clause and State Autonomy: Federalism for a Third Century, 88 Colum. L. Rev. 1, 3–10 (1988). Another major role of federalism in our constitutional system is that "[t]he 'constitutionally mandated balance of power' between the States and the Federal Government was adopted by the Framers to ensure the protection of 'our fundamental liberties.'" *Id.* at 458 citing *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985), quoting *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 572 (1985).

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

Response: Please see response to Question 2.

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

Response: My view on the relative advantages and disadvantages of awarding damages (usually done in the form of monetary relief) and injunctions (usually done in the form of a court order to stop certain behavior) depends on the facts of each case. What would also instruct my view is the Supreme Court's holding in *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010), that "an injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Id.* at 165.

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

Response: The due process clause is found in the 5th and 14th amendments of the United States Constitution. The due process clause relates to the fairness of the procedure used to deprive a person of life, liberty, or property. The Supreme Court has held that the due process clause also protects against certain substantive fundamental rights and liberty interests regardless of the fairness of the procedure used to deprive that person of that liberty. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court noted that their analysis regarding substantive due process has two primary features. *Id.* at 720-21. First, the asserted right must be deeply rooted in the nation's history and tradition such that "neither liberty nor justice would exist if they were sacrificed," and second, the asserted right must be carefully described and defined. *Id*. If the government seeks to infringe on a fundamental liberty interest, the infringement must be narrowly tailored to serve a compelling state interest. *Id.* at 721.

26. 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 right to freely exercise the religion of one's choice is a fundamental right in our society protected for the First Amendment of the United States Constitution. In addition, the Religious Freedom Restoration Act ("RFRA") of 1993, provides additional protection of exercise of religion at a federal level.

For example, relying on RFRA, the United States Supreme Court held that "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." *Burwell v. Hobby Lobby*, 573 U.S. 682, 694 (2014). It further noted that if the "[g]overnment

substantially burdens a person's exercise of religion, under the Act that person is entitled to an exemption from the rule unless the Government 'demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'" *Id*. at 694-95 (2014). RFRA, therefore, requires that the federal government meet strict scrutiny standards even if a law is of general applicability.

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

Response: Yes. In *Wallace v. Jaffree,* 472 U.S. 38 (1985), the United States Supreme Court acknowledged that the First Amendment protects the "freedom to believe, to worship, and to express himself in accordance with the dictates of his own conscience." *Id.* at 49.

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: If the governmental action in question was taken by the federal government, which is subject to RFRA, I would look to that statute and precedents interpreting it for guidance. For example, in *Burwell v. Hobby Lobby,* 573 U.S. 682 (2014), the United States Supreme Court made a case specific determination that as it related to the facts therein, the burden was deemed substantial because the respondents were having to face the choice between having to "engage in conduct that seriously violates their religious beliefs" or face severe economic consequences for noncompliance. *Id.* at 691.

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: In *Frazee v. Illinois Dep't of Emp. Sec*., 489 U.S. 829 (1989), the United States Supreme Court found that "[o]nly beliefs rooted in religion are protected by the Free Exercise Clause." *Id.* The Ninth Circuit in *Callahan v. Woods*, 658 F.2d 679 (9th Cir. 1981) required that "the claimant's proffered belief must be sincerely held; the First Amendment does not extend to 'so-called religions which ... are obviously shams and absurdities and whose members are patently devoid of religious sincerity.'" *Id.* at 683, citing *Theriault v. Carlson*, 495 F.2d 390, 395 (5th Cir. 1974); see *Stevens v. Berger*, 428 F. Supp. 896, 899 (E.D.N.Y. 1977). Additionally, to qualify for

the protections of the Free Exercise Clause, claimants do not need to prove that they are "responding to the commands of a particular religious organization." 489 U.S. at 834.

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: By its own language, the Religious Freedom and Restoration Act of 1993 (RFRA) "applies to all Federal law, and the implementation of that law, whether statutory or otherwise." 42 U.S.C. § 2000bb-3(a). RFRA requires that the government demonstrate a compelling governmental interest and the least restrictive means of achieving that interest, when a person's free exercise is burdened even if burdened by a law of general applicability. *Burwell v. Hobby Lobby,* 573 U.S. 682 (2014). In *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012), the Supreme Court noted that the Free Exercise Clause protects a religious group's right to shape its own faith and mission through its appointments. *Id.* at 188-89. It also found that "according the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions." *Id.* In *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court held that what was important was whether the employee in question was performing "vital religious duties" and not whether they held the title of "minister." *Id*. at 2066. By so doing, the Court gave a more thorough explanation of its holding in *Hosanna-Tabor Evangelical Lutheran Church & School, supra,* where it also articulated the "ministerial exception."

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.

27. 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: Judges are not supposed to take their personal opinions into account when presiding over a case. Instead, a judge's job is to listen to facts and arguments, research any relevant law, apply the facts to the law, and adhere to any binding precedent. Although I do not know the context of this quote, it implies that the type of judge who always likes the results they reach is one that is allowing their personal opinions and beliefs to impact their decision making.

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

Response: No.

a. If yes, please provide appropriate citations.

Response: Not applicable.

29. 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.

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

Response: I believe that questions related to the overall operation of the criminal justice system are important issues for policymakers. If confirmed as a federal district court judge, in any case that came before me I would strive to treat every litigant fairly with respect and without bias just as I do today as a judge on the Fresno County Superior Court.

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

Response: No.

32. How did you handle the situation?

Response: Not applicable.

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

Response: Yes.

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

Response: I have not read the Federalist Papers and therefore, they have not shaped my views of the law.

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

Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3, which require that a judge not make public comments on the merits of a matter pending or impending in any court. As this may one day be litigated in court and as my personal beliefs do not play a role in my decision-making, it would be inappropriate and irrelevant for me to opine on this issue. I will, however, agree to follow Federal Rule of Evidence 702, and adhere to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992) and any other United States Supreme Court and Ninth Circuit Court precedent as it relates to the admissibility of any expert testimony on this issue should it come before my court.

36. 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: No.

37. 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.

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

Response: I have a SavingsPlus Target Date Fund 2040 account which is made up of seven major asset classes including U.S. Large Cap Stocks, U.S. Mid Cap Stocks, U.S. Small Cap Stocks, International Stocks, Bonds, Short Term Investments, and Diversified Real Return strategies. Although I am unable to select the specific companies where funds are allocated, it is my understanding that some of the funds are allocated in each of the companies listed below.

a. Apple?

Response: Please see response to Question 38.

b. Amazon?

Response: Please see response to Question 38.

c. Google?

Response: Please see response to Question 38.

d. Facebook?

Response: Please see response to Question 38.

e. Twitter?

Response: Please see response to Question 38.

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

Response: Not that I recall.

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

Response: Please see response to Question 39.

40. Have you ever confessed error to a court?

Response: No.

a. If so, please describe the circumstances.

Response: Not applicable.

41. 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: I understand that I am responsible for answering all of these questions honestly and fully and have done so to the best of my recollection.

Questions for the Record for Ana Isabel de Alba
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 Mike Lee
Questions for the Record
Ana de Alba, Nominee to the United States District Court for the Eastern District of California

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

Response: I have had the great privilege of serving the Fresno County Superior Court as a judge since 2018. In that capacity, I approach each case with no preconceived notions, listen to the facts and arguments, and faithfully apply the law to the facts presented. I also work hard to ensure that I issue prompt, impartial, and fair decisions which are consistent with any binding precedent. If I am fortunate enough to be confirmed to California's Eastern District, I would continue to approach cases in this manner.

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

Response: I would look to see if the United States Supreme Court or the Ninth Circuit have issued binding precedent related to the interpretation of that statute. If not, I would then look at the language of the federal statute itself. If it is clear, then I would interpret it as it is stated. If the statute is ambiguous, I would look to any statutory definitions and canons of construction as well as any non-binding, but persuasive, precedent related to the provisions by other federal courts. If the statute's interpretation was still ambiguous, I would look to legislative history, but with Supreme Court's caution in *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546 (2005) that "[n]ot all extrinsic materials are reliable sources of insight into legislative understandings, however, and legislative history in particular is vulnerable to two serious criticisms." *Id*. at 568. The first is that "legislative history is itself often murky, ambiguous, and contradictory" and the second is that reliance on committee reports may give unrepresented committee members the incentive to manipulate legislative history since they are not subject to Article I. *Id.* Because of issues as noted above, the United States Supreme Court has treated Committee Reports on the bill as more probative than floor statements by individual legislatures. *Zuber v. Allen,* 396 U.S. 168, 186 (1969). I would follow their lead and do the same.

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

Response: I would first look to see if the United States Supreme Court or the Ninth Circuit have issued binding precedent related to the interpretation of that provision. If, as a district court judge, I were presented with a constitutional issue of first impression, I would look to the methods of interpretation the United States Supreme Court or Ninth Circuit have used that would be most analogous to the issue presented.

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

Response: Black's Law Dictionary defines originalism as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." Originalism, *Black's Law Dictionary* (11th ed. 2019). Analyzing the original public meaning of a constitutional provision is one method of interpretation that the United States Supreme Court has used. If, as a district court judge, I were presented with a constitutional issue of first impression, I would look to the methods of interpretation the United States Supreme Court or Ninth Circuit have evaluated that would be most analogous to the issue presented. If those courts used the original public meaning in the analogous decision, I would follow their lead.

5. **How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: In *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731 (2020), the Supreme Court stated that it "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President. If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people's representatives." *Id*. at 1738. If I am confirmed as a District Court Judge, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent regarding this issue.

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

      Response: Please see responses to Question 5.

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

Response: In *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), the Supreme Court held that, to satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* at 560-561.

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

Response: Yes, in *M'Culloch v. State*, 17 U.S. 316 (1819), the United States Supreme Court held that "[e]ven without the aid of the general clause in the constitution, empowering congress to pass all necessary and proper laws for carrying its powers into execution, the grant of powers itself necessarily implies the grant of all usual and suitable means for the execution of the powers granted." *Id.* at 323-24. The Supreme Court further noted that "[i]f the end be legitimate, and within the scope of the constitution, all the means which are appropriate, which are plainly adapted that end, and which are not prohibited, may constitutionally be employed to carry it into effect." *Id.*

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

Response: I would first look to see if the United States Supreme Court or the Ninth Circuit have issued binding precedent related to the interpretation of that provision. Without more, the failure of the law to reference a specific Constitutional enumerated power is not dispositive. The Supreme Court noted that "[i]f the end be legitimate, and within the scope of the constitution, all the means which are appropriate, which are plainly adapted that end, and which are not prohibited, may constitutionally be employed to carry it into effect." *M'Culloch v. State*, 17 U.S. 316, 323-24 (1819). If I am confirmed as a District Court Judge, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent regarding this issue.

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

Response: The due process clause is found in the 5th and 14th amendments of the United States Constitution. The due process clause relates to the fairness of the procedure used to deprive a person of life, liberty, or property. The Supreme Court has held that the due process clause also protects against certain substantive fundamental rights and liberty interests regardless of the fairness of the procedure used to deprive that person of that liberty. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court noted that their analysis regarding substantive due process has two primary features. *Id.* at 720-21. First, the asserted right must be deeply rooted in the nation's history and tradition; and second, the asserted right must be carefully described and defined. *Id*. If the government seeks to infringe on a fundamental liberty interest, the infringement must be narrowly tailored to serve a compelling state interest. *Id.* at 721.

10. **What rights are protected under substantive due process?**

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court noted that "… in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the rights to marry,

Loving v. Virginia, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, *ibid*.; *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952), and to abortion, *Casey*, *supra*. We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. *Cruzan*, 497 U.S., at 278–279." *Id.* at 720.

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

Response: The United States Supreme Court distinguished these types of rights when it abrogated *Lochner v. New York* in *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) by stating "[t]he guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community.'" *Id.* at 392. To date, the right to abortion is still binding precedent under both *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992). If I am confirmed as a District Court Judge, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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

Response: In *United States v. Lopez*, 514 U.S. 549 (1995) the United States Supreme Court identified three categories of activity that Congress may regulate subject to the Commerce Clause. *Id.* at 558-59 citing *Perez v. United States*, 402 U.S. 146, 150 (1971); *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc*., 452 U.S. 264, 276-77 (1981). These include: (1) use of the channels of interstate commerce (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities;" and (3) activities that are substantially related to interstate commerce. *Id.* at 558-59. If regulation does not fit within any of the above three categories, the Supreme Court is likely to find that Congress has exceeded its authority under the Commerce Clause.

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

Response: Race, religion, national origin, and alienage are considered "suspect classes." *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Graham v. Richardson*, 403 U.S. 365, 372 (1971). Specifically, the United States Supreme Court has defined a suspect class as having an "immutable characteristic determined solely by the accident of birth." *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973). It is also described as one "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28 (1973).

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

Response: The role of checks and balances and separation of powers is one of the main tenants of our Constitution's structure. As the Supreme Court noted in *Morrison v. Olson*, 487 U.S. 654, 693 (1988) "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as 'a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.'" *Id.* at 693, quoting *Buckley v. Valeo*, 424 U.S. 1 (1976).

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

Response: I would look to the Ninth Circuit and United States Supreme Court to see if they had any relevant precedent related to whether the usurped authority was in excess of their power conferred by the Constitution. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent that would guide this analysis.

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

Response: None.

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

Response: Both of these outcomes are undesirable and if I am fortunate enough to be confirmed to California's Eastern District, I would strive daily to try to avoid either outcome.

18. **From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly**

more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not studied any trends in Supreme Court decisions so I am an unfamiliar with the issue presented in this question. As a general proposition, however, I believe that one downside to both aggressive and passive judicial review is that it begins to encroach on the separation of powers which is at the very core of our Constitution and system of government. Aggressive review may find that judges begin to encroach on the legislature's job of making law and passive review may mean that judges are not ensuring that laws do not violate the Constitution.

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

Response: In *Marbury v. Madison*, 5 U.S. 137 (1803), the United States Supreme Court established judicial review finding that the judiciary is tasked with assessing whether executive or legislative action has violated the United States Constitution. My understanding of judicial supremacy is that it refers to the idea that the United States Supreme Court gets the final say on whether something is Constitutional. The only way that the Supreme Court's finding of Constitutionality may be changed is by Constitutional amendment or the Court overturning a prior decision.

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

Response: Legislatures and judges take an oath to be bound to uphold the United States Constitution pursuant to Article VI. The United States Supreme Court has also held that legislators are required to follow its decisions. *See Cooper v. Aaron*, 358 U.S. 1 (1958). Elected officials have an obligation to pass laws that do not violate the United States Constitution and judges have to serve as a check on that power.

21. **In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.**

Response: As a judge, it is of utmost importance to understand that one's personal views and values have no place in the courtroom. I have done that in my capacity as a Superior Court judge in Fresno County and if I am fortunate enough to be

confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent irrespective of any personal views I may have regarding the issues presented.

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

Response: As a judge, it is of utmost importance to understand that one's personal views and values have no place in the courtroom. I have done that in my capacity as a Superior Court judge in Fresno County and if I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent irrespective of whether I believed that it "has questionable constitutional underpinnings." If there was no precedent on point, I would interpret the text in a manner consistent with the methods of interpretation the Supreme Court has used.

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

Response: 18 U.S.C. §3553 governs what factors a federal judge is to look to when sentencing criminal defendant. If I am fortunate enough to be confirmed to California's Eastern District, I would review and apply the sentencing factors as well as any applicable Supreme Court and Ninth Circuit precedent on that issue.

24. **The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?**

Response: I am unfamiliar with the Biden Administration's quote and I do not have a personal definition of equity. I have looked to Black's Law Dictionary which defines "equity" as "[f]airness; impartiality; evenhanded dealing." Equity, *Black's Law*

Dictionary (11th ed. 2019). Any issues related to equity are important decisions that are best left to policymakers because if I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme and Ninth Circuit precedent irrespective of any personal views I may hold.

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

Response: As I do not have a personal definition of either, I have looked to Black's Law Dictionary which defines "equity" as "[f]airness; impartiality; evenhanded dealing," and "equality" as "[t]he quality, state, or condition of being equal; esp., likeness in power or political status." Equity and Equality, *Black's Law Dictionary* (11th ed. 2019).

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

Response: I am unfamiliar with the Biden Administration's quote. Any issues related to equity are important decisions that are best left to policy makers because if I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent irrespective of any personal views I may hold.

27. **How do you define "systemic racism?"**

Response: I do not have a definition of "systemic racism." I believe that questions related to "systemic racism" are important issues for policymakers. If faced with a case where the question of whether a particular set of facts constituted discrimination on the basis of race in violation of the United States Constitution or federal or state laws, I would address that case as I do all other cases before me by thoroughly researching the issues, listening to the arguments and facts presented, and strictly applying the law to the facts consistent with any binding precedent.

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

Response: Black's Law Dictionary defines "critical race theory" as a "reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities." Critical Race Theory, *Black's Law Dictionary* (11th ed. 2019).

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

Response: I would note the definitions offered in response to Questions 27 and 28.

Senator Ben Sasse
Questions for the Record for Ana Isabel de Alba
U.S. Senate Committee on the Judiciary
Hearing: "Nominations"
April 27, 2022

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

   Response: I have had the great privilege of serving the Fresno County Superior Court as a judge since 2018. In that capacity, I approach each case with no preconceived notions, listen to the facts and arguments, and faithfully apply the law to the facts presented. I also work hard to ensure that I issue prompt, impartial, and fair decisions which are consistent with any binding precedent. If I am fortunate enough to be confirmed to California's Eastern District, I would continue to approach cases in this manner.

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

   Response: Black's Law Dictionary defines originalism as "[t]he doctrine that words of a legal instrument are to be given the meanings they had when they were adopted." Originalism, *Black's Law Dictionary* (11th ed. 2019). Analyzing the original public meaning of a constitutional provision is one method of interpretation that the United States Supreme Court has used. If, as a district court judge, I were presented with a constitutional issue of first impression, I would look to the methods of interpretation the United States Supreme Court or Ninth Circuit have evaluated that would be most analogous to the issue presented. If those courts used the original public meaning in the analogous decision, I would follow their lead.

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

   Response: Black's Law Dictionary defines textualism as "[t]he doctrine that the words of a governing text are of paramount concern and that what they fairly convey in their context is what the text means." Textualism, *Black's Law Dictionary* (11th ed. 2019). I am bound by United States Supreme Court and Ninth Circuit precedent when interpreting text, but if none exists, then plain text guides my interpretation.

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

Response: My understanding of "living constitution" derives from the 11th edition of Black's Law Dictionary which defines it as "[t]he doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Living Constitution, *Black's Law Dictionary* (11th ed. 2019). Analyzing a constitutional provision through the living constitutionalist interpretive method is one manner that the United States Supreme Court has used. If, as a district court judge, I were presented with a constitutional issue of first impression, I would look to the methods of interpretation the United States Supreme Court or Ninth Circuit have evaluated that would be most analogous to the issue presented. If those courts used the living constitutionalist interpretive method in the analogous decision, I would follow their lead.

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

Response: I have had the great privilege of serving the Fresno County Superior Court as a judge since 2018. In that capacity, I approach each case with no preconceived notions, listen to the facts and arguments, and faithfully apply the law to the facts presented. I also work hard to ensure that I issue prompt, impartial, and fair decisions which are consistent with any binding precedent. I have not researched the philosophies of United States Supreme Court Justices and as such I cannot speak to which Justice I most admire.

7. **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: The Federal Rules of Appellate Procedure dictate when an appellate court may rehear a matter en banc. Fed. R. App. 35. In so doing, the rules want to assure that appellate courts are mindful that "[a]n en banc hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance." *Id.*

8. **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: Please see response to Question 7.

9. **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: Extrinsic factors such as general principles of justice have no role in statutory interpretation. Legislative history may have a limited role for reasons cautioned by the United States Supreme Court in *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S.

546 (2005). In *Exxon, supra,* the Supreme Court noted that "[n]ot all extrinsic materials history in particular is vulnerable to two serious criticisms." *Id*. at 568. The first is that "legislative history is itself often murky, ambiguous, and contradictory" and the second is that reliance on committee reports may give unrepresented committee members the incentive to manipulate legislative history since they are not subject to Article I. *Id.* Because of issues as noted above, the United States Supreme Court has treated Committee Reports on the bill as more probative than floor statements by individual legislatures. *Zuber v. Allen,* 396 U.S. 168, 186 (1969). I would follow their lead and do the same.

10. 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 governs what factors a federal judge is to look to when sentencing criminal defendants. If I am fortunate enough to be confirmed to California's Eastern District, I would review and apply the sentencing factors as well as any applicable Supreme Court and Ninth Circuit precedent on that issue.

Questions from Senator Thom Tillis
for Ana Isabel de Alba
Nominee to be US District Judge for the
Eastern District of California

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: My understanding of judicial activism is that it is a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions." Judicial Activism, *Black's Law Dictionary* (11th ed. 2019). I do not consider judicial activism appropriate because a judge's personal views and values have no place in the courtroom. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent irrespective of any personal views I may have regarding the issues presented.

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

   Response: Impartiality is an expectation.

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

   Response: No, a judge's personal views and values have no place in the courtroom. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent irrespective of any personal views I may have regarding the issues presented.

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

   Response: Yes, there will be times when applying a particular law may be undesirable given a judge's personal views and values. As a judge, I know that my personal views and values have no place in the courtroom as they have had no place in my courtroom as a Fresno County Superior Court judge for the last three and a half years. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent irrespective of any personal views I may have regarding the issues presented.

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: I would scrupulously apply binding United States Supreme Court and Ninth Circuit precedent. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the right to bear arms is an individual right and in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Court held that that right applies to the states. In *Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021), the Ninth Circuit held that to determine whether a regulation or legislation infringes on Second Amendment rights, one must first determine "if the challenged law affects conduct that is protected by the Second Amendment." *Id.* at 783. If it does, then one must determine the appropriate level of scrutiny that the government action must survive in order to be Constitutional. Under *Young, supra,* the Ninth Circuit noted, "[w]e have understood *Heller* to require one of three levels of scrutiny: If a regulation 'amounts to a destruction of the Second Amendment right,' it is unconstitutional under any level of scrutiny; a law that 'implicates the core of the Second Amendment right and severely burdens that right' receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny. *Id*. at 784.

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: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to comment on this hypothetical legal scenario. I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3, which require that a judge not make public comments on the merits of a matter pending or impending in any court. The issues or related issues raised in this hypothetical may come before me making it inappropriate for me to comment. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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: In *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4 (2021), the United States Supreme Court held that "[q]ualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 7, citing *White v. Pauly*, 137 S. Ct. 548, 551(2017) (per curiam) (internal quotation marks omitted). The Court further elaborated that a "right is clearly established when it is 'sufficiently clear that every reasonable official would have

understood that what he is doing violates that right.'" *Id.* citing *Mullenix v. Luna,* 577 U.S. 7, 11 (2015) (per curiam) (internal quotation marks omitted). Although "this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* at 8. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to comment on the correctness of any United States Supreme Court decision. I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3, which require that a judge not make public comments on the merits of a matter pending or impending in any court. The issues or related arising out of qualified immunity jurisprudence may come before me making it inappropriate for me to comment. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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

Response: Any issues related to the proper scope of qualified immunity protections are important decisions that are best left to policymakers because if I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent irrespective of any personal views I may hold.

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: Issues involving intellectual property and our patent systems are very important. In my 11 years as a practicing lawyer and three and a half years on the bench, I have not had occasion to handle intellectual property cases, but if confirmed to California's Eastern District, I can assure you that I would take these cases and the importance of getting up to speed on these issues very seriously. I would also rigorously follow United States Supreme Court precedent regardless of my views whether the precedent provided sufficient clarity.

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: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to comment on this hypothetical legal scenario. I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3, which require that a judge not make public comments on the merits of a matter pending or impending in any court. The issues or related issues raised in this hypothetical may come before me making it inappropriate for me to comment. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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: Please see response to Question 13 a.

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: Please see response to Question 13 a.

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: Please see response to Question 13 a.

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: Please see response to Question 13 a.

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: Please see response to Question 13 a.

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: Please see response to Question 13 a.

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: Please see response to Question 13 a.

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: Please see response to Question 13 a.

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: Please see response to Question 13 a.

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: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would generally be inappropriate for me to comment on the correctness of any United States Supreme Court decision. I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3, which require that a judge not make public comments on the merits of a matter pending or impending in any court. The issues or related issues raised in this case may come before me making it inappropriate for me to comment. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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: In my nearly 11 years of practice and three and a half years on the bench, I have not had experience with copyright law. If I am fortunate enough to be confirmed to California's Eastern District, I would do the necessary research to get up to speed and would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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

Response: In my nearly 11 years of practice and three and a half years on the bench, I have not had experience involving the Digital Millennium Copyright Act. If I am fortunate enough to be confirmed to California's Eastern District, I would do the necessary research to get up to speed and would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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

Response: In my nearly 11 years of practice and three and a half years on the bench, I have not had experience with intermediary liability for online service providers. If I am fortunate enough to be confirmed to California's Eastern District, I would do the necessary research to get up to speed and would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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: In my nearly 11 years of practice and three and a half years on the bench, I have not had experience with First Amendment and free speech issues. If I am fortunate enough to be confirmed to California's Eastern District, I would do the necessary research to get up to speed and would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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: If the legislative text is unclear and there is no controlling United States Supreme Court or Ninth Circuit precedent, I would look to legislative history, but with Supreme Court's caution in *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546 (2005) that "[n]ot all extrinsic materials are reliable sources of insight into legislative understandings, however, and legislative history in particular is vulnerable to two serious criticisms." *Id*. at 568. The first is that "legislative history is itself often murky, ambiguous, and contradictory" and the second is that reliance on committee reports may give unrepresented committee members the incentive to manipulate legislative history since they are not subject to Article I. *Id.* Because of issues as noted above, the United States Supreme Court has treated Committee

Reports on the bill as more probative than floor statements by individual legislatures. *Zuber v. Allen,* 396 U.S. 168, 186 (1969). I would follow their lead and do the same.

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: As noted by the Supreme Court in *Christensen v. Harris Cty*., 529 U.S. 576 (2000), interpretations in opinion letters, policy statements, agency manuals, and enforcement guidelines do not warrant *Chevron*-style deference and are instead, "entitled to respect," but only to the extent that they have the "power to persuade." *Id*. at 587 citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). Deference does apply to an agency interpretation contained in a regulation, but only when the regulation's language is ambiguous." *Id*. at 588 citing *Auer v. Robbins*, 519 U.S. 452 (1997).

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: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to comment on hypothetical legal scenario. I am governed by both the California Code of Judicial Ethics, Canon 2, and the Code of Conduct for United States Judges, Canon 3, which require that a judge not make public comments on the merits of a matter pending or impending in any court. The issues or related issues raised in this hypothetical may come before me making it inappropriate for me to comment. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

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: Judges should steadfastly adhere to any applicable Supreme Court and appropriate circuit court precedent.

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: Judges should steadfastly adhere to any applicable Supreme Court and appropriate circuit court precedent.

18. In some judicial districts, plaintiffs are allowed to request that their case be heard within a particular division of that district. When the requested division has only one judge, these litigants are effectively able to select the judge who will hear their case. In some instances, this ability to select a specific judge appears to have led to individual judges engaging in inappropriate conduct to attract certain types of cases or litigants. I have expressed concerns about the fact that nearly one quarter of all patent cases filed in the U.S. are assigned to just one of the more than 600 district court judges in the country.

a. Do you see "judge shopping" and "forum shopping" as a problem in litigation?

Response: I am not familiar with this issue and since California's Eastern District does not have a single-judge division, it is not one to which I would be exposed.

b. If so, do you believe that district court judges have a responsibility not to encourage such conduct?

Response: If I am confirmed to California's Eastern District, I would faithfully apply all United States Supreme Court and Ninth Circuit precedent regarding issues venue and would also adhere to any local Eastern District rules regarding the assignment of matters.

c. Do you think it is *ever* appropriate for judges to engage in "forum selling" by proactively taking steps to attract a particular type of case or litigant?

Response: Canon 2(A) of the Code of Conduct for United States Judges requires a federal judge to "respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." If a judge is engaging in "forum selling" then that may erode public confidence in the integrity and impartiality of the judiciary.

d. If so, please explain your reasoning. If not, do you commit not to engage in such conduct?

Response: If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent as well as all applicable Code of Conduct for United States Judges.

19. In just three years, the Court of Appeals for the Federal Circuit has granted no fewer than 19 mandamus petitions ordering a particular sitting district court judge to transfer cases to a different judicial district. The need for the Federal Circuit to intervene using this extraordinary remedy so many times in such a short period of time gives me grave concerns.

a. What should be done if a judge continues to flaunt binding case law despite numerous mandamus orders?

Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to comment on issue related to a judge's performance. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

b. Do you believe that some corrective measure beyond intervention by an appellate court is appropriate in such a circumstance?

Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to comment on issue related to a judge's performance. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

20. When a particular type of litigation is overwhelmingly concentrated in just one or two of the nation's 94 judicial districts, does this undermine the perception of fairness and of the judiciary's evenhanded administration of justice?

Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to comment on issues related to a judge's performance. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

a. If litigation does become concentrated in one district in this way, is it appropriate to inquire whether procedures or rules adopted in that district have biased the administration of justice and encouraged forum shopping?

Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to opine on this issue. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

b. To prevent the possibility of judge-shopping by allowing patent litigants to select a single-judge division in which their case will be heard, would you support a local rule that requires all patent cases to be assigned randomly to judges across the district, regardless of which division the judge sits in?

Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to pledge support or disapproval of a particular issue. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

21. Mandamus is an extraordinary remedy that the court of appeals invokes against a district court only when the petitioner has a clear and indisputable right to relief and the district judge has clearly abused his or her discretion. Nearly every issuance of mandamus may be viewed as a rebuke to the district judge, and repeated issuances of mandamus relief against the same judge on the same issue suggest that the judge is ignoring the law and flouting the court's orders.

a. If a single judge is repeatedly reversed on mandamus by a court of appeals on the same issue within a few years' time, how many such reversals do you believe must occur before an inference arises that the judge is behaving in a lawless manner?

Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to comment on issues related to a judge's performance. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.

b. Would five mandamus reversals be sufficient? Ten? Twenty?

Response: As a currently sitting judge on the Fresno County Superior Court and as a federal judicial nominee, it would be inappropriate for me to comment on issues related to a judge's performance. If I am fortunate enough to be confirmed to California's Eastern District, I would steadfastly adhere to any applicable Supreme Court and Ninth Circuit precedent.