Senator Lindsey Graham, Ranking Member
Questions for the Record
Mr. Brandon Scott Long
Nominee to be a United States District Judge for the Eastern District of Louisiana

1. **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 do not agree with this statement. Judges are required to follow the law, not their own value judgments. Canon 2(A) of the Code of Conduct for U.S. Judges cautions judges to "respect and comply with the law" and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

2. **When asked why he wrote opinions that he knew the Supreme Court would reverse, Judge Stephen Reinhardt's stock response was, "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?**

   Response: I am not familiar with the context of this quote, and I would not follow this approach. If confirmed, I will be obligated to follow the binding precedent of the Supreme Court and the Fifth Circuit Court of Appeals. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("[A] precedent of this Court must be followed by the lower federal courts[.]").

3. **Please define the term "living constitution."**

   Response: Living constitutionalism refers to the doctrine that "the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Black's Law Dictionary (11th ed. 2019).

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

   Response: I am not aware of the context of this statement. However, the Supreme Court has held that the Constitution contains enduring principles that are generally fixed in meaning. *See New York State Rifle & Pistol Ass'n, v. Bruen*, 142 S. Ct. 2111, 2132 (2022). I know of no case where the Supreme Court has directed lower courts to use a living constitutionalism method of interpretation. If confirmed as a district judge, I will follow all Supreme Court and Fifth Circuit precedent concerning interpretative methods of analysis.

5. **According to your questionnaire, you served on detail to the FBI in 2020-2021 and were the Acting Chief of Staff to Director Wray for short time that included January 2021.**

   Response: In responding to questions relating to my work at the FBI, my objective is to be as forthcoming as possible while observing my obligations under the Justice Manual and the Code of Conduct for U.S. Judges. Since my confirmation hearing, I have rereviewed the Justice Manual and the Code of Conduct and spoken with Department of Justice colleagues to gain a firmer understanding of how such guidelines may limit or not limit responses to certain questions. Consistent with that understanding, I include the responses below.

   a. **Please describe your duties as Deputy Chief of Staff and Acting Chief of Staff.**

      Response: From February 2020 to July 2021, I was on "detail" from the U.S. Attorney's Office in New Orleans to the FBI in Washington, DC. As Deputy Chief of Staff and Acting Chief of Staff to the FBI Director, I supported the Director's Office on various policy, public affairs, and administrative matters. By way of example, I assisted with the preparation of many of the Director's public statements and internal communications, advised on media appearances and congressional engagements, worked with the Department of Justice on policy matters affecting the FBI, and helped oversee components of the Director's Office staff. In these roles, I did not have oversight or decision-making authority over investigations, I did not personally participate in any investigations, and I was outside of what I would call the "operational chain of command." At the FBI, the chain of command is highly formalized, structured, and transparent. All investigative matters—that is, all cases, investigations, and investigative operations—report up through the Deputy Director, who reports directly to the FBI Director. The Chief of Staff (to whom the Deputy Chief of Staff reports) has a separate reporting line to the FBI Director. The Chief of Staff, Deputy Chief of Staff, and other members of the Director's staff are thus outside of the operational chain of command.

   b. **Please describe your duties and role regarding the events that occurred on January 6th and the subsequent investigation.**

      Response: As Acting Chief of Staff from December 2020 to January 2021, and Deputy Chief of Staff from January 2021 until my departure in July 2021, I had the duties and role described in response to question 5(a). I had no role in preparing for the events at the U.S. Capitol on January 6, 2021. I did not have decision-making authority regarding the deployment of FBI resources to address

the violence and destruction of property on January 6. And I have not personally participated in the subsequent investigations of illegal conduct on January 6.

c. **Were you involved with any decision to investigate (or not investigate) allegations against or involving Hunter Biden?**

Response: No.

i. **If yes, please explain.**

6. **Under Supreme Court and Fifth Circuit precedent, what is a "fact" and what sources do courts consider in determining whether something is a question of fact or a question of law?**

Response: Black's Law Dictionary (11th ed. 2019) defines a "fact" as "[a]n actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation." The Supreme Court has noted that the nature of the distinction between questions of fact and questions of law is "vexing." *Pullman-Standard v. Swint*, 456 U.S. 273, 288 (1982) "[O]ften questions of fact and questions of law are inextricably entangled." *Coca-Cola Co. v. Atchison, T. & S. F. Ry. Co.*, 608 F.2d 213, 218 (5th Cir. 1979). However, the distinction is important to the determination of whether appellate review requires the clear error standard (questions of fact), *see* Fed. R. Civ. P. 52(a)(6), or the *de novo* standard (questions of law), *see Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014). While bright-line rules are scarce, it is commonplace for courts to treat questions of intent as factual matters. *See Pullman-Standard*, 456 U.S. at 287–288 (collecting cases); *Byram v. United States*, 705 F.2d 1418, 1423 (5th Cir. 1983). In determining whether an issue presents a question of fact or law, I would closely study precedent in the Supreme Court and Fifth Circuit and follow whatever guidance or sources are permitted under that precedent.

7. **How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?**

Response: Criticism of an opinion is lawful and protected under the First Amendment. Personal attacks on a sitting judge can be both unethical, *see, e.g.*, Rules 3.5(d), 8.2(a), and 8.4(d), ABA Model Rules of Professional Conduct; as well as illegal, *see, e.g.*, 18 U.S.C. § 401 (contempt) and § 1503 (influencing or injuring a judge).

8. **Which of the four primary purposes sentencing—retribution, deterrence, incapacitation, and rehabilitation—do you personally believe is the most important? Which of these principles, if confirmed, will guide your approach to sentencing defendants?**

Response: The process of sentencing a criminal defendant is designed to be highly individualized. Judges are required to consider a variety of factors under 18 U.S.C. § 3553(a), including *inter alia* the nature and circumstances of the criminal offense, the defendant's history and characteristics, the need to provide restitution to victims, and the four purposes of sentencing outlined in the question. The statute does not elevate any one purpose above the others. A judge's job is to assess each defendant's case on its own merits with rigor and objectivity—giving due consideration as required to the § 3553(a) factors, the U.S. Sentencing Guidelines, the Presentence Report, the arguments of the parties, and any statements by the defendant and the victims—in order to devise a sentence that is consistent, fair, and proportional under the law. If confirmed, I will do just that.

9. **Please identify a Supreme Court decision from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: My judicial philosophy begins with assiduously following the laws passed by Congress, precedent in the Supreme Court and the Fifth Circuit Court of Appeals, and the Constitution to which I've sworn an oath. I will work hard to have command of the relevant areas of law each time I walk into court or render a decision. I will listen carefully to the testimony and arguments of the parties and keep an open mind throughout the proceedings. I will be respectful of all litigants, witnesses, courtroom staff, and juries, and set a tone of decorum in the courtroom. And I will remain humble, understanding the limitations of my role and placing the law and the facts above any personal preferences I may have. I have not assessed whether a particular Supreme Court decision best represents this philosophy, but I am fortunate to have appeared before countless judges over my career as a federal prosecutor who have exhibited these qualities.

10. **Please identify a Fifth Circuit judicial opinion from the last 50 years that is a typical example of your judicial philosophy and explain why.**

Response: Please see my response to Question 9.

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

Response: Title 18, United States Code, Section 1507 makes it a crime, punishable by up to one year in prison, to picket or parade in or near a United States court building, or in or near a building or residence used by a judge, juror, witness, or court officer, with intent to interfere with, obstruct, or impede the administration of justice, or to influence any judge, juror, witness, or court officer in the discharge of his/her duty, among other offenses.

12. **Under Supreme Court precedent, is 18 USC § 1507, or a state statute modeled on § 1507, constitutional on its face?**

Response: If confirmed as a judge, my role would be to apply this and other laws fairly and neutrally to the facts of any case before me. If a question was raised as to the statute's constitutionality, I would assess the matter based on Supreme Court and Fifth Circuit precedent, including *Cox v. Louisiana*, 379 U.S. 559, 564 (1965) (upholding a similar Louisiana statute on its face), the text of the statute, the facts before the court, and the arguments of the parties.

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

    Response: "Fighting words" are "personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." *Cohen v. California*, 403 U.S. 15, 20 (1971). In assessing what speech falls into this "small class," courts will ask whether a "reasonable onlooker" would understand the speech as a "direct personal insult or an invitation to exchange fisticuffs." *Texas v. Johnson*, 491 U.S. 397, 409 (1989).

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

    Response: "True threats of violence are outside the bounds of First Amendment protection and punishable as crimes." *Counterman v. Colorado*, 143 S. Ct. 2106, 2111 (2023). In *Counterman*, the Supreme Court recently held that whether a statement was a "true threat" depended on the speaker's subjective intent to threaten. *Id*. In making this assessment, courts have been directed to use a recklessness standard, *i.e.*, whether the defendant "consciously disregarded a substantial risk that his communications would be viewed as threatening violence." *Id.* at 2112.

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

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

       Response: Yes. As a district court judge, I would be obligated to faithfully follow Supreme Court precedent. Any personal beliefs I may have about a decision are of no moment. Moreover, the Code of Conduct for U.S. Judges precludes me from commenting on legal issues that could give rise to litigation in my court if I am confirmed. As other nominees have observed, however, the issues in *Brown* involving school desegregation are unlikely to be relitigated in any court. Accordingly, I can express my belief that *Brown* was correctly decided.

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

Response: Yes. As a district court judge, I would be obligated to faithfully follow Supreme Court precedent. Any personal beliefs I may have about a decision are of no moment. Moreover, the Code of Conduct for U.S. Judges precludes me from commenting on legal issues that could give rise to litigation in my court if I am confirmed. As other nominees have observed, however, the issues in *Loving v. Virginia* involving interracial marriage are unlikely to be relitigated in any court. Accordingly, I can express my belief that the case was correctly decided.

c. **Was *Griswold v. Connecticut* correctly decided?**
d. **Was *Roe v. Wade* correctly decided?**
e. **Was *Planned Parenthood v. Casey* correctly decided?**
f. **Was *Gonzales v. Carhart* correctly decided?**
g. **Was *District of Columbia v. Heller* correctly decided?**
h. **Was *McDonald v. City of Chicago* correctly decided?**
i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
j. **Was *New York State Rifle & Pistol Association v. Bruen* correctly decided?**
k. **Was *Dobbs v. Jackson Women's Health* correctly decided?**

Response: With respect to subparts c. through k., I am unable to give a "yes" or "no" answer. Any personal beliefs I may have about a decision are of no moment. Moreover, the Code of Conduct for U.S. Judges precludes me from commenting on legal issues that could give rise to litigation in my court if I am confirmed. However, I would note that *Roe v. Wade* and *Planned Parenthood v. Casey* are no longer binding precedent, having been overturned by *Dobbs v. Jackson Women's Health*. As a district court judge, I would be obligated to faithfully follow binding Supreme Court precedent.

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

Response: In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, the Supreme Court held that when the Second Amendment's text covers an individual's conduct, the Constitution "presumptively protects that conduct." 142 S. Ct. 2111, 2129-30 (2022). The government must then justify any restriction on the Second Amendment's "unqualified command" by demonstrating that the restriction is consistent with the Nation's historical tradition of firearm regulation. *Id.* at 2130. The Court explained that "analogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin." *Id.* at 2133.

17. **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?**
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?**
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, to the best of my knowledge (as to each subpart).

18. **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?**
    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?**
    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, to the best of my knowledge (as to each subpart).

19. **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?**
    b. **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.**
    c. **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, or any other such Arabella dark-money fund that is still shrouded.**
    d. **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, or any other such Arabella dark-money fund that is still shrouded.

Response: No, to the best of my knowledge (as to each subpart).

20. **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?**
    b. **Are you currently in contact with anyone associated with the Open Society Foundations?**
    c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

    Response: No, to the best of my knowledge (as to each subpart).

21. **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?**
    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?**
    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, to the best of my knowledge (as to each subpart).

22. **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 21, 2022, I submitted my resume to the office of Senator Bill Cassidy after the announcement that the Honorable Carl J. Barbier of the Eastern District of Louisiana would be taking senior status. On January 17, 2023, I interviewed with Senator Cassidy. On March 8, 2023, I interviewed with attorneys from the White House Counsel's Office. On March 10, 2023, I interviewed with Senator John N. Kennedy. On March 17, 2023, I was contacted by the White House Counsel's Office and informed that

I would be moving forward in the selection process. I was then in contact at various points with attorneys from the Office of Legal Policy at the Department of Justice and with staff members from the offices of Senators Cassidy and Kennedy. On June 7, 2023, the President announced his intent to nominate me. Since that time, I have spoken at various points with attorneys from the Office of Legal Policy and the White House Counsel's Office, as well as staff members from the offices of Senators Cassidy and Kennedy.

23. **During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

    Response: No, to the best of my knowledge.

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

    Response: No, to the best of my knowledge.

25. **During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

    Response: No, to the best of my knowledge.

26. **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: No, to the best of my knowledge.

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

    Response: No, to the best of my knowledge.

28. **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 21, 2022, I submitted my resume to the office of Senator Bill Cassidy after the announcement that the Honorable Carl J. Barbier of the Eastern District of Louisiana would be taking senior status. On January 17, 2023, I interviewed with

Senator Cassidy. On March 8, 2023, I interviewed with attorneys from the White House Counsel's Office. On March 10, 2023, I interviewed with Senator John N. Kennedy. On March 17, 2023, I was contacted by the White House Counsel's Office and informed that I would be moving forward in the selection process. I was then in contact at various points with attorneys from the Office of Legal Policy at the Department of Justice and with staff members from the offices of Senators Cassidy and Kennedy. On June 7, 2023, the President announced his intent to nominate me. Since that time, I have spoken at various points with attorneys from the Office of Legal Policy and the White House Counsel's Office, as well as staff members from the offices of Senators Cassidy and Kennedy.

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

Response: On July 19, 2023, the Office of Legal Policy (OLP) forwarded these questions, as well as questions received from other Senators. I drafted responses and sent them to OLP for review. OLP provided feedback on my draft. I considered that feedback and made edits where I deemed appropriate. I then sent a final version of my responses to OLP for submission to the Senate.

Senator Charles Grassley Questions for the Record
July 12, 2023
Brandon Long, Nominee for U.S. District Court for the Eastern District of Louisiana

1. **On January 23, 2023, the FBI Richmond, Virginia field office issued a report, with little or no basis or supporting examples, linking traditional Catholic churches to racial and ethnic violent extremism.[1] The report suggested that FBI agents should infiltrate Catholic churches to find informants and gather information about their activities. After the report was brought to light, Attorney General Garland said it was "appalling" and "inappropriate," and the FBI withdrew the report.[2] You nonetheless failed to denounce the report during your July 12, 2023, nomination hearing before the Senate Judiciary Committee.**

   Response: In responding to questions relating to my work at the FBI, my objective is to be as forthcoming as possible while observing my obligations under the Justice Manual and the Code of Conduct for U.S. Judges. Since my confirmation hearing, I have rereviewed the Justice Manual and the Code of Conduct and spoken with Department of Justice colleagues to gain a firmer understanding of how such guidelines may limit or not limit responses to certain questions. Consistent with that understanding, I include the responses below.

   a. **During your time as Deputy Chief of Staff and Acting Chief of Staff for FBI Director Chris Wray, did you become aware of any discussions, proposals and/or communications related to the FBI investigating and infiltrating Catholic churches to gather information on violent extremism? If so, what actions did you take to stop that improper FBI activity?**

      Response: During my time as a detailee to the FBI from February 2020 through July 2021, I was not aware of any discussions, proposals, or communications related to the FBI investigating and infiltrating Catholic churches to gather information on violent extremism. My understanding is that the Richmond memo, which to my knowledge I have never seen, was authored in January 2023, over a year and a half after I left the FBI. According to media reports, the memo originated from the FBI's Richmond field office. As a member of the FBI Director's staff, I never visited the Richmond field office and have no recollection of working with anyone in Richmond.

   b. **Is the Richmond field office report "appalling" and "inappropriate"? If not, why not?**

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[1] Senator Charles E. Grassley and Senator Lindsey O. Graham, *Letter to Attorney General Garland and FBI Director Chris Wray*, (Mar. 1, 2023) https://www.grassley.senate.gov/imo/media/doc/grassley_graham_to_doj_fbi_richmond_fbi_catholic_report.pdf.
[2] Senate Committee on the Judiciary, *Oversight of the Department of Justice*, (Mar. 1, 2023) https://www.judiciary.senate.gov/committee-activity/hearings/02/22/2023/oversight-of-the-department-of-justice.

Response: Since completing my FBI detail in July 2021, I have been serving as a line Assistant U.S. Attorney in New Orleans, where I have never been asked to work on a case involving the Catholic Church. (As an aside, I am a Catholic.) At the time of my confirmation hearing, I had only a cursory understanding of the media coverage surrounding the January 2023 FBI memo. Having now reviewed the coverage more closely, I would agree with the assessment of the Attorney General that the memo was "appalling" and "inappropriate." I would also agree with the assessment of the FBI Director, who said that he was "aghast" when the memo came to his attention and ordered that the memo be withdrawn.

As a general matter, as a judicial nominee and consistent with Canon 3(A) of the Code of Conduct for U.S. Judges, I cannot comment on a matter that could come before me, as that would be seen as prejudging an issue. However, I am willing to comment on this matter because the memo has been withdrawn and denounced by the Attorney General and FBI Director. That suggests litigation around the memo is not likely to come before me.

c. **Do you believe that it is proper for the FBI to target and place informants in Catholic churches to investigate the exercise of their First Amendment activity? If so, please explain.**

Response: No.

2. **Did you have any involvement, awareness and/or communications relating to any aspect of the Hunter Biden investigative matter, and related matters, while at the FBI?**

Response: As the Deputy and Acting Chief of Staff from February 2020 through July 2021, I did not have oversight or decision-making authority over investigations, and I did not personally participate in any investigations (including those referenced in the question). In that sense, I was outside of what I would call the "operational chain of command." At the FBI, the chain of command is highly formalized, structured, and transparent. All investigative matters—that is, all cases, investigations, and investigative operations—report up through the Deputy Director, who reports directly to the FBI Director. The Chief of Staff (to whom the Deputy Chief of Staff reports) has a separate reporting line to the FBI Director. The Chief of Staff, Deputy Chief of Staff, and other members of the Director's staff are thus outside of the operational chain of command.

While the Hunter Biden matter was the subject of media coverage during my time at the FBI, and it's possible I had one-off conversations with colleagues in passing regarding the media coverage, I was not involved in the Hunter Biden investigation in any way. I was not aware of, nor did I participate in, any investigative decisions or steps regarding

the matter. And I was not involved in, nor did I attend, any meetings relating to the matter. As a Department of Justice employee subject to the Justice Manual, Sections 1-7.001 et seq., as well as a judicial nominee subject to the Code of Conduct for U.S. Judges, specifically Canon 3(A)(6) prohibiting public comment on a pending matter and Canon 2(A) requiring judges to avoid the appearance of having prejudged any possible related matters, it would be inappropriate for me to comment further on any open investigations.

Senate Judiciary Committee
Nominations Hearing
July 12, 2023
Questions for the Record
Senator Amy Klobuchar

<u>For Brandon Scott Long, nominee to be United States District Court Judge for the Eastern District of Louisiana</u>

You served as Deputy Chief of Staff and eventually Acting Chief of Staff to F.B.I. Director Christopher Wray. You have also served as an Assistant United States Attorney for nearly 12 years, both the Eastern District of Louisiana and the District of Columbia.

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

  Response: Every day of my service as a Department of Justice employee, I have sought to remain mindful of the heavy burden that falls on my shoulders. That burden is to investigate and prosecute cases with earnestness and vigor, but give equal consideration to ensuring that no one is prosecuted unjustly. I have grown fond of saying that I've never had a single bad day as a prosecutor. Because when I go home at the end of the day, whether I've won or lost in court, having faithfully followed the law, having been objective and open-minded in my assessment of the facts, and having treated the court, opposing counsel, the defendant, and the victims with respect and fairness, I've done my part to uphold the ideal that justice be done in every case. If confirmed, I will take those same sensibilities with me to the bench.

Federal district court judges manage a large number of cases at one time that touch a wide range of areas of the law, while also ensuring that the litigants who appear before them feel that they have had their day in court.

- **How have you approached areas of the law that you were unfamiliar with, and what in your background has prepared you to manage a federal district court judge's docket?**

  Response: On countless occasions throughout my career, circumstances have required me to learn new areas of law quickly—whether delving into complicated conspiracy law in preparation for a fast-approaching trial, or researching a thorny area of privilege law to meet a motion deadline, or analyzing a complex trial record on appeal. My approach in all such instances has been to jump in head-first, performing research and analysis of the law, thoroughly running to ground the facts, rigorously preparing my arguments, and when feasible and appropriate consulting with more experienced colleagues. My approach as a judge would be similar. That is, I would always be prepared, which means having command of the law and facts each time I walk into court or decide a case. I would listen closely to the testimony and arguments of the parties and keep an open mind. I would be humble, understanding the limitations of my role and placing the law

and the facts above any personal preferences I may have. I would set clear expectations for the litigants through scheduling orders and deadlines. I would draft my rulings in a way that was clear and concise, leaving little room to doubt the underpinnings of my decision. And, of course, I would seek to reach a fair and just decision under the law in every case. Following this approach will allow me to manage my docket efficiently and will engender confidence in the court and in my decisions.

Senator Mike Lee
Questions for the Record
Brandon Long, Nominee to the United States District Court for the Eastern District of Louisiana

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

   Response: My judicial philosophy begins with assiduously following the laws passed by Congress, precedent in the Supreme Court and the Fifth Circuit Court of Appeals, and the Constitution to which I've sworn an oath. I will work hard to have command of the relevant areas of law each time I walk into court or render a decision. I will listen carefully to the testimony and arguments of the parties and keep an open mind throughout the proceedings. I will be respectful of all litigants, witnesses, courtroom staff, and juries, and set a tone of decorum in the courtroom. And I will remain humble, understanding the limitations of my role and placing the law and the facts above any personal preferences I may have.

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

   Response: I would begin by closely reviewing any Supreme Court or Fifth Circuit precedent. If precedent exists, I would follow precedent. If not, I would seek to ascertain the plain meaning of the statute, focusing on the "ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1739 (2020). If the statute was still unclear, I would employ other canons of statutory construction that have been countenanced by the Supreme Court and the Fifth Circuit. If appropriate, I would also consider secondary sources, including non-binding cases from other jurisdictions, learned treatises, and law review articles, as well as legislative history "only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

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

   Response: In deciding a case that turned on the interpretation of a constitutional provision, I would faithfully follow Supreme Court and Fifth Circuit precedent. In the unlikely event that I was interpreting a constitutional provision for the first time, I would analyze the text of the provision and follow the interpretive methods countenanced by the Supreme Court. For instance, in Second Amendment cases, the Court has held that "the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (emphasis removed). Where appropriate, I would also consider closely analogous cases and non-binding authority from other jurisdictions.

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

Response: The meaning of the Constitution is generally fixed according to the common understanding of the text at the time of enactment. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022) (holding that the Constitution has a fixed meaning according to the understandings of those who ratified it, although it can and must apply to circumstances beyond those the Founders specifically anticipated).

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: A judge should apply statutes as written. The Supreme Court has held that "when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020).

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: *Bostock v. Clayton Cnty.* speaks to this very question:

> This Court 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. And we would deny the people the right to continue relying on the original meaning of the law they have counted on to settle their rights and obligations.

140 S. Ct. 1731, 1738 (2020).

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

Response: The "irreducible constitutional minimum of standing" contains three elements: the plaintiff must have suffered an "injury in fact," there must be a causal connection between the injury and the conduct complained of, and it must be likely that the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

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

Response: Congressional powers are limited to those enumerated in the Constitution. Included in those powers, under Article I, Section 8, is Congress's authority to make all laws "necessary and proper" for executing its powers. This "necessarily implies the grant of all usual and suitable means for the execution of the powers granted." *McCulloch v. Maryland*, 17 U.S. 316, 324 (1819).

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

Response: The constitutionality of a statute "does not depend on recitals of the power it undertakes to exercise." *Nat'l Fed. Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012). I would evaluate the statute's constitutionality by closely analyzing the facts before the court, any Supreme Court and Fifth Circuit precedent, the text of the statute, and the arguments of the parties.

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

Response: Through substantive due process, the Supreme Court has determined that the Constitution protects certain unenumerated, yet fundamental rights. Those rights include, for instance, the right to marry someone of a different race, *Loving v. Virginia*, 388 U.S. 1 (1967); the right to have offspring, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); the liberty of parents and guardians to direct the upbringing and education of children under their control, *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); the right to engage in intimate conduct, *Lawrence v. Texas*, 539 U.S. 558 (2003); the right to a marital zone of privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); and the right of same-sex couples to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

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

Response: The determination of what rights are protected under substantive due process has two features. First, courts will consider whether the claimed right is "objectively, deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (quotations omitted). Second, courts will assess whether the asserted interest has been carefully described. *Id.* at 721. Please also see my response to Question 9.

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

Response: Under Supreme Court precedent, substantive due process does not protect a right to an abortion. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). Nor does substantive due process protect the rights at stake in *Lochner*. *Id.* at 2248; *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). If confirmed as a district court judge, I will be obligated to faithfully follow Supreme Court precedent. Any personal beliefs I may have about a decision are of no moment.

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

Response: Congress can regulate three broad categories of activity under the Commerce Clause: "the use of the channels of interstate commerce," "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and "activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558 (1995). In assessing the scope of Congress's authority, courts should undertake the "modest" task of assessing whether a rational basis exists for concluding that the congressional action substantially affects interstate commerce. *Gonzales v. Raich*, 545 U.S. 1, 22 (2005).

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

Response: A suspect class is a group that possesses an "immutable characteristic determined solely by the accident of birth, . . . 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." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974) (internal quotations and citations omitted). The Supreme Court has found suspect distinctions to include race, religion, alienage, and nationality. *See New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Oyama v. California*, 332 U.S. 633, 646 (1948).

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

Response: Justice Thomas's Concurrence in *Perez v. Mortgage Bankers Ass'n* explained: "To the Framers, the separation of powers and checks and balances were more than just theories. They were practical and real protections for individual liberty in the new Constitution. The Judiciary—no less than the other two branches—has an obligation to guard against deviations from those principles." 575 U.S. 92, 118–19 (2015) (internal citations omitted).

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: In a case involving the delegation of powers among the branches of government, as with any case, I would closely review the facts, study the arguments carefully and with an open mind, and fairly and dispassionately follow Supreme

Court and Fifth Circuit precedent. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (limiting the President's power to acts authorized by Congress or the Constitution).

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

Response: A judge's role is to consider all facts properly placed into the record and fairly and even-handedly apply the law as the judge finds it. As Justice Frankfurter explained, "The judicial process demands that a judge move within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case." *See Pub. Utilities Comm'n of D.C. v. Pollak*, 343 U.S. 451, 466 (1952) (Frankfurter, J., concurring). If confirmed, I will closely follow Canon 3 of the Code of Conduct for U.S. Judges, which requires me to apply the law objectively, and in doing so set aside any bias or personal feelings I may have in the performance of my duties.

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

Response: I do not have a personal view on whether it's worse to invalidate a constitutional law or validate an unconstitutional law. Both are equally unadvisable, and I would do my level best to avoid both outcomes.

18. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I have not studied this trend, and it would be inappropriate for me to speculate on what accounts for it. The frequency with which the Supreme Court invalidates federal statutes will have no bearing on my own approach, if I'm confirmed, to assessing the constitutionality of a federal statute. That approach, which would be consistent and predictable, would involve closely analyzing the law and facts, studying the arguments carefully and with an open mind, and fairly and dispassionately applying the relevant law and binding precedent.

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

Response: Judicial review refers to the federal judiciary's authority to invalidate laws that violate the Constitution. *See Marbury v. Madison*, 5 U.S. 137 (1803). *See also* Black's Law Dictionary (11th ed. 2019) (defining judicial review *inter alia* as "[a] court's power to review the actions of other branches or levels of government"). Judicial supremacy is "[t]he doctrine that interpretations of the Constitution by the

federal judiciary in the exercise of judicial review, esp[ecially] U.S. Supreme Court interpretations, are binding on the coordinate branches of the federal government and the states." Black's Law Dictionary (11th ed. 2019).

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: Legislators, executive branch officials, and judicial officers all take an oath to abide by the Constitution. Const. art. VI. While it would be inappropriate for me to express any personal beliefs on the approach that elected officials should follow in carrying out their constitutional oath, the "principle that the federal judiciary is supreme in the exposition of the law of the Constitution" remains a "permanent and indispensable feature of our constitutional system." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

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: The role of the judicial branch is to apply the law as it stands, faithfully and impartially, to cases and controversies before the court. *See* U.S. Const. art. III. Judges don't make or execute laws. If confirmed, I will adjudge cases with humility, understanding the limitations of my role and placing the law and the facts above any personal preferences I may have.

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: To my understanding, this question poses two hypothetical scenarios. In the first, a higher court decision is not rooted in constitutional text, history, or tradition and has questionable constitutional underpinnings that conflict with my own beliefs about the wisdom or constitutionality of that decision. In such an instance, my own views are of no moment. I will be bound to follow Supreme Court and Fifth Circuit precedent. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("[A] precedent of

this Court must be followed by the lower federal courts[.]"). In the second scenario, binding precedent from the Supreme Court or the Fifth Circuit does not speak directly to an issue at hand. Under those circumstances, I would follow my standard approach of closely analyzing the law and facts, studying the arguments carefully and with an open mind, and fairly and dispassionately applying the relevant law and binding precedent. Where appropriate and necessary to resolve an issue, I would undergo a textual analysis of the constitutional provision, statute, or regulation, seek to analogize binding precedent to the facts at hand, and consult non-binding case law and approved secondary sources.

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

Response: None. Judges are required to "administer justice without respect to persons, and do equal right to the poor and to the rich." 28 U.S.C. § 453.

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 not familiar with the Biden Administration's definition of "equity." The Oxford-English dictionary (online) defines "equity" as "[t]he quality of being equal or fair; fairness, impartiality; even-handed dealing."

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

Response: Equity is fairness. Equality is the condition of being equal. *See* Oxford-English Dictionary (online).

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

Response: The Equal Protection Clause bars any state from denying "to any person within its jurisdiction the equal protection of the laws." It does not specifically mention "equity." I am not aware of any Supreme Court or Fifth Circuit case wherein the definition of equity from question 24 has been read into the Equal Protection Clause.

27. How do you define "systemic racism?"

Response: I do not have a personal definition of "systemic racism," although I understand that people have different views on what the term means. Black's Law Dictionary (11th ed. 2019) defines "systemic discrimination" as "[a]n ingrained culture that perpetuates discriminatory policies and attitudes toward certain classes of people within society or a particular industry, profession, company, or geographic location."

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

Response: I do not have a personal definition of "critical race theory," although I understand that people have different views on what the term means. Black's Law Dictionary (11th ed. 2019) 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."

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

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

30. You served as Acting Chief of Staff to FBI Director Christopher Wray from December 2020 to January 2021, a time period which captures the events that took place at the capitol on January 6th. What were your responsibilities during that time and what internal communications took place on January 6th?

Response: In responding to questions relating to my work at the FBI, my objective is to be as forthcoming as possible while observing my obligations under the Justice Manual and the Code of Conduct for U.S. Judges. Since my confirmation hearing, I have rereviewed the Justice Manual and the Code of Conduct and spoken with Department of Justice colleagues to gain a firmer understanding of how such guidelines may limit or not limit responses to certain questions. Consistent with that understanding, I include the response below.

As the Acting Chief of Staff from December 2020 to January 2021, my responsibilities were not dissimilar from my responsibilities throughout my FBI detail from February 2020 to July 2021, where I otherwise served as the Deputy Chief of Staff. In those roles, I supported the Director's Office on various policy, public affairs, and administrative matters. By way of example, I assisted with the preparation of many of the Director's public statements and internal communications, advised on media appearances and congressional engagements, worked with the Department of Justice on policy matters affecting the FBI, and helped oversee components of the Director's Office staff. I did not have oversight or decision-making authority over investigations, I did not personally participate in any investigations, and I was outside of what I would call the "operational chain of command." At the FBI, the chain of command is highly formalized, structured, and transparent. All investigative matters—that is, all cases, investigations, and investigative operations—report up through the Deputy Director, who reports directly to the FBI Director. The Chief of

Staff (to whom the Deputy Chief of Staff reports) has a separate reporting line to the FBI Director. The Chief of Staff, Deputy Chief of Staff, and other members of the Director's staff are thus outside of the operational chain of command.

Accordingly, as the Deputy and Acting Chief of Staff at the FBI, I had no role in preparing for the events at the U.S. Capitol on January 6. I did not have decision-making authority regarding the deployment of FBI resources to address the violence and destruction of property on January 6. And I have not personally participated in the subsequent investigations of illegal conduct on January 6.

The FBI employs some 38,000 personnel around the world, including agents, analysts, and support staff. I cannot speak to all of the communications that occurred on January 6, 2021. Moreover, as has been publicly reported, the DOJ Office of Inspector General (OIG) has initiated a review to examine the role and activity of the FBI and other DOJ components in preparing for and responding to the events at the U.S. Capitol on January 6. To my knowledge, that review is ongoing. While I do not have personal knowledge of the scope of that review, I imagine it includes a review of the FBI's internal communications on January 6. As a Department of Justice employee subject to the Justice Manual, Sections 1-7.001 et seq., it would be inappropriate for me to comment on areas that are under OIG review.

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

Questions for the Record for Brandon Scott Long, nominated to be United States District Judge for Eastern District of Louisiana

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: Racial discrimination is wrong, and it's illegal. The United States Supreme Court has held that "the central purpose of the Fourteenth Amendment was to eliminate racial discrimination." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2161 (2023), quoting *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964). Moreover, Congress has passed laws prohibiting racial discrimination, including Title VI and Title VII of the Civil Rights Act of 1964.

2. **Are there any unenumerated rights in the Constitution, as yet unarticulated by the Supreme Court that you believe can or should be identified in the future?**

Response: Substantive-due-process analysis has two features. First, courts will consider whether the claimed right is "objectively, deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (quotations omitted). Second, courts will assess whether the asserted interest has been carefully described. *Id.* at 721. Any personal beliefs of judges must be set aside so as to avoid the Due Process Clause from becoming "subtly transformed into the policy preferences" of members of the court. *Id.* at 720. If confirmed, I will faithfully apply the *Glucksberg* test and any other applicable Supreme Court and Fifth Circuit precedent to any case involving a right unenumerated in the Constitution.

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

Response: My judicial philosophy begins with assiduously following the laws passed by Congress, precedent in the Supreme Court and the Fifth Circuit Court of Appeals, and the Constitution to which I've sworn an oath. I will work hard to have command of the relevant areas of law each time I walk into court or render a decision. I will listen carefully to the testimony and arguments of the parties and keep an open mind throughout the proceedings. I will be respectful of all litigants, witnesses, courtroom staff, and juries, and set a tone of decorum in the courtroom. And I will remain humble, understanding the limitations of my role and placing the law and the facts above any personal preferences I may have.

The work of a district court judge is very different from the work of a Supreme Court Justice, and I have not closely analyzed the judicial philosophies in the Warren, Burger, Rehnquist, and Roberts Courts to determine which Justice's philosophy is most analogous to my own.

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

Response: Originalism refers to the interpretive method whereby "words of a legal instrument are to be given the meanings they had when they were adopted." Black's Law

Dictionary (11th ed. 2019). The Supreme Court has taken an originalist approach in interpreting certain constitutional provisions. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a district court judge, I will follow all Supreme Court and Fifth Circuit precedent concerning interpretative methods of analysis.

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

Response: Living constitutionalism refers to the doctrine that "the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values." Black's Law Dictionary (11th ed. 2019). I am not aware of any case where the Supreme Court has directed lower courts to use a living constitutionalism method. If confirmed as a district court judge, I will follow all Supreme Court and Fifth Circuit precedent concerning interpretative methods of analysis.

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

Response: In the unlikely event that I were interpreting a constitutional provision for the first time, I would analyze the text of the provision and follow the interpretive methods countenanced by the Supreme Court. For instance, in Second Amendment cases, the Court has held that "the public understanding of a legal text in the period after its enactment or ratification . . . is a critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (emphasis removed). Where appropriate, I would also consider closely analogous cases and non-binding authority from other jurisdictions.

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

Response: The meaning of the Constitution or a statute is generally fixed according to the common understanding of the text at the time of enactment. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022) (holding that the Constitution has a fixed meaning according to the understandings of those who ratified it, although it can and must apply to circumstances beyond those the Founders specifically anticipated); *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."). In certain limited circumstances, the Supreme Court has looked to contemporary standards when deciding the bounds of constitutional activity. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (noting that Eighth Amendment excessive punishment claims are determined by the standards "that currently prevail").

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

Response: No. The Constitution contains enduring principles that are generally fixed in meaning. *See New York State Rifle & Pistol Ass'n, v. Bruen*, 142 S. Ct. 2111, 2132 (2022).

While the Constitution is intended to apply to modern circumstances, *id.*, the mechanism for changing the Constitution is the Article V amendment process.

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

Response: A judge should 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. Canon 2(A), Code of Conduct for United States Judges (2019). The *Dobbs* case is Supreme Court precedent. If confirmed, I would be duty-bound to follow all Supreme Court decisions, including *Dobbs*. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("[A] precedent of this Court must be followed by the lower federal courts[.]").

a. **Was it correctly decided?**

Response: As a district court judge, I would be obligated to faithfully follow Supreme Court precedent. Any personal beliefs I may have about a decision are of no moment. Moreover, the canons of judicial conduct preclude me from commenting on legal issues that could give rise to litigation in my court if I am confirmed. Thus, it would be inappropriate for me to comment on whether the decision was correct.

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

Response: A judge should 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. Canon 2(A), Code of Conduct for United States Judges (2019). The *Bruen* case is Supreme Court precedent. If confirmed, I would be duty-bound to follow all Supreme Court decisions, including *Bruen*. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("[A] precedent of this Court must be followed by the lower federal courts[.]").

a. **Was it correctly decided?**

Response: As a district court judge, I would be obligated to faithfully follow Supreme Court precedent. Any personal beliefs I may have about a decision are of no moment. Moreover, the canons of judicial conduct preclude me from commenting on legal issues that could give rise to litigation in my court if I am confirmed. Thus, it would be inappropriate for me to comment on whether the decision was correct.

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

Response: A judge should 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. Canon 2(A), Code of Conduct for United States Judges (2019). The *Brown* case is Supreme Court precedent. If confirmed, I would be duty-bound to follow all Supreme Court decisions, including *Brown*. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("[A] precedent of this Court must be followed by the lower federal courts[.]").

a. **Was it correctly decided?**

Response: Yes. As a district court judge, I would be obligated to faithfully follow Supreme Court precedent. Any personal beliefs I may have about a decision are of no moment. Moreover, the Code of Conduct for United States Judges preclude me from commenting on legal issues that could give rise to litigation in my court if I am confirmed. As other nominees have observed, however, the issues in *Brown* involving school desegregation are unlikely to be relitigated in any court. Accordingly, I can express my belief that *Brown* was correctly decided.

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

Response: Under Title 18, United States Code, Section 3142(e)(3), certain types of offenses trigger a presumption favoring pretrial detention. These offenses include, among others, crimes under the Federal Controlled Substances Act with a maximum possible sentence of at least 10 years in prison; certain violent crimes and firearm offenses; and certain crimes against children. 18 U.S.C. § 3142(e)(3)(A)-(E). Moreover, Title 18, United States Code, Section 3142(e)(2), creates a rebuttable presumption favoring detention under certain circumstances where the defendant committed a prior offense while on release pending trial.

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

Response: I am aware of no Supreme Court or Fifth Circuit precedent describing the policy rationales for these presumptions. However, by its own language, the presumption in § 3142(e)(3) arises out of the concern that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community." Similarly, the presumption in § 3142(e)(2) arises out of the concern that "no condition or combination of conditions will reasonably assure the safety of any other person and the community."

13. **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: The Religious Freedom Restoration Act (RFRA) and the First Amendment Free Exercise Clause establish limits as to what the government may impose on, or require of, religious organizations and small businesses with observant owners. For instance, the RFRA provides that "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability [unless the burden] (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C.A. § 2000bb-1 (West). In *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court found that the RFRA protects for-profit, closely held corporations. 573 U.S. 682, 719 (2014).

Similarly, under the Supreme Court's First Amendment jurisprudence, the government must satisfy the strict scrutiny standard—by demonstrating its course was justified by a

compelling state interest and was narrowly tailored in pursuit of that interest—when its action is not both facially neutral and generally applicable in its burden on religious exercise. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 (2022). Government action is not facially neutral when, for instance, it was motivated by hostility towards religion. *See Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1732 (2018). And government action is not generally applicable when it treats comparable secular activity more favorably than religious exercise. *See Tandon v. Newsom*, 141 S. Ct. 1294, 1297 (2021).

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

Response: Such discrimination is permitted only when the government action is the least restrictive means of and/or narrowly tailored to achieving a compelling government interest. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022).

15. **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: In *Roman Cath. Diocese of Brooklyn v. Cuomo*, the Supreme Court enjoined a New York executive order (EO) that imposed COVID-19 restrictions on the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues. 141 S. Ct. 63 (2020). First, the Court determined that the EO was not neutral and of general applicability because it singled out houses of worship for especially harsh treatment. *Id*. Accordingly, under the strict scrutiny standard, the EO was likely to fail because the state could have adopted less restrictive rules to minimize the risk of COVID-19 exposure. *Id.* at 67. The Court also found that denying people their freedom to worship in person at a religious service would cause irreparable harm, and that the state failed to show that less restrictive rules would imperil public health. *Id.* at 67-68.

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

Response: In *Tandon v. Newsom*, the Supreme Court enjoined California's COVID-19 restrictions, holding that restrictions on at-home religious services were not neutral and generally applicable because they treated comparable secular activity more favorably than religious exercise. 141 S. Ct. 1294, 1297 (2021). The Court determined that, under the strict scrutiny standard, the injunction applicants would likely succeed on the merits of their claim, in part because the state did not "explain why it could not safely permit at-home worshipers to gather in larger numbers while using precautions used in secular activities." *Id*. The Court also found that the applicants would be irreparably harmed by the loss of free exercise rights, and that California had not shown that public health would

be imperiled by employing less restrictive measures. *Id*.

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

    Response: Yes. *See, e.g., Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2429-30 (2022).

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

    Response: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Supreme Court held that the Colorado Civil Rights Commission violated the free exercise rights of a baker who refused to bake a wedding cake for a same-sex couple. 138 S. Ct. 1719, 1724 (2018). The Court noted the "difficult questions as to the proper reconciliation of at least two principles," *id.* at 1723: on the one hand, "gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth," *id.* at 1727, while on the other hand, the baker "was entitled to the neutral and respectful consideration of his [First Amendment] claims." *Id.* at 1729. The Court pointed to statements made by members of the Commission during public hearings showing intolerance towards the baker's religious beliefs. *Id.* at 1731. This hostility "was inconsistent with the First Amendment's guarantee that our laws be applied in a manner that is neutral toward religion." *Id.* at 1732. Accordingly, the Court invalidated the ruling of the Commission. *Id*.

19. **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: The Supreme Court has rejected the "notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization." *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 834 (1989). "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). What matters is whether the individual maintains an "honest conviction" in his/her religious observance. *Id.* at 716. *See also Frazee*, 489 U.S. at 834 (affording the petitioner First Amendment protections based on a "sincerely held religious belief").

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

       Response: The Supreme Court has rejected the "notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization." *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 834 (1989). "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). What matters is whether the individual maintains an "honest conviction" in his/her religious observance. *Id.* at 716. *See also Frazee*, 489 U.S. at 834 (affording the petitioner First

Amendment protections based on a "sincerely held religious belief").

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

Response: The Supreme Court has rejected the "notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization." *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 834 (1989). "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). What matters is whether the individual maintains an "honest conviction" in his/her religious observance. *Id.* at 716. *See also Frazee*, 489 U.S. at 834 (affording the petitioner First Amendment protections based on a "sincerely held religious belief").

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

Response: No.

20. **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 an earlier case, *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, the Supreme Court held that the First Amendment barred a court from entertaining an employment discrimination claim brought by an elementary school teacher against the religious school where she taught. 565 U.S. 171, 181 (2012). That decision involved the "ministerial exception" to laws governing the employment relationship between a religious institution and, in that instance, a religion teacher with formal religious training who assumed the title of "Minister of Religion, Commissioned." *Id.* at 190-92. In *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, the Court extended the "ministerial exception" to other teachers who "performed vital religious duties," such as providing instruction about the Catholic faith, guiding their students in faith, and praying and attending mass with students. 140 S. Ct. 2049, 2066 (2020). "When a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow." *Id.* at 2069.

21. **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 *Fulton v. City of Philadelphia*, the Supreme Court held that Philadelphia violated the free exercise rights of Catholic Social Services (CSS) when it stopped referring foster children to the agency after CSS, on religious grounds, refused to certify same-sex couples as foster parents. 141 S. Ct. 1868, 1882 (2021). The Court began with the premise that laws incidentally burdening religion are typically not subject to strict scrutiny under the First Amendment so long as they are neutral and generally applicable. *Id.* at 1876. A law is not generally applicable if it "invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Id.* at 1877 (quotations omitted). In *Fulton*, because Philadelphia's foster care procurement program involved a system of individualized exemptions, and the city offered no compelling reason for denying CSS an exemption, the program was not generally applicable and the strict scrutiny standard applied. *Id.* at 1878-82. Under that standard, the city's three stated interests—maximizing the number of foster parents, protecting the City from liability, and ensuring equal treatment of prospective foster parents and foster children—were insufficient to justify the First Amendment infringement of CSS's rights. *Id.* at 1881-82.

22. **In *Carson v. Makin*, the U.S. Supreme Court struck down Maine's tuition assistance program because it discriminated against religious schools and thus undermined Mainers' Free Exercise rights. Explain your understanding of the Court's holding and reasoning in the case.**

Response: In *Carson v. Makin*, the Supreme Court held that Maine's exclusion of "nonsectarian" schools from its tuition assistance program violated the Free Exercise Clause of the First Amendment. 142 S.Ct. 1987, 2002 (2022). Under the program, Maine paid tuition for certain students at private schools so long as the schools were not religious. *Id.* at 1998. The Court found this program discriminated against religion, noting that the "State's antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise." *Id*.

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

Response: The case of *Kennedy v. Bremerton Sch. Dist.* involved whether the Bremerton School District (District) violated the First Amendment's Free Speech and Free Exercise Clauses when it reprimanded a high school football coach for engaging in a short, quiet prayer at midfield after football games. 142 S. Ct. 2407 (2022). The Court determined that the District's conduct was neither neutral nor generally applicable, triggering a free-exercise violation. *Id.* at 2422-23. The Court also determined that that the coach's prayers were private, not government, speech, and thus protected under the Free Speech Clause. *Id.* at 2423-25. In discussing the tension between the Free Speech, Free Exercise, and Establishment Clauses of the First Amendment, the Court found the coach's "private religious exercise did not come close to crossing any line one might imagine separating protected private expression from impermissible government coercion." *Id.* at 2429. Under strict scrutiny analysis, the District overstepped based on its "mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech." *Id.* at 2433. According to the Court, the Constitution does not mandate or

tolerate that kind of discrimination. *Id*.

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

    Response: In *Mast v. Fillmore Cnty.*, the Supreme Court vacated a decision by Minnesota courts requiring an Amish community to comply with a county ordinance requiring the installation of modern septic systems, over the Amish's religious objections. 141 S. Ct. 2430 (2021). In his concurrence, Justice Gorsuch concluded that the county and the lower courts misinterpreted the demands of the Religious Land Use and Institutionalized Persons Act (RLUIPA). *Id.* at 2432. The RLUIPA calls for strict scrutiny of land use regulations that substantially burden religious exercise, requiring the government to show that its regulations are narrowly tailored to serve a compelling governmental interest. *Id*. Justice Gorsuch explained that the question is not whether the county has a compelling interest in enforcing its septic system requirement generally, but whether it has an interest in denying an exception to the requirement for the Amish specifically. *Id*. Justice Gorsuch also determined that the county and the courts failed to give due weight to the exemptions that other groups enjoy. *Id*.

25. **Some people claim that Title 18, Section 1507 of the U.S. Code should not be interpreted broadly so that it does not infringe upon a person's First Amendment right to peaceably assemble. How would you interpret the statute in the context of the protests in front the homes of U.S. Supreme Court Justices following the *Dobbs* leak?**

    Response: Title 18, United States Code, Section 1507 makes it a crime, punishable by up to one year in prison, to picket or parade in front of the homes of United States judges with intent to interfere with, obstruct, or impede the administration of justice, or to influence any judge in the discharge of his/her duty, among other offenses. If confirmed as a judge, my role would be to apply this and other laws fairly and neutrally to the facts of any case before me. If a question was raised as to the statute's constitutionality, I would assess the matter based on the facts before the court, any Supreme Court and Fifth Circuit precedent, the text of the statute, and the arguments of the parties.

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

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: No.

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

Response: Yes.

28. **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.

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

Response: Under Article II, Section 2, of the Constitution, the President makes political appointments with advice and consent of the Senate. As a judicial nominee, it would be inappropriate for me to opine on these types of political decisions. If confirmed as a district court judge and a matter involving the constitutionality of an appointment came before me, I would faithfully apply all applicable laws and binding Supreme Court and Fifth Circuit precedent to the facts of the case.

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

Response: I am not aware of any Supreme Court or Fifth Circuit decision establishing that a program or policy with a racially disparate outcome is *per se* evidence of purposeful or subconscious racial discrimination. If such an issue came before me as a district court judge, I would closely review the facts of the case, study the arguments carefully and with an open mind, and fairly and dispassionately apply the relevant law

and binding precedent.

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

Response: The appropriate number of Supreme Court Justices is a question for policymakers to consider. If confirmed as a district court judge, I will follow all Supreme Court precedent regardless of the size of the Court.

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

Response: No. Each of the Justices was nominated by the President and confirmed by the Senate, as required under Article II, Section 2, of the Constitution.

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

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022), the Supreme Court held that the original public meaning of the Second Amendment protected an individual's right to possess a handgun in the home and to carry a handgun outside the home for self-defense.

34. **What kinds of restrictions on the Right to Bear Arms do you understand to be prohibited by the U.S. Supreme Court's decisions in *United States v. Heller*, *McDonald v. Chicago*, and *New York State Rifle & Pistol Association v. Bruen*?**

Response: In the *Bruen* case, the Supreme Court held that when the Second Amendment's text covers an individual's conduct, the Constitution "presumptively protects that conduct." 142 S.Ct. 2111, 2129-30 (2022). The government must then justify any restriction on the Second Amendment's "unqualified command" by demonstrating that the restriction is consistent with the Nation's historical tradition of firearm regulation. *Id.* at 2130. The Court explained that "analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*." *Id.* at 2133.

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

Response: Yes. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111 (2022).

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

Response: "The constitutional right to bear arms in public for self-defense is not 'a

second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2156 (2022) (*McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)). I am not aware of any Supreme Court or Fifth Circuit precedent subordinating Second Amendment rights to other individual rights enumerated in the Constitution.

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

Response: I am not aware of any Supreme Court or Fifth Circuit precedent subordinating Second Amendment rights to other individual rights enumerated in the Constitution.

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

Response: Decisions on whether and how to enforce a law are vested in the executive branch of government under Article II of the Constitution. The executive branch has "broad discretion" on whom to prosecute. *Wayte v. United States*, 470 U.S. 598, 607 (1985). "[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978). As a judicial nominee who, if confirmed, will undoubtedly be handling criminal matters, it would be inappropriate for me to opine on questions involving prosecutorial discretion.

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

Response: In a criminal law context, an act of prosecutorial discretion involves a decision whether and how to enforce a criminal statute. Black's Law Dictionary (11th ed. 2019) defines "prosecutorial discretion" as a "prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court." A substantive administrative rule change involves a decision by an administrative agency to change a substantive rule. A rule change must be consistent with binding precedent and statutory law, including the Administrative Procedure Act.

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

Response: No. Congress authorized capital punishment for certain criminal offenses. *See* 18 U.S.C. § 3591. The President does not have the authority to unilaterally abolish a statute.

41. **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.*, the Supreme Court lifted the stay on a district court judgment that the Centers for Disease Control and Prevention (CDC) exceeded its regulatory authority in imposing a nationwide moratorium on evictions of certain tenants based on COVID-19 concerns. 141 S. Ct. 2485 (2021). The Court found that the applicants—realtor associations and rental property managers who sued to enjoin the moratorium—were likely to succeed on the merits of their case, given that Congress did not clearly authorize the expansive authority claimed by the CDC. *Id.* at 2488-89. Moreover, the applicants were at risk of irreparable harm after being denied rent payments with no guarantee of eventual recovery, *id.* at 2489, and the balance of equities favored vacating the stay. *Id.* at 2490.

42. **Is it appropriate for a prosecutor to publicly announce that they are going to prosecute a member of the community before they even start an investigation as to that person's conduct?**

Response: For Department of Justice employees, the guidelines covering confidentiality and media engagements are found in the Justice Manual, Sections 1-7.001 et seq. Section 1-7.400(B) contains restrictions on the Department's disclosure of information before criminal charges are publicly filed. As a judicial nominee, it would be inappropriate for me to discuss a hypothetical issue that could get raised during litigation. If confirmed, and if a case involving this issue arises, I would closely review the facts of the case, study the arguments carefully and with an open mind, and fairly and dispassionately apply the relevant law and binding precedent.

43. **In your questionnaire and again during your testimony you indicated that you served as Deputy and Acting Chief of Staff for FBI Director Wray. In this capacity, you noted that you, "worked primarily on policy, public affairs, and administrative matters."**

Response: In responding to questions relating to my work at the FBI, my objective is to be as forthcoming as possible while observing my obligations under the Justice Manual and the Code of Conduct for U.S. Judges. Since my confirmation hearing, I have rereviewed the Justice Manual and the Code of Conduct and spoken with Department of Justice colleagues to gain a firmer understanding of how such guidelines may limit or not limit responses to certain questions. Consistent with that understanding, I include the responses below.

a. **What policy matters did you work on that affected the Federal Bureau of Investigation? Be as specific and detailed as possible.**

Response: From February 2020 to July 2021, I was on "detail" from the U.S. Attorney's Office in New Orleans to the FBI in Washington, DC. While serving in that capacity, I worked on policy matters affecting the FBI. For example, I worked closely with attorneys from the Department of Justice and FBI personnel on announcing reforms designed to strengthen the FBI's compliance, oversight, and

accountability with respect to certain foreign intelligence activities. I also worked with Department of Justice attorneys and FBI personnel on a policy establishing the FBI's Internal Auditing Office, the goal of which was to enhance the FBI's compliance with guidelines, statutes, policies, and procedures governing its national security activities. These policy reforms were memorialized in separate memoranda issued by Attorney General William P. Barr in August 2020. I did not keep a record of all the policy matters on which I worked, however the ones noted here are illustrative.

b. **What notable public statements did you prepare? Be as thorough as possible.**

Response: The FBI's Office of Public Affairs (OPA) was responsible for generating and issuing public statements on behalf of the FBI. During my detail at the FBI, I would occasionally review and make comments to draft public statements before they were submitted to the Chief of Staff or the FBI Director for their review and approval. In addition, OPA's Executive Writing Unit was responsible for drafting speeches, talking points, email messages, and other communications for the Director to deliver to the FBI workforce and externally in public forums. I would frequently review drafts of such communications before they were given to the Chief of Staff or the FBI Director for their review and approval. I did not keep a record of which statements I reviewed. However, examples that I recall include the Director's remarks after the death of George Floyd, remarks to the International Association of Police Chiefs, messages to the FBI workforce regarding COVID-19, messages to the FBI workforce surrounding major public holidays, and remarks given by the FBI Director at the funerals of Special Agents Laura Schwartzenberger and Daniel Alfin, who were shot and killed while executing a search warrant on a child pornography suspect in February 2021.

c. **As Acting Chief of Staff, did you accompany Director Wray on briefings and trips?**

Response: As the Acting Chief of Staff in December 2020 and January 2021, I attended briefings alongside the FBI Director. I do not recall accompanying the FBI Director on any trips outside of the Washington, DC area during that time.

d. **As then-Acting Chief of Staff, were you aware of the FD-1023 outlining potential bribery allegations against President Biden?**

Response: I have not seen and was not aware of any such FD-1023 during my detail at the FBI. Outside of the recent media coverage, I am not familiar with that report. By way of background, as the Deputy and Acting Chief of Staff, I did not have oversight or decision-making authority over investigations, I did not personally participate in any investigations, and I was outside of what I would call the "operational chain of command." At the FBI, the chain of command is highly formalized, structured, and transparent. All investigative matters—that is, all cases,

investigations, and investigative operations—report up through the Deputy Director, who reports directly to the FBI Director. The Chief of Staff (to whom the Deputy Chief of Staff reports) has a separate reporting line to the FBI Director. The Chief of Staff, Deputy Chief of Staff, and other members of the Director's staff are thus outside of the operational chain of command.

e. **Was the FBI in possession of the report and or the recordings on the Biden family bribery allegations during your tenure?**

Response: I have not seen and was not aware of any such report or recordings during my detail at the FBI, nor can I confirm or deny their existence. Outside of the recent media coverage, I am not familiar with these materials.

f. **Have you listened to the seventeen voice recordings between the Burisma informant and the Biden family, or are you otherwise familiar with their contents?**

Response: I have not listened to and was not aware of any such recordings during my detail at the FBI, nor can I confirm or deny their existence. Outside of the recent media coverage, I am not familiar with these materials.

44. **On October 19, 2020, just weeks before the 2020 Presidential Election, fifty one former top intelligence officials signed a letter saying that the contents of Hunter Biden's laptop—which was in the FBI's possession for almost a year by that point—had "all the classic earmarks of a Russian information operation." Whistleblowers have subsequently confirmed the FBI had verified the laptop's contents as genuine as far back as 2019.**

a. **Given that the FBI knew that these fifty one intelligence officials were not being truthful regarding laptop's authenticity, why did the FBI choose to remain silent about the authenticity of the Hunter Biden's laptop in its October 20, 2020 letter on the matter?**

Response: I do not recall reviewing an October 20, 2020, letter while I was working for the FBI. In preparing this response, I found the letter online and have now reviewed it, but I have no recollection of seeing the letter at the time it was drafted or discussing the contents of the letter with any FBI personnel. I was not involved in any aspect of the referenced investigation, and I cannot otherwise speak to what the FBI chose to say or not say in the October 20, 2020, letter, and why. Moreover, as a Department of Justice employee subject to the Justice Manual, Sections 1-7.001 et seq., as well as a judicial nominee subject to the Code of Conduct for U.S. Judges, specifically Canon 3(A)(6) prohibiting public comment on a pending matter and Canon 2(A) requiring judges to avoid the appearance of having prejudged any possible related matters, it would be inappropriate for me to comment on an open investigation.

b. **Were you involved in any decision making process regarding either the Hunter Biden laptop investigation or the decision to not verify the laptop's authenticity prior to the 2020 election?**

Response: I was not involved in decision-making relating to Hunter Biden's laptop or any related investigations.

c. **Did you participate in *any* meetings regarding the Hunter Biden laptop?**

Response: I do not recall participating in any meetings regarding the Hunter Biden laptop.

45. **During your July 12, 2023 confirmation hearing, you were unwilling to say whether a January 2023 FBI memo detailing efforts to infiltrate and develop sources within traditional Catholic churches was appropriate. You refused to denounce these efforts even when the Attorney General himself called the memo "appalling" and "inappropriate."**

a. **Was the Attorney General incorrect when he referred to the January 2023 memo as "appalling" and "inappropriate"?**

Response: During my time as a detailee to the FBI from February 2020 through July 2021, I was not aware of any discussions, proposals, or communications related to the FBI infiltrating and developing sources within Catholic churches. My understanding is that the Richmond memo, which to my knowledge I have never seen, was authored in January 2023, over a year and a half after I left the FBI. According to media reports, the memo originated from the FBI's Richmond field office. As a member of the FBI Director's staff, I never visited the Richmond field office and have no recollection of working with anyone in Richmond.

Since completing my FBI detail in July 2021, I have been serving as a line Assistant U.S. Attorney in New Orleans, where I have never been asked to work on a case involving the Catholic Church. (As an aside, I am a Catholic.) At the time of my confirmation hearing, I had only a cursory understanding of the media coverage surrounding the January 2023 FBI memo. Having now reviewed the coverage more closely, I would agree with the assessment of the Attorney General that the report was "appalling" and "inappropriate." I would also agree with the assessment of the FBI Director, who said that he was "aghast" when the memo came to his attention and ordered that the memo be withdrawn.

As a general matter, as a judicial nominee and consistent with Canon 3(A) of the Code of Conduct for U.S. Judges, I cannot comment on a matter that could come before me, as that would be seen as prejudging an issue. However, I am willing to comment on this matter because the memo has been withdrawn and denounced by the Attorney General and FBI Director. That suggests litigation around the memo is not likely to come before me.

b. **Do you believe that targeting people a specific religious faith for criminal investigation is consistent with equal justice under the law?**

Response: No.

c. **Is it consistent with the First Amendment?**

Response: No.

Senator John Kennedy
Questions for the Record

Mr. Brandon Long

1. **Please describe your roles as Deputy Chief of Staff and Acting Chief of Staff to Director Christopher Wray at the Federal Bureau of Investigation ("FBI" or "Bureau") from 2020 to 2021.**

   Response: In responding to questions relating to my work at the FBI, my objective is to be as forthcoming as possible while observing my obligations under the Justice Manual and the Code of Conduct for U.S. Judges. Since my confirmation hearing, I have rereviewed the Justice Manual and the Code of Conduct and spoken with Department of Justice colleagues to gain a firmer understanding of how such guidelines may limit or not limit responses to certain questions. Consistent with that understanding, I include the responses below.

   From February 2020 to July 2021, I was on "detail" from the U.S. Attorney's Office in New Orleans to the FBI in Washington, DC. As Deputy Chief of Staff and Acting Chief of Staff to the FBI Director, I supported the Director's Office on various policy, public affairs, and administrative matters. By way of example, I assisted with the preparation of many of the Director's public statements and internal communications, advised on media appearances and congressional engagements, worked with the Department of Justice on policy matters affecting the FBI, and helped oversee components of the Director's Office staff. In these roles, I did not have oversight or decision-making authority over investigations, I did not personally participate in any investigations, and I was outside of what I would call the "operational chain of command." At the FBI, the chain of command is highly formalized, structured, and transparent. All investigative matters—that is, all cases, investigations, and investigative operations—report up through the Deputy Director, who reports directly to the FBI Director. The Chief of Staff (to whom the Deputy Chief of Staff reports) has a separate reporting line to the FBI Director. The Chief of Staff, Deputy Chief of Staff, and other members of the Director's staff are thus outside of the operational chain of command.

   a. **Were you in the operational chain of command or did you exercise decisional authority on behalf of the Bureau leading up to the January 6, 2021 attack on the U.S. Capitol, during the attack, or in the Bureau's response?**

      Response: No.

   b. **Were you in the operational chain of command or did you exercise decisional authority in any investigation involving Hunter Biden?**

      Response: No.

   c. **Were you in the operational chain of command or did you exercise decisional authority regarding U.S. Attorney David Weiss' alleged request for special**

counsel status as IRS whistleblowers claim in connection with the Hunter Biden federal tax investigation?

Response: No.

d. **Were you in the operational chain of command or did you exercise decisional authority related to "threat tagging" of parents at local school board meetings across the country as potential domestic terrorists?**

Response: No. I am not aware of that practice at the FBI.

e. **In relation to the above question, do you believe parents peacefully expressing concerns about their child's education at local school board meetings should be labeled or investigated as 'domestic terrorists'?**

Response: No. The peaceful expression of one's beliefs is protected under the First Amendment.

f. **Were you in the operational chain of command or did you exercise decisional authority regarding any Bureau investigation into pro-life organizations in connection with domestic terrorism?**

Response: No.

g. **In your hearing, a senator asked about your awareness of a memo authored by an FBI field office regarding the targeting of Catholic churches in an effort to uncover domestic extremism, despite the fact that you were no longer with the FBI when the field office issued it. Did you have any knowledge of or involvement with the preparation of this memo prior to your departure from the Bureau?**

Response: No. During my time as a detailee to the FBI from February 2020 through July 2021, I was not aware of any discussions, proposals and/or communications related to the FBI targeting Catholic churches. My understanding is that the Richmond memo, which to my knowledge I have never seen, was authored in January 2023, over a year and a half after I left the FBI. According to media reports, the memo originated from the FBI's Richmond field office. As a member of the FBI Director's staff, I never visited the Richmond field office and have no recollection of working with anyone in Richmond.

h. **The Bureau subsequently retracted the memo detailed in the question above. Do you agree with this decision?**

Response: Yes. Since completing my FBI detail in July 2021, I have been serving as a line Assistant U.S. Attorney in New Orleans, where I have never been asked to work on a case involving the Catholic Church. (As an aside, I am a Catholic.) At the time of my confirmation hearing, I had only a cursory understanding of the

media coverage surrounding the January 2023 FBI memo. Having now reviewed the coverage more closely, I would agree with the assessment of the Attorney General that the report was "appalling" and "inappropriate." I would also agree with the assessment of the FBI Director, who said that he was "aghast" when the memo came to his attention and ordered that the memo be withdrawn.

As a general matter, as a judicial nominee and consistent with Canon 3(A) of the Code of Conduct for U.S. Judges, I cannot comment on a matter that could come before me, as that would be seen as prejudging an issue. However, I am willing to comment on this matter because the memo has been withdrawn and denounced by the Attorney General and FBI Director. That suggests litigation around the memo is not likely to come before me.

i. **In relation to question 1(h), do you believe the FBI suffers from anti-Catholic bias?**

   Response: No.

j. **In relation to question 1(h), is targeting a group of people based solely on their religion an appropriate tactic by a federal law enforcement agency?**

   Response: No.

k. **Have you been contacted by investigators in the House or Senate probing allegations of misconduct at the FBI?**

   Response: No.

l. **Have you participated in any congressional investigation probing allegations of misconduct at the FBI as witness or otherwise?**

   Response: No.

2. **Please describe your judicial philosophy. Be as specific as possible.**

   Response: My judicial philosophy begins with assiduously following the laws passed by Congress, precedent in the Supreme Court and the Fifth Circuit Court of Appeals, and the Constitution to which I've sworn an oath. I will work hard to have command of the relevant areas of law each time I walk into court or render a decision. I will listen carefully to the testimony and arguments of the parties and keep an open mind throughout the proceedings. I will be respectful of all litigants, witnesses, courtroom staff, and juries, and set a tone of decorum in the courtroom. And I will remain humble, understanding the limitations of my role and placing the law and the facts above any personal preferences I may have.

3. **Do you believe the meaning of the Constitution is immutable or does it evolve over time?**

Response: The meaning of the Constitution is fixed according to the understanding of those who ratified it. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2132 (2022). However, "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated." *Id*. Article V of the Constitution sets forth the process for amending the Constitution.

4. **Please describe how you would determine the meaning of an ambiguous term or phrase in a statute or other legal document.**

   Response: I would begin by closely reviewing any Supreme Court or Fifth Circuit precedent. If precedent exists, I would follow precedent. If not, I would seek to ascertain the plain meaning of the statute, focusing on the "ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1739 (2020). If the statute was still unclear, I would employ other canons of statutory construction that have been countenanced by the Supreme Court and the Fifth Circuit. If appropriate, I would also consider secondary sources, including non-binding cases from other jurisdictions, learned treatises, and law review articles, as well as legislative history "only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

5. **Should a judge look beyond the text of a law or regulation, even if clear, to consider its purpose and the consequences of ruling a particular way when deciding a case?**

   Response: No. A judge should apply the statute as written. The Supreme Court has held that "when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020).

6. **Should a judge consider statements made by a president as part of legislative history when construing the meaning of a statute or regulation?**

   Response: I am not aware of any Supreme Court or Fifth Circuit precedent that would permit a judge to consider statements by a president when interpreting a statute or regulation. More broadly, the Supreme Court has explained that external materials, like legislative history, "have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). Even then, "legislative history is itself often murky, ambiguous, and contradictory." *Id.*

7. **Is there ever an appropriate circumstance in which a district court judge may ignore or circumvent precedent set by the circuit court within which it sits or the U.S. Supreme Court?**

Response: No. I would be bound to follow Supreme Court and Fifth Circuit precedent. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("[A] precedent of this Court must be followed by the lower federal courts[.]").

8. **Please describe the analysis will you use, if confirmed, to evaluate whether a law or regulation infringes on an individual's rights under the Second Amendment in light of the Supreme Court's opinion in *Bruen*.**

   Response: In the *Bruen* case, the Supreme Court held that when the Second Amendment's text covers an individual's conduct, the Constitution "presumptively protects that conduct." 142 S. Ct. 2111, 2129-30 (2022). The government must then justify any restriction on the Second Amendment's "unqualified command" by demonstrating that the restriction is consistent with the Nation's historical tradition of firearm regulation. *Id.* at 2130. The Court explained that "analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*." *Id.* at 2133. In striking down New York's "proper-cause" requirement in *Bruen*, the Court reviewed historical evidence including English history and customs, Colonial-era regulations, and post-ratification restrictions, finding that the state had failed to show an American tradition justifying the requirement. *Id.* at 2138-56. If called upon to decide a Second Amendment case, I will fully and faithfully apply *Bruen*, *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), as well as any other governing Supreme Court and Fifth Circuit precedent.

9. **How does the judicial branch decide when an agency has exercised more authority than Congress delegated or otherwise exceeded its rulemaking powers?**

   Response: Under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, a court reviewing an agency's construction of a statute must evaluate two questions: whether Congress has directly spoken to the precise question at issue, and if not, whether the agency's action is based on a permissible construction of the statute. 467 U.S. 837, 843 (1984). "If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation," so long as the regulation is not "arbitrary, capricious, or manifestly contrary to the statute." *Id.* at 843-44. In certain "extraordinary cases" of economic and political significance, an agency must provide "something more than a merely plausible textual basis for the agency action" and instead "point to clear congressional authorization for the power it claims." *West Virginia v. EPA*, 142 S. Ct. 2587, 2608-09 (2022) (quotations omitted); *see also Biden v. Nebraska*, 143 S. Ct. 2355, 2375 (2023).

10. **In *Gundy v. United States*, 588 U.S. ___ (2019), justices in dissent indicated willingness to limit the non-delegation doctrine, arguing that Congress can only delegate authority that is non-legislative in nature. Does the Constitution limit the power to define criminal offenses to the legislative branch?**

Response: Congress may not transfer to another branch "powers which are strictly and exclusively legislative." *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) (quoting *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 42–43, 6 L.Ed. 253 (1825)). However, "a statutory delegation is constitutional as long as Congress lay[s] down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform." *Gundy*, 139 S. Ct. at 2123 (internal quotations and citation omitted). In *Gundy*, a plurality of the Court determined that Congress did not violate the nondelegation doctrine when it instructed the Attorney General to apply a section of the Sex Offender Registration and Notification Act to pre-Act offenders as soon as feasible. 139 S. Ct. 2116, 2129 (2019). If confirmed, I am bound to follow this and all other Supreme Court and Fifth Circuit precedent.

11. Does the meaning of the Eighth Amendment change over time? Why or why not?

Response: The Constitution contains enduring principles that are generally fixed in meaning but may be applied to modern circumstances. *See New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2132 (2022). The Eighth Amendment prohibitions on excessive fines, excessive bail, and cruel and unusual punishment are similarly enduring principles, but their applicability "must change as the basic mores of society change." *Kennedy v. Louisiana*, 554 U.S. 407, 419, as modified (Oct. 1, 2008), opinion modified on denial of reh'g, 554 U.S. 945 (2008) (quoting *Furman v. Georgia*, 408 U.S. 238, 382 (1972) (Burger, C. J., dissenting)).

12. Is the death penalty constitutional?

Response: In *Gregg v. Georgia*, the Supreme Court held that the death penalty is constitutional. 428 U.S. 153, 187 (1976).

13. Please describe the legal basis that allows federal courts to issue universal injunctions.

Response: Under Article III of the Constitution, judicial power extends to all cases "in law and equity." Injunctions, a common form of equitable powers, are governed by Federal Rule of Civil Procedure 65. The Supreme Court has held that a plaintiff must demonstrate certain factors to warrant an injunction, including irreparable injury, inadequate remedies at law, and that a balance of hardships and public interest favor granting an injunction. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156–57 (2010) (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)). With respect to universal injunctions, the Fifth Circuit has held: "[T]he Constitution vests the District Court with the judicial Power of the United States. That power is not limited to the district wherein the court sits but extends across the country. It is not beyond the power of a court, in appropriate circumstances, to issue a nationwide injunction." *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015) (quotations omitted). However, the Fifth Circuit has cautioned that "[s]uch injunctions at times can constitute 'rushed, high-stake, low-information decisions,' while more limited equitable relief can be beneficial."

Louisiana v. Becerra, 20 F.4th 260, 264 (5th Cir. 2021) quoting *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch J., concurring in the grant of a stay).

14. Please identify one federal judge or justice, current or former, whose service on the bench most inspires you and explain why you will seek to emulate it if confirmed.

Response: Judges take an oath to "administer justice without respect to persons, and do equal right to the poor and to the rich, and [to] faithfully and impartially discharge and perform all [his or her] duties . . . under the Constitution and laws of the United States." 28 U.S.C. § 453. Throughout my career as a practicing litigator, I have been fortunate to appear before countless judges who are like-minded in their commitment to this oath. To single out any one judge of whom I am particularly fond would do a disservice to the others—particularly among the extraordinary group of judges in the Eastern District of Louisiana, where I have been nominated. I will note, however, that I often find myself most inspired by judges who have the courage to do the right thing under the law, even when it isn't easy or convenient. This might involve, for example, exhibiting humility upon realizing that he or she made an erroneous off-the-cuff ruling; or patience in explaining the law to a confused criminal defendant; or grace and decorum when tensions are mounting between the lawyers; or fidelity to the rule of law even when the consequences may run afoul of his or her personal views. If I am confirmed, I will seek to follow a similar path, administering justice faithfully and impartially under the Constitution and the law.

Questions from Senator Thom Tillis for Brandon Scott Long Nominee to be United States District Court Judge for the Eastern District of Louisiana

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

   Response: Yes. "A judge . . . should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Code of Conduct for U.S. Judges, Canon 2(A). Judges are required to render decisions in a fair and impartial manner, setting aside any personal views.

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

   Response: Judicial activism is "[a] philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usu[ally] with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (11th ed. 2019). I do not consider judicial activism to be appropriate. If confirmed as a judge, I cannot and will not allow any personal views I may have to guide my decisions. I am required to adhere strictly to governing texts and precedents.

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

   Response: Judges take an oath to "faithfully and impartially discharge and perform" their duties. 28 U.S.C. § 453. The public expects and deserves judges who will exercise their duties with impartiality.

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

   Response: No. Judges are not policy makers. The role of a judge is to decide cases and controversies through a fair and impartial application of the law. *See* Code of Conduct for U.S. Judges, Canons 2(A) and 3.

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

   Response: The desirable outcome in any case is one that is grounded in the law and precedent, based upon a rigorous and open-minded analysis of the facts on record and arguments of the parties.

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

Response: No. If confirmed as a judge, I cannot and will not allow any personal views I may have guide my decisions. I am required to adhere strictly to governing texts and precedents.

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

   Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court held that the original public meaning of the Second Amendment protected an individual's right to possess a handgun in the home and to carry a handgun outside the home for self-defense. The Supreme Court has further held that a firearm restriction infringes on Second Amendment rights when the government fails to show that the restriction is consistent with the Second Amendment's text and historical understanding. *Bruen*, 142 S. Ct. at 2131. If confirmed, I will faithfully and dispassionately apply these principles, and any other governing Supreme Court and Fifth Circuit precedent, to the facts of any Second Amendment case that comes before me.

8. **How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?**

   Response: I would closely evaluate the facts in the record and arguments of the parties, and then faithfully and dispassionately apply to the facts the governing principles discussed in response to question 7, along with any other applicable Supreme Court and Fifth Circuit precedent. Beyond this general observation, it would be inappropriate to comment on the approach I would take, as that could be seen as prejudging an issue that might come before me should I be confirmed.

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: Qualified immunity protects government officials from civil liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known," *i.e.*, rights that are "clearly established." *Pearson v. Callahan*, 555 U.S. 223, 231-32 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). This protection is designed to balance two important interests—the need to hold officials accountable for unreasonable or irresponsible behavior, while shielding officials from liability for reasonable conduct or mere mistakes in judgment. *Pearson*, 555 U.S. at 231. In presiding over a case involving qualified immunity, I would follow my standard approach of closely analyzing the law and facts, studying the arguments carefully and with an open mind, and fairly and dispassionately applying the relevant law and binding precedent. Beyond this general observation, it would be inappropriate to comment on the approach I would take, as that could be seen as prejudging an issue that might come before me should I be confirmed.

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: If I'm confirmed, the principles outlined in question 9, as well as any other applicable law and precedent, will govern my decisions on qualified immunity cases. Questions relating to the scope of the qualified immunity doctrine are for policymakers to decide. Any personal beliefs I may have on the subject are of no moment.

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

    Response: Please see my responses to questions 9 and 10.

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: The Patent Act provides that "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." 35 U.S.C. § 101. The statute thus provides for four distinct categories of inventions or discoveries: processes, machines, manufactures, and compositions of matter. *Id*. The Supreme Court has found implicit exceptions for certain categories not covered under § 101, namely, laws of nature, natural phenomena, and abstract ideas. *See Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013). Evaluating eligibility under § 101 is merely the threshold test; the invention must also satisfy additional "conditions and requirements," including that the invention be novel, nonobvious, and fully and particularly described. *Bilski v. Kappos*, 561 U.S. 593, 602 (2010). As a judicial nominee, it would not be appropriate for me to offer any personal views I may have on these and other principles of the Supreme Court's patent eligibility jurisprudence. If confirmed, as with all cases, I will be bound to follow Supreme Court and Fifth Circuit precedent. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("[A] precedent of this Court must be followed by the lower federal courts[.]").

13. **Do you believe the current patent eligibility 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: Please see my response to question 12.

14. **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 approximately 18 years of legal practice, first as a private attorney practicing primarily in the area of criminal law, and then as a criminal Assistant U.S. Attorney in two jurisdictions, I have not handled copyright law cases. While I handled a small number of civil litigation matters in private practice, none of those matters involved copyright law. However, on countless occasions throughout my career, circumstances have required me to learn new areas of law quickly. On such occasions, my approach has been consistent: perform exhaustive legal research, thoroughly run to ground the facts, and methodically and dispassionately apply the law to the facts of my case. If confirmed as a district court judge, I would follow a similar approach when confronting new areas of law.

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

Response: In my approximately 18 years of legal practice, first as a private attorney practicing primarily in the area of criminal law, and then as a criminal Assistant U.S. Attorney in two jurisdictions, I have not handled copyright law cases. While I handled a small number of civil litigation matters in private practice, none of those matters involved the Digital Millennium Copyright Act. However, on countless occasions throughout my career, circumstances have required me to learn new areas of law quickly. On such occasions, my approach has been consistent: perform exhaustive legal research, thoroughly run to ground the facts, and methodically and dispassionately apply the law to the facts of my case. If confirmed as a district court judge, I would follow a similar approach when confronting new areas of law.

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

Response: In my approximately 18 years of legal practice, first as a private attorney practicing primarily in the area of criminal law, and then as a criminal Assistant U.S. Attorney in two jurisdictions, I have not handled cases involving intermediary liability for online service providers. While serving on detail to the FBI between February 2020 and July 2021, I became generally familiar with Section 230 and its protections for online platforms, but I was not involved in investigations or cases relating to Section 230. If confirmed as a district court judge and confronted with a new area of law, as I have on countless occasions throughout my career, my approach will be consistent: perform exhaustive legal research, thoroughly run to ground the facts, and methodically and dispassionately apply the law to the facts of the case.

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 approximately 18 years of legal practice, first as a private attorney practicing primarily in the area of criminal law, and then as a criminal Assistant U.S. Attorney in two jurisdictions, I have not handled First Amendment, free speech, or intellectual property cases. While I handled a small number of civil litigation matters in private practice, none of those matters involved the First Amendment, free speech, or intellectual property. However, on countless occasions throughout my career, circumstances have required me to learn new areas of law quickly. On such occasions, my approach has been consistent: perform exhaustive legal research, thoroughly run to ground the facts, and methodically and dispassionately apply the law to the facts of my case. If confirmed as a district court judge, I would follow a similar approach when confronting new areas of law.

15. **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 reported that 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: When interpreting the meaning of a statute, "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). Such extrinsic materials have "a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Id*. That is because "legislative history is itself often murky, ambiguous, and contradictory." *Id*. And judicial reliance on legislative history could encourage committee members and staff to strategically manipulate legislative materials to accomplish results that could otherwise not be achieved through the legislative process. *Id*. If I am confirmed as a district court judge, my own exploration of legislative history would be grounded in these principles as well as any other applicable Supreme Court and Fifth Circuit precedent.

    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: Materials such as policy statements, agency manuals, and enforcement guidelines for agencies like the U.S. Copyright Office do not carry legal authority, but are entitled to some deference given the "specialized experience and broader investigations and information" of the agency. *See Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440, 449 n. 9 (2003) (quoting *Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000)) (referring to the EEOC's Compliance Manual); *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944) (finding an agency administrator's rulings to "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance"). While such interpretations are not awarded "*Chevron*-style deference," they are "entitled to respect" so long as they have the "power to persuade." *Christensen*, 529 U.S. at 587.

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: Questions of when online service providers should be required to act are for policymakers to decide. Any personal beliefs I may have on the subject are of no moment. If confirmed, I will faithfully and dispassionately apply the relevant law and precedent to the facts.

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

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

Response: The Supreme Court has stated that "[w]hile every statute's meaning is fixed at the time of enactment, new applications may arise in light of changes in the world." *Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018). My approach to interpreting the DMCA, as with any statute, would be consistent and predictable. I would focus on the language of the statute and any binding Supreme Court and Fifth Circuit precedent as to how the statute should be applied.

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: Please see my response to question 16a. My role would be to apply governing Supreme Court and Fifth Circuit precedent faithfully and dispassionately to any case before me.

17. **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 this practice.

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

   Response: It is axiomatic that judge shopping is a discouraged practice. *See Gasperini v. Ctr. for Humans., Inc.*, 518 U.S. 415, 428 (1996) (noting that the *Erie* rule is designed to discourage forum shopping); *Garcia v. Int'l Constr. Equip., Inc.*, 765 F. App'x 109, 110 (5th Cir. 2019) (permitting an intra-district case transfer to prevent judge-shopping); *cf. McCuin v. Texas Power & Light Co.*, 714 F.2d 1255, 1262 (5th Cir. 1983) ("In a perfect judicial system forum-shopping would be paradoxical. The same results would obtain in every forum and after every type of trial."). The Eastern District of Louisiana, to which I have been nominated, currently has fourteen sitting judges in a single courthouse. Cases are allocated across the different sections of the court, thus limiting litigants' ability to engage in judge shopping.

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

   Response: If confirmed, it will be my duty to faithfully and dispassionately apply all governing law and binding precedent to the cases and controversies in my court. Moreover, I will abide by all professional and legal responsibilities inherent in the role of a district court judge. Any beliefs I may have regarding the responsibility of judges are of no moment.

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: No.

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

   Response: Please see my response to question 17b.

18. **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: Please see my response to question 17a.

19. **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: Please see my response to question 17a.

Senate Judiciary Committee Hearing
"Nominations"
Questions for the Record for Brandon Long
to be United States District Judge for the Eastern District of Louisiana

QUESTIONS FROM SENATOR BLACKBURN

1. **At your confirmation hearing on July 12, 2023, you declined to answer questions about your involvement in various matters during your time as Deputy Chief of Staff and Acting Chief of Staff to Federal Bureau of Investigation (FBI) Director Christopher Wray. In declining to answer such questions, you cited the Code of Judicial Conduct and your current role at the Department of Justice (DOJ), neither of which preclude you from answering questions about your role at the FBI.**

   Response: In responding to questions relating to my work at the FBI, my objective is to be as forthcoming as possible while observing my obligations under the Justice Manual and the Code of Conduct for U.S. Judges. Since my confirmation hearing, I have rereviewed the Justice Manual and the Code of Conduct and spoken with Department of Justice colleagues to gain a firmer understanding of how such guidelines may limit or not limit responses to certain questions. Consistent with that understanding, I include the responses below.

   a. **Please state below any meeting you participated in related to any of the following topics:**

      Response: From February 2020 to July 2021, I was on "detail" from the U.S. Attorney's Office in New Orleans to the FBI in Washington, DC. As Deputy Chief of Staff and Acting Chief of Staff to the FBI Director, I supported the Director's Office on various policy, public affairs, and administrative matters. By way of example, I assisted with the preparation of many of the Director's public statements and internal communications, advised on media appearances and congressional engagements, worked with the Department of Justice on policy matters affecting the FBI, and helped oversee components of the Director's Office staff. In these roles, I did not have oversight or decision-making authority over investigations, I did not personally participate in any investigations, and I was outside of what I would call the "operational chain of command." At the FBI, the chain of command is highly formalized, structured, and transparent. All investigative matters—that is, all cases, investigations, and investigative operations—report up through the Deputy Director, who reports directly to the FBI Director. The Chief of Staff (to whom the Deputy Chief of Staff reports) has a separate reporting line to the FBI Director. The Chief of Staff, Deputy Chief of Staff, and other members of the Director's staff are thus outside of the operational chain of command.

      Accordingly, I was not in the operational chain of command, I had no oversight or decision-making authority, and I did not participate in any investigations relating to the topics below.

I am presently serving as a line Assistant U.S. Attorney in New Orleans. When I left the FBI in July 2021, I left behind all FBI emails, electronic files, memoranda, phone records, and work calendars. I do not presently have access to such materials. Thus, I am not in possession, custody, or control of records of meetings I participated in from my time as Deputy and Acting Chief of Staff at the FBI.

To the best of my recollection, while serving as a staff member to the Director, I attended meetings involving the FBI's efforts to respond to violence and destruction of property in summer 2020. I also attended meetings relating to the FBI's work in ensuring the integrity of the election in 2020. I do not recall any meetings specifically relating to President Trump. However, from February 2020 through January 2021, President Trump was in office and, on occasion, sought to advance certain priorities within the Department of Justice. For instance, Operation Legend, a law enforcement initiative in 2020 where the Department surged resources in select cities to address violent crime, was an important program for the Administration, and it's possible that the President would have been referenced during meetings relating to Operation Legend. I do not recall attending any meetings regarding the Hunter Biden laptop.

i. **the Black Lives Matter protests that occurred during the summer of 2020**

ii. **the Hunter Biden laptop incident that was publicized in October 2020**

iii. **the 2020 United States presidential election**

iv. **President Donald J. Trump.**

b. **Please provide any email correspondence you sent or received related to any of the following topics:**

Response: Having left the FBI in July 2021, I do not have possession, custody, or control of any email correspondence from my time as Deputy and Acting Chief of Staff at the FBI.

i. **the Black Lives Matter protests that occurred during the summer of 2020**

ii. **the Hunter Biden laptop incident that was publicized in October 2020**

iii. **the 2020 United States presidential election**

iv. **President Donald J. Trump.**

c. **Please provide any memoranda you drafted, sent, or received related to any of the following topics:**

Response: Having left the FBI in July 2021, I do not have possession, custody, or control of any memoranda from my time as Deputy and Acting Chief of Staff at the FBI.

i. **the Black Lives Matter protests that occurred during the summer of 2020**

ii. **the Hunter Biden laptop incident that was publicized in October 2020**

iii. **the 2020 United States presidential election**

iv. **President Donald J. Trump.**

d. **Please state whether you participated in any phone conversation related to any of the following topics:**

Response: Having left the FBI in July 2021, I do not have possession, custody, or control of any phone records from my time as Deputy and Acting Chief of Staff at the FBI, and I do not have specific recollection of phone conversations relating to the topics below. However, during my time as Deputy and Acting Chief of Staff, it's possible that I participated in phone conversations regarding the FBI's efforts to respond to violence and destruction of property in summer 2020, as well as the FBI's work in ensuring the integrity of the election in 2020. I do not recall any phone conversations specifically relating to President Trump; however, as described in response to 1(a) above, it's possible that the President or his priorities would have been referenced during phone conversations I participated in. I do not recall any phone conversations regarding the Hunter Biden laptop.

i. **the Black Lives Matter protests that occurred during the summer of 2020**

ii. **the Hunter Biden laptop incident that was publicized in October 2020**

iii. **the 2020 United States presidential election**

iv. **President Donald J. Trump.**

e. **Please provide any other document or communication you drafted, sent, or received related to any of the following topics:**

Response: Having left the FBI in July 2021, I do not have possession, custody, or control of any other documents or communications from my time as Deputy and Acting Chief of Staff at the FBI.

i. **the Black Lives Matter protests that occurred during the summer of 2020**

ii. **the Hunter Biden laptop incident that was publicized in October 2020**

iii. the 2020 United States presidential election

iv. President Donald J. Trump.

In responding to each of the above requests, please provide all documents in your possession, custody, and control (including, but not limited to, email correspondence, text messages, instant messages, memoranda, and meeting notes) containing any of the following terms:

i. "Hunter Biden"
ii. "Hunter"
iii. "Black Lives Matter"
iv. "BLM"
v. "2020 riots"
vi. "2020 protests"
vii. "2020 election"
viii. "2020 presidential election"
ix. "2020 US presidential election"
x. "2020 U.S. presidential election"
xi. "2020 United States presidential election"
xii. "Donald J. Trump"
xiii. "Donald Trump"
xiv. "Trump."