

Senator Dick Durbin
Ranking Member, Senate Judiciary Committee
Written Questions for John Peter Cronan
Nominee to be a Member of the United States Sentencing Commission
August 19, 2026

1. According to records obtained under the Freedom of Information Act, then-Attorney General (AG) Bill Barr requested that you meet with Joseph DiGenova in 2019, while you served in the Justice Department during the first Trump Administration. According to public reporting, DiGenova reportedly met with AG Barr to advocate for Rudy Giuliani’s client and Ukrainian businessman, Dmytro Firtash.

a. **Why did Attorney General Barr request that you meet with DiGenova?**

Response: While I vaguely recall a meeting with attorneys for Dmytro Firtash around 2019, I do not recall any details of this meeting. From your question, this meeting would have occurred about seven years ago and at a time when I served in a senior leadership position at the U.S. Department of Justice’s Criminal Division and typically had many meetings each day. I do not recall whether or why then-Attorney General Bill Barr requested that I meet with Joseph DiGenova.

b. **Did you meet with or otherwise correspond with DiGenova?**

Response: I do not recall any other meetings or any correspondences with Mr. DiGenova.

c. **If so, what did you discuss?**

Response: I do not recall any details as to what was discussed at this meeting, nor do I any longer have access to notes, if any, from that meeting.

2. The U.S. Sentencing Commission (Commission or USSC) consists of seven members from both political parties appointed by the President and two *ex officio*, nonvoting members—the Attorney General or a designee and the U.S. Parole Commission chair. However, unlike most state sentencing commissions, the federal Commission lacks a representative from a public defender background who would provide an essential perspective on the criminal justice system. Earlier this year, Senator Booker and I introduced the *Sentencing Commission Improvements Act*, legislation that would add a nonvoting member with a public defender background to the U.S. Sentencing Commission.

a. **Do you support legislation that would create a public defender *ex officio* position?**

Response: Congress has provided that “[t]he Attorney General, or the Attorney General’s designee, shall be an *ex officio*, nonvoting member of the Commission.” 28 U.S.C. § 991(a). The Chair of the U.S. Parole Commission serves as an *ex officio*, nonvoting

member of the Commission as well. See <https://www.ussc.gov/about/who-we-are/organization>.

I understand that, on or about March 18, 2026, a bill was introduced (S. 4136) that would amend 28 U.S.C. § 991(a) to add “a Federal public defender, or a community defender, designated by the Defender Services Office of the Administrative Office of the United States Courts” as an *ex officio*, nonvoting member of the Commission. Having not served on the Commission nor participated in any discussions about whether an additional *ex officio* member should be added, I am not familiar with all the arguments in support of or against this proposal. Without that knowledge or background, I do not feel comfortable offering a position on the proposed legislation.

b. If Congress does not act on this issue, what steps will you take to ensure that public defenders have equal access to the Commissioners, and that the Justice Department does not have outsized influence in the creation of new guideline provisions?

Response: Regardless of whether legislation is enacted to add a criminal defender *ex officio* member to the Commission, I believe it is essential that the Commission regularly receive input from all stakeholders, including from the federal criminal defense community. If I am confirmed, I will work to ensure that the Commission receives input from the Federal Defenders and others in the federal criminal defense community throughout the Guidelines cycle, and to include the federal criminal defense community at any roundtable discussions regarding the Guidelines.

3. The Sentencing Guidelines contain several enhancements that do not have a *mens rea* requirement—they apply regardless of whether a person had knowledge of the fact triggering the enhancement, effectively rendering them strict liability enhancements.

a. What is your view on the role of *mens rea* in criminal sentencing?

Response: *Mens rea*, which is Latin for “guilty mind,” is defined in *Black’s Law Dictionary* as “[t]he state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime.” A crime’s *mens rea* could be, for example, acting purposely, knowingly, recklessly, or negligently. Along with *actus reus*, which means “guilty act,” *mens rea* is an essential element of most crimes. A defendant’s *mens rea* can be relevant to various considerations at sentencing under Section 3553(a), including the “nature and circumstances of the offense,” 18 U.S.C. § 3553(a)(1), “the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense,” *id.* § 3553(a)(2)(A), and “the need to avoid unwarranted sentencing disparities,” *id.* § 3553(a)(6).

b. Would you support amending the guidelines to include *mens rea* requirements for those enhancements that currently lack such a requirement?

Response: While I have not thought enough about this issue to respond categorically, the commission of conduct giving rise to an enhancement with criminal intent, particularly acting purposely or knowingly, would generally suggest more egregious conduct warranting greater punishment.

4. A wealth of empirical social science research has demonstrated that longer prison sentences provide minimal deterrent effect; do not increase public safety; and in some cases, actually increase the rate of reoffending.

How will this research on deterrence impact your work on the Commission if you are confirmed?

Response: I am not familiar with the particular research to which you are referencing. From my experience as a prosecutor and a district judge, I believe that the deterrent effect of an anticipated sentence is a product of the likelihood of punishment and the anticipated severity of that punishment. I believe deterrence can have value in particular cases, although like all factors under 18 U.S.C. § 3553(a), a sentencing judge must conduct an individualized assessment of the weight to afford that factor based on the offender and offense committed. If confirmed to the Commission, I will look examine any data or information revealing the extent to which certainty of punishment and the expectation of the severity of punishment creates a deterrent effect and whether the degree of deterrence varies for certain crimes.

5. **Did President Trump lose the 2020 election?**

Response: The U.S. Constitution sets forth the process by which a person is elected President of the United States. That process is contained in the Twelfth Amendment to the Constitution, which requires that electors meet in their states and vote by ballot for President and Vice President, and then the President of the Senate, at a joint session of Congress, must open the certificates and the votes are counted. The Twelfth Amendment further provides that the person who receives the majority of the votes for President shall be the President. I understand that this process occurred in connection with the 2020 Presidential Election. Pursuant to that process, Joe Biden was certified as the winner of 2020 Presidential Election because he received a majority of the votes of the electoral college. As a result, Joe Biden then served as President from early 2021 to early 2025.

6. **Does the U.S. Constitution permit a president to serve three terms?**

Response: The Twenty-Second Amendment to the Constitution provides, in relevant part, that someone already elected twice to be President of the United States cannot be elected a third time: “No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once.” As a sitting federal judge, it would be inappropriate for me to offer an interpretation of that Amendment beyond reciting its plain text or to otherwise opine on the hypothetical legal question of whether a person may be permitted to serve three terms as President. *See* Code of Conduct for United States Judges, Canon 3(A)(6). Further, to the extent the subject matter of

this question implicates political or policy debates regarding term limits or statements by public officials, it would be inappropriate for me, as a federal judge, to comment. *See* Code of Conduct for United States Judges, Canon 5.

7. Do you believe that January 6 rioters who were convicted of violent assaults on police officers should have been given full and unconditional pardons?

Response: The federal pardon power is held by the President of the United States under Article II, Section 2, Clause 1 of the U.S. Constitution: “The President . . . shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.” U.S. Const. art. III, § 2; *see Trump v. United States*, 603 U.S. 593, 608 (2024) (“To the executive alone is entrusted the power of pardon, and the legislature cannot change the effect of such a pardon any more than the executive can change a law. The President’s authority to pardon, in other words, is conclusive and preclusive, disabling the Congress from acting upon the subject.” (citations and internal quotation marks omitted)). To the extent the subject matter of this question implicates political or policy debates regarding President Trump’s decision to grant particular pardons, it would be inappropriate for me, as a federal judge, to comment. *See* Code of Conduct for United States Judges, Canons 2(A), 5.

8. Would you resign if the President asks you to do something which is inconsistent with your oath to uphold and defend the Constitution?

Response: I cannot envision a scenario where this would occur, but I would never do anything inconsistent with my oath to uphold and defend the Constitution. I also note that I currently serve as a federal district judge, which is part of the judicial branch, and I am being considered for an independent commission of the judiciary. I do not serve in, nor am I being considered for, a position within the Executive Branch.

9. The Federalist Society seeks to “reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law.”

a. In your Questionnaire, you state that you are currently or were previously a member of the Federalist Society. What is your understanding of “traditional values”?

Response: I am not familiar with the passage that you quoted or its context, nor do I know what the author was referencing.

b. President Trump wrote on Truth Social that the Federalist Society gave him “bad advice” on “numerous Judicial Nominations.” He also wrote that Leonard Leo is a “sleazebag” who “probably hates America.” If you are not familiar with this post, please refer to it in the footnote.¹

¹ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (May 29, 2025, 8:10 PM), <https://truthsocial.com/@realDonaldTrump/posts/114593880455063168>.

i. Do you agree with President Trump that the Federalist Society provided President Trump with bad advice during his first term? Why or why not?

Response: I am not familiar with this statement. As a sitting federal judge, it would be inappropriate for me to comment on political issues or statements by a political figure. *See* Code of Conduct for United States Judges, Canon 5.

ii. Do you agree with President Trump that Leo is a sleazebag who probably hates America? Why or why not?

Response: I am not familiar with this statement. As a sitting federal judge, it would be inappropriate for me to comment on political issues or statements by a political figure. *See* Code of Conduct for United States Judges, Canon 5.

iii. If you are confirmed, do you plan to remain affiliated with the Federalist Society?

Response: I have no current plans to terminate my membership with the Federalist Society. After I was confirmed as a federal judge, I consulted the canons of judicial ethics and determined that it was appropriate for me to continue my membership with the Federalist Society.

c. During your selection process, have you spoken to or corresponded with any individuals associated with the Federalist Society, including Leonard Leo or Steven G. Calabresi? If so, please provide details of those discussions.

Response: No.

d. Have you ever been asked to and/or provided services to the Federalist Society, including research, analysis, advice, speeches, or appearing at events?

Response: I am often invited to speak to chapters of the Federalist Society at law schools and I participated in a “fireside chat” with then-Deputy Attorney General Todd Blanche at the Third Circuit Chapters Conference on April 25, 2025. As with other invitations to speak at law schools or to legal organizations, I try my best to speak if my schedule allows and I am comfortable with the subject matter. I have never been asked to provide, or provided, services to the Federalist Society in the form of research, analysis, or advice.

e. Have you ever been paid honoraria by the Federalist Society? If so, how much were you paid, and for what services?

Response: No.

10. The Teneo Network states that its purpose is to “Recruit, Connect, and Deploy talented conservatives who lead opinion and shape the industries that shape society.”

a. During your selection process, have you spoken to or corresponded with any individuals associated with the Teneo Network, including Leonard Leo? If so, please provide details of those discussions.

Response: No.

b. Have you ever been asked to and/or provided services to the Teneo Network, including research, analysis, advice, speeches, or appearing at events?

Response: No.

c. Have you ever been paid honoraria by the Teneo Network? If so, how much were you paid, and for what services?

Response: No.

11. The Heritage Foundation states that its mission is to “formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.” Heritage Action, which is affiliated with the Heritage Foundation, seeks to “fight for conservative policies in Washington, D.C. and in state capitals across the country.”

a. During your selection process, have you spoken to or corresponded with any individuals associated with the Heritage Foundation or Heritage Action, including Kevin D. Roberts? If so, please provide details of those discussions.

Response: No.

b. Have you ever been asked to and/or provided services to the Heritage Foundation or Heritage Action, including research, analysis, advice, speeches, or appearing at events?

Response: No.

c. Were you ever involved in or asked to contribute to Project 2025 in any way?

Response: No.

d. Have you ever been paid honoraria by the Heritage Foundation or Heritage Action? If so, how much were you paid, and for what services?

Response: No.

12. The America First Policy Institute (AFPI) states that its “guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in

the American interest, and the primacy of American workers, families, and communities in all we do.”

a. During your selection process, have you spoken to or corresponded with any individuals associated with AFPI? If so, please provide details of those discussions.

Response: No.

b. Have you ever been asked to and/or provided services to AFPI, including research, analysis, advice, speeches, or appearing at events?

Response: No.

c. Have you ever been paid honoraria by AFPI? If so, how much were you paid, and for what services?

Response: No.

13. The America First Legal Institute (AFLI) states that it seeks to “oppose the radical left’s anti-jobs, anti-freedom, anti-faith, anti-borders, anti-police, and anti-American crusade.”

a. During your selection process, have you spoken to or corresponded with any individuals associated with AFLI, including Gene Hamilton or Daniel Epstein? If so, please provide details of those discussions.

Response: I did not speak with anyone associated with AFLI during the selection process. I know Gene Hamilton from previously working together at the U.S. Department of Justice and, after President Trump announced my nomination for the Sentencing Commission, Mr. Hamilton reached out to congratulate me.

b. Have you ever been asked to and/or provided services to AFLI, including but not limited to research, analysis, advice, speeches, or appearing at events?

Response: No.

c. Have you ever been paid honoraria by AFLI? If so, how much were you paid, and for what services?

Response: No.

14. The Article III Project is an organization which claims that, “The left is weaponizing the power of the judiciary against ordinary citizens.”

a. During your selection process, have you spoken to or corresponded with any individuals associated with the Article III Project, including Mike Davis, Will Chamberlain, or Josh Hammer? If so, please provide details of those discussions.

Response: I did not speak with anyone associated with Article III Project during the selection process. I have known Mike Davis since around 2017 or 2018, and, after President Trump announced my nomination for the Sentencing Commission, Mr. Davis reached out to congratulate me.

b. Have you ever been asked to and/or provided services to the Article III Project, including research, analysis, advice, speeches, or appearing at events?

Response: No.

c. Have you ever been paid honoraria by the Article III Project? If so, how much were you paid, and for what services?

Response: No.

15. The Alliance Defending Freedom (ADF) states that it is “the world’s largest legal organization committed to protecting religious freedom, free speech, the sanctity of life, marriage and family, and parental rights.”

a. During your selection process, have you spoken to or corresponded with any individuals associated with ADF? If so, please provide details of those discussions.

Response: No.

b. Have you ever been asked to and/or provided services to ADF, including research, analysis, advice, speeches, or appearing at events?

Response: No.

c. Have you ever been paid honoraria by ADF? If so, how much were you paid, and for what services?

Response: No.

**Nomination of John Cronan
Nominee to the U.S. Sentencing Commission
Questions for the Record
Submitted August 13, 2026**

QUESTIONS FROM SENATOR WHITEHOUSE

Please answer each question and sub-question individually and as specifically as possible.

1. If confirmed, what issues would you recommend the Sentencing Commission consider as policy priorities for future amendment cycles?

Response: At a public meeting held on August 27, 2026, the Sentencing Commission voted on Final Priorities for the 2026-2027 Amendment Cycle. Those priorities were identified as: (1) evaluation of Sentencing Guidelines and federal sentencing practices in light of the Commission’s mission set forth in the Sentencing Reform Act; (2) comprehensive review of Commission’s Rules of Practice and Procedure; (3) consideration of any amendments that may be warranted in response to any legislation or caselaw developments; (4) resolution of circuit conflicts as warranted; and (5) consideration of other miscellaneous issues coming to the Commission’s attention. <https://www.ussc.gov/policymaking/federal-register-notice/federal-register-notice-final-2026-2027-priorities>. If I am confirmed to the Commission, I would be committed to those priorities and considering any appropriate amendments to the Guidelines.

In addition, as indicated in these Final Priorities, Congress has provided that a purpose of the Commission is to “establish sentencing policies and practices for the Federal criminal justice system that . . . provide certainty and fairness in meeting the purposes of sentencing,” 28 U.S.C. § 991(b)(1)(A), which I understand to include addressing splits among the Courts of Appeals in interpreting Guidelines provisions. *See Braxton v. United States*, 500 U.S. 344, 348-50 (1991). Rule 5.2(c) of the Commission’s Rules of Practice and Procedure set out a non-exhaustive list of factors that the Commission considers in deciding whether a particular circuit conflict warrants resolution.

One circuit conflict that the Commission has considered in the past, and I believe warrants priority consideration, concerns the definition of a “controlled substance offense” in Section 4B1.2. Certain circuits have held that a “controlled substance offense” includes only offenses controlled by federal law, and a state drug offense will not qualify if the state statute includes substances not covered by federal law. Other circuits have held that a state conviction involving a drug regulated by state law, but not identified under federal law, can qualify as a “controlled substance offense.” In addition, circuits have split on which temporal version of the applicable drug schedule should be used in deciding if a prior offense qualifies as a “controlled substance offense”: the schedule in place at the time of the prior conviction or the schedule in place at the time of the instant federal offense or sentencing for that federal offense.

2. In 2014, the President’s Advisory Council on Wildlife Trafficking recommended that the Sentencing Commission review the Sentencing Guidelines on wildlife trafficking offenses for

possible revision. In the years since, wildlife trafficking by transnational criminal organizations has become more sophisticated, more prevalent, and more destructive.

- a. If confirmed, will you review these Guidelines and the Advisory Council's recommendation?

Response: While I am generally familiar with the Guidelines provision for wildlife trafficking offenses, which is at Section 2Q2.1, I am not familiar with the 2014 report of the President's Advisory Council on Wildlife Trafficking. If I am confirmed to the Commission, I will read that report, including the Advisory Council's recommendations, and review the applicable Guidelines.

- b. If confirmed, will you discuss these Guidelines and the Advisory Council's recommendation for consideration of any necessary revisions?

Response: Because I am not familiar with the Advisory Council's recommendations, I am unable to commit to discussing any recommendations the Advisory Council made for revision of the Guidelines. But, as noted, if confirmed, I commit to reading the report and its recommendations and to reviewing the applicable Guidelines. I also would review any research and studies conducted by the Commission on this issue, as well as consider any positions taken by relevant stakeholders.

3. Please describe your view of the role of alternatives to incarceration in federal sentencing.

Response: It is important for all participants in the criminal justice process to think about alternatives to incarceration in appropriate cases; sometimes incarceration may not achieve the goals of sentencing for a particular defendant. In the Southern District of New York, for instance, we have a pretrial diversion program called the Young Adult Opportunity Program ("YAOP"). YAOP is an intensive, judicially-supervised pretrial program for adults ages 18 to 25 who are charged with non-violent federal crimes. This entirely voluntary program offers education and emotional support, counseling, and treatment resources to the participants, with the hope that its structure and accountability will get the young women and men back on track at a young age. If a participant successfully completes the program, they may receive a shorter sentence or even dismissal of the charges.

4. Please describe your view of the role of "problem-solving" or "specialty" courts in federal sentencing.

Response: Please see my discussion of YAOP in my response to Question 3. In addition, in 2019, the Southern District of New York launched a special court called the Reentry through Intensive Supervision and Employment ("RISE") court. Participants are defendants serving terms of supervised release, and they appear in court every two weeks to discuss their living and employment situation, legal and financial issues, and progress on completing a behavioral wellness program. The RISE court provides support to the participants including *pro bono* representation for legal matters, and a Probation Officer and the other participants work together

to encourage their success. Upon successful completion, a participant's supervised release term could be reduced and, more importantly, the person is well-positioned to succeed in society. A few defendants before me have graduated from the RISE court and appear to be doing very well. Programs like the RISE court are geared at public safety, reducing recidivism, and providing a multifaceted approach to helping people make successful transition to society post-incarceration.

**Nomination of John Cronan
to be a Commissioner of the United States Sentencing Commission
Questions for the Record
Submitted August 19, 2026**

QUESTIONS FROM SENATOR COONS

1. Do you believe that the Senate Judiciary Committee has a responsibility to evaluate executive nominees to the best of its ability, including by asking questions on the record to make each nominee's unique background and viewpoint clear to the American people?

Response: Yes.

2. Do you believe that you, as a nominee to serve as a Commissioner of the United States Sentencing Commission, have a responsibility to the American people to give full and complete answers to the Committee's questions to the best of your ability and in good faith?

Response: Yes, subject to the limitations imposed by the ethical canons under the Code of Conduct for United States Judges.

3. Do you believe you fulfilled this responsibility with the answers you have provided to my questions for the record?

Response: Yes.

a. Did you receive assistance from staff in the White House, the Department of Justice, or any other organization in writing your responses to these questions? If so, from whom did you receive assistance and what was the nature of the assistance you received?

Response: I personally wrote a first draft of my responses to these Questions after consulting my record, the ethical canons, relevant legal authorities, and responses of past nominees before this Committee. No one assisted me in preparing that draft. I then provided that draft to the U.S. Department of Justice's Office of Legal Policy ("OLP"). After receiving limited feedback from OLP staff, I finalized my responses based on my independent judgment. In preparing these responses, I received no assistance from anyone in the White House or from any organization other than the aforementioned limited feedback from OLP.

4. Please describe your experience in the selection process for this position from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated both with those inside and outside of the government).

Response: In approximately February 2026, I was asked by the White House Counsel's Office if I was interested in being considered by President Trump to be nominated as a Commissioner on the U.S. Sentencing Commission, and I responded that I would be. On March 3, 2026, I was

interviewed by staff with the White House Counsel's Office and the U.S. Department of Justice for that position. On June 29, 2026, I received a call from President Trump advising that he would be announcing my nomination for the Sentencing Commission shortly and congratulating me on the nomination. That evening, President Trump announced my nomination. On July 14, 2026, the White House announced on its website that my nomination was sent to the U.S. Senate.

5. At any point during the process that led to your nomination, did you make any representations or commitments to anyone—including but not limited to individuals at the White House, at the Justice Department, or at outside groups—as to how you would vote on a particular matter if confirmed? If so, explain fully.

Response: No.

6. When it comes to conducting yourself ethically, who in the legal profession do you see as a role model?

Response: I have been fortunate to have many amazing role models and mentors during my career. Two especially significant role models for conducting myself ethically on the bench are the judges I clerked for, Judge Robert A. Katzmann and Judge Barrington D. Parker, Jr.

7. If confirmed, will you commit to conducting your duties as a Commissioner according to your best professional judgment, independent from political pressure and influence?

Response: Yes.

8. In a November 2025 video speech titled “A Bureau on the Brink,” Bureau of Prisons (BOP) Deputy Director Josh Smith described “an agency in dire straits.” He discussed that “staffing is catastrophic,” with “critical areas like psychology and medical services understaffed, causing burnout and mandatory overtime for the rest. The Government Accountability Office has called this one of the worst staffing crises in federal government history.” He continued, “our infrastructure budget has a \$4 billion maintenance backlog, with leaking roofs, broken cell doors, and outdated equipment, compromising safety and security.” Moreover, “staff and inmate suicides have also surged, a heartbreaking outcome as a result of deficient health and wellness support and chronic staffing shortages.” He concluded, “97% of those that we have in our custody are going to be released back into our communities. That is why there is no other agency in all of law enforcement that has a greater impact on public safety than this Bureau of Prisons.”

It is apparent that the deep capacity challenges faced by BOP create significant public safety risks to staff, correctional officers, and inmates. They also endanger public safety more generally by inhibiting the ability of inmates to rehabilitate and then safely and effectively reintegrate into our communities.

a. Do you share Deputy Director Smith's concerns about the capacity challenges at BOP? Please explain.

Response: I am not familiar with Bureau of Prisons (“BOP”) Deputy Director John Smith’s remarks in November 2025, nor am I familiar with the nationwide staffing shortages at BOP facilities that he appeared to be referencing. I am familiar with staffing issues at the Metropolitan Detention Center (“MDC”) in Brooklyn, where many defendants who appear before me are incarcerated. When I was confirmed as a federal district judge in August 2020, the MDC was experiencing considerable staffing shortages, which gave rise a host of serious concerns relating to inmate and staff safety, violence at the jail, the adequacy of medical treatment, and overall confinement conditions including extended lockdowns. It is my sense that, in more recent years, conditions at the MDC have improved considerably, largely thanks to increased staffing levels. For instance, while lockdowns occasionally occur at the MDC, extended lockdowns presently appear to be rare.

b. Do you agree that these capacity challenges can create risks to public safety for BOP personnel, inmates, and the public at large? Please explain.

Response: Inadequate staffing levels at federal jails and prisons result in, among other concerns, risks to the safety risks of BOP staff and inmates.

9. The statute that lays out the duties of the Commission, 28 U.S.C. § 994, says that when the Commission considers sentencing guidelines, it “shall take into account the nature and capacity of the penal, correctional, and other facilities and services available.” It continues, “[t]he sentencing guidelines . . . shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons.” This mandate reflects Congress’s judgment that compared to BOP (which has no role at sentencing), or compared to the disaggregated decisions of hundreds of federal district judges, it is the Commission that is best situated to ensure that on a systemic basis our federal sentencing laws operate effectively within BOP capacity.

a. Do you agree that as a Commissioner it will be your duty to formulate Guidelines to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons?

Response: As you noted, Congress has directed that the U.S. Sentencing Guidelines “be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission.” 28 U.S.C. § 994(g). At the same time, a sentencing judge should consider, to the extent applicable, all of the factors under 18 U.S.C. § 3553(a), and impose a sentence that achieves the four primary purposes of sentence: retribution to reflect the seriousness of the criminal conduct, 18 U.S.C. § 3553(a)(2)(A), deterrence to prevent the crime from occurring again, *id.* § 3553(a)(2)(B), incapacitation to protect society from future harm, *id.* § 3553(a)(2)(C), and rehabilitation to help the defendant return to life outside of custody and be a productive member of society, *id.* § 3553(a)(2)(D).

The Guidelines have most value to a sentencing judge when they effectively account for as many § 3553(a) factors as possible for a particular offense and offender. While as

required under Section 994(g), the Sentencing Commission should strive to formulate Guidelines that “minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons,” 28 U.S.C. § 994(g), the Commission should not do so at the expense of the statutory purposes of sentencing, including protecting the public.

b. If confirmed, how will you implement this statutory mandate?

Response: If I am confirmed to the Commission, I will study the data and information related to “the nature and capacity of the penal, correctional, and other facilities and services available,” 28 U.S.C. § 994(g). When considering any amendments to the Guidelines, I would take into account that consideration and all other appropriate considerations under the law. Congress further directed the Commission to “make recommendations to Congress concerning modification or enactment of statutes relating to sentencing, penal, and correctional matters that the Commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy.” 28 U.S.C. § 995(a)(2). Accordingly, if appropriate, I also would consider how the Commission’s collection of data and information on this and other issues should be shared with Congress to assist its legislative efforts, including addressing any concerns with the capacity of federal prisons.

10. One tool to better address BOP capacity challenges is alternatives to incarceration, and on that point, Congress directed the Commission to ensure that “the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.”

a. Do you think the Guidelines sufficiently implement this directive? If yes, why?

Response: Various provisions of the U.S. Sentencing Guidelines consider a defendant’s lack of a criminal history and the non-violent nature of the offense. These provisions reduce the defendant’s offense level and resulting Guidelines range. Depending on the degree of that extent of that reduction, the Guidelines may provide for a non-custodial sentence.

The 2023 Amendments to the Guidelines enacted certain provisions that reach nonviolent offenders with no or little criminal history. The so-called “zero-point offender” provision at Section 4C1.1 allows for a two-level reduction for defendants who have no criminal history points under Chapter Four, Part A, and satisfy other criteria including the absence of violence in connection with the offense. The 2023 Amendments also modified Section 5C1.2 to track the First Step Act’s changes to the “safety valve relief” provision at 18 U.S.C. § 3553(f), as well as to account for the expanded class of defendants who qualify for safety valve relief. (In turn, Section 2D1.1(c)(18) provides for a two-level decrease for a defendant who meets the criteria under Section 5C1.2.)

Section 3B1.2 also provides for mitigating role reductions, decreasing the offense level by four if the defendant was a minimal participant, by two if the defendant was a minor

participant, and by three if the defendant's role fell in between that of a minor and a minimal participant. In addition, for defendants convicted of drug offenses, another two-level decrease applies under Section 2D1.1(c)(17) if the defendant receives a four-level reduction as a minimal participant and satisfies other criteria.

The Guidelines further provide for noncustodial sentences, or a reduced custodial sentences, for defendants who lack a criminal history and whose conviction does not exceed certain offense levels. A defendant in Criminal History Category I (meaning that the defendant has zero or one criminal history point) with a final offense level of eight or lower is in Zone A pursuant to the Sentencing Table at Chapter 5, Part A. Subject to certain restrictions, a defendant in Zone A may receive a sentence of probation. U.S. Sent'g Guidelines Manual § 5B1.1(a)(1). A sentence of imprisonment is not required under the Guidelines for a defendant in Zone A unless the applicable guideline in Chapter Two expressly requires such a term. *Id.* § 5C1.1(b). If a defendant in Criminal History Category I has a final offense level of nine to eleven, the defendant is in Zone B. Subject to certain restrictions, a defendant in Zone B may receive a sentence of probation if the sentence includes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention. *Id.* § 5B1.1(a)(2). If a defendant in Criminal History Category I has a final offense level of twelve or thirteen, the defendant is in Zone C. A defendant in Zone C may receive a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention, provided that at least one-half of the minimum term is satisfied by imprisonment. *Id.* § 5C1.1(d)(2).

b. If not, how would you amend the Guidelines to encourage alternatives to incarceration, particularly for first-time, nonviolent offenders?

Response: If I am confirmed to the Commission, I would study the data and information related first-time, nonviolent offenders to consider any appropriate amendments to the Guidelines. If appropriate, I also would consider how the Commission's collection of data and information on this issue should be shared with Congress to assist legislative efforts.

But to be sure, I believe it is important for all participants in the criminal justice process to think about alternatives to incarceration in appropriate cases; sometimes incarceration may not achieve the goals of sentencing for a particular defendant. In the Southern District of New York, for instance, we have a pretrial diversion program called the Young Adult Opportunity Program ("YAOP"). YAOP is an intensive, judicially-supervised pretrial program for adults ages 18 to 25 who are charged with non-violent federal crimes. This entirely voluntary program offers education and emotional support, counseling, and treatment resources to the participants, with the hope that its structure and accountability will get the young women and men back on track at a young age. If a participant successfully completes the program, they may receive a shorter sentence or even dismissal of the charges.

11. In the rare instances where the Commission has voted along party lines to promulgate amendments, the Commission has been criticized by commentators and some legislators. Do you commit to supporting only those guideline amendments that have bipartisan support among the Commissioners?

Response: If I am confirmed, my starting point for any discussion regarding a possible amendment to the Guidelines would be to work hard to achieve consensus among the Commissioners, especially on major initiatives. When the Sentencing Commission acts unanimously, the resulting Guidelines provisions may carry greater weight with sentencing judges. But while I believe there is a value for the Commission to operate by consensus, I would not let my desire for consensus interfere with my own independent assessment of the proper outcome especially when considering the importance of retribution, incapacitation, deterrence, and rehabilitation in sentencing.

12. The Commission's enabling statute, 28 U.S.C. § 991, provides for an ex officio member from the Department of Justice, but it does not provide a corresponding role for a representative from the Federal Public Defenders. The Judicial Conference of the United States supports a Defender ex officio.

a. Do you support legislation that would create a Defender ex officio position?

Response: Congress has provided that "[t]he Attorney General, or the Attorney General's designee, shall be an ex officio, nonvoting member of the Commission." 28 U.S.C. § 991(a). The Chair of the U.S. Parole Commission serves as an *ex officio*, nonvoting member of the Commission as well. See <https://www.ussc.gov/about/who-we-are/organization>.

I understand that, on or about March 18, 2026, a bill was introduced (S. 4136) that would amend 28 U.S.C. § 991(a) to add "a Federal public defender, or a community defender, designated by the Defender Services Office of the Administrative Office of the United States Courts" as an *ex officio*, nonvoting member of the Commission. Having not served on the Commission nor participated in any discussions about whether an additional *ex officio* member should be added, I am not familiar with all the arguments in support of or against this proposal. Without that knowledge or background, I do not feel comfortable offering my position.

b. In the absence of congressional action on this issue, what steps will you take to ensure that Defenders have equal access to the Commissioners and that the Department of Justice does not have outsized influence in the creation of new guideline provisions?

Response: Regardless of whether legislation is enacted to add a criminal defender *ex officio* member of the Commission, I believe it is essential that the Commission regularly receive input from all stakeholders, including from the federal criminal defense community. If I am confirmed, I will work to ensure that the Commission receives input from the Federal Defenders and others in the federal criminal defense community

throughout the Guidelines cycle, and to include the federal criminal defense community at any roundtable discussions regarding the Guidelines.

13. As a district court judge, what is your philosophical approach to sentencing, and how would your experience in the courtroom impact your work on the Commission?

Response: Deciding whether another human being should lose their liberty, and if so for how long and under what conditions, is the most meaningful and difficult decision a district judge is called to make. I devote considerable time preparing for each sentencing and contemplating the sentence to impose. In doing so, I carefully consider the application of the relevant factors under 18 U.S.C. § 3553(a) and do my best to arrive at a sentence that is sufficient but not greater than necessary to achieve the purposes of sentencing for the particular defendant before me. Every sentence I impose is individually tailored to that defendant, taking into account the circumstances of the defendant, the criminal conduct, and the harm caused.

To start, I ensure that I am completely prepared for sentencing and have thoroughly digested the record. I carefully review the Presentence Investigative Report and the sentencing submissions from the parties, including any submissions providing character information, mitigation, or other support for the defendant and any submissions from victims of the offense. If after reviewing these materials, there are any issues I need clarified or elaborated upon, I direct the parties to address those issues prior to sentencing.

At the sentencing proceeding, I conduct a proceeding in compliance with Federal Rule of Criminal Procedure 32. This includes conducting my own careful calculation of the defendant's offense level and criminal history under the U.S. Sentencing Guidelines to arrive at the accurate sentencing range. I conduct the Guidelines calculation independent of the calculation conducted by the Probation Department in the Presentence Investigation Report or the agreement of the parties in any plea agreement. At the sentencing hearing, I provide the prosecutor, the defendant's attorney, the defendant (if he or she so desires), and any victims the opportunity to be heard. Only after hearing from the parties, and carefully considering the appropriate factors pursuant to Section 3553(a), including the advisory Guidelines range, do I impose sentence.

Through this process, I consider the objectives of sentencing and considerations set forth in 18 U.S.C. § 3553(a), particularly mindful of the four primary purposes of sentence: retribution to reflect the seriousness of the criminal conduct, 18 U.S.C. § 3553(a)(2)(A), deterrence to prevent the crime from occurring again, *id.* § 3553(a)(2)(B), incapacitation to protect society from future harm, *id.* § 3553(a)(2)(C), and rehabilitation to help the defendant return to life outside of custody and be a productive member of society, *id.* § 3553(a)(2)(D). This entails not simply looking at the statutory title of the offense of conviction, but closely examining what exactly the defendant did, why the defendant committed the crime in the first place, and if the defendant stopped committing the crime prior to arrest, why the defendant stopped. I look at the history and characteristics of the defendant, including the advantages and disadvantages the defendant faced, any circumstances that may have led the defendant to criminal activity, and whether the crime was an aberration in an otherwise largely law-abiding life. I also consider the need for both individual and general deterrence in the particular case. Throughout, I remain very attentive to the need to protect the public from future crimes, as well as the importance of rehabilitation—

such as by providing the defendant with educational or vocational training, medical care, or other correctional treatment—to help the defendant make a successful reentry into society. I also take into account victim considerations, including the need for restitution, as well as the need to avoid unwarranted sentencing disparities. Then, after considering the ranges of sentences available, I impose a sentence that I determined to be “sufficient, but not greater than necessary,” to comply with the purposes of sentencing.

I believe my experience as a federal district judge, as well as a federal prosecutor before that, would serve me well on the Sentencing Commission. As a judge, I have sentenced approximately 139 criminal defendants, and I handled well over 100 sentencings as a federal prosecutor. That work has allowed me to accumulate deep familiarity with the Sentencing Guidelines and expertise in federal sentencing. My perspectives on the Guidelines and sentencing more broadly would position me well to advance the Commission’s mission. I believe that the Guidelines have most value to a sentencing judge when they effectively account for as many Section 3553(a) factors as possible for a particular offense and offender. My experience over the past two decades will enable me to assess where the Guidelines can be improved to better account for the Section 3553(a) factors and thus be a useful resource for judges at sentencing.

14. Please describe the process you undertake when it comes to sentencing, including your use of the Sentencing Guidelines.

Response: Please see my response to Question 13.

a. How many individuals have you sentenced?

Response: From reviewing my files, I believe that I have sentenced approximately 139 defendants, which includes approximately twenty-two defendants whom I sentenced after revoking their terms of supervised release.

b. In how many instances have you varied upwards from what the Sentencing Guidelines recommended?

Response: I do not know the exact number, but the instances when I have varied upwards from the Sentencing Guidelines have been rare. I estimate that I have varied upwards about 4 or 5 times. I imposed each of those sentences after conducting an individualized consideration of all the applicable factors under 18 U.S.C. § 3553(a), and arrived at a sentence that I determined was sufficient but not greater than necessary to achieve the purposes of sentencing in Section 3553(a)(2).

c. In how many instances have you varied downwards from what the Sentencing Guidelines recommended?

Response: I do not know the exact number, but I have varied downwards from the Sentencing Guidelines on numerous occasions. I imposed each of those sentences after conducting an individualized consideration of all the applicable factors under 18 U.S.C. §

3553(a), and arrived at a sentence that I determined was sufficient but not greater than necessary to achieve the purposes of sentencing in Section 3553(a)(2).

15. How many compassionate release motions have you considered as a district court judge, and of those, how many have you granted?

Response: I have considered approximately twenty-two compassionate release motions as a district judge (although a few were successive motions filed by the same defendant). I have not granted a compassionate release motion.

Questions for the Record for Judge John Cronan
Submitted by Senator Richard Blumenthal
August 12, 2026

1. Were you in Washington, D.C. on January 6, 2021?

Response: No.

- a. Were you inside the U.S. Capitol or on the U.S. Capitol grounds on January 6, 2021?

Response: No.

2. Do you support law enforcement?

Response: I am not sure what you mean by “support law enforcement.” During my career as a federal prosecutor at the U.S. Department of Justice before becoming a U.S. district judge, I had the privilege to work closing with many dedicated and brave federal, state, and local law enforcement officers who devoted their careers to protecting the public while also respecting the rights and liberties of all. I have tremendous respect for law enforcement officers who perform their jobs ethically and in accordance with the law, and denounce any violence against law enforcement officers during the lawful performance of their duties.

- a. Many of those pardoned by President Trump for their roles in the January 6, 2021 attack on the Capitol engaged in assaults on law enforcement. Do you support President Trump’s pardon of Daniel Ball, who threw an explosive device into a tunnel filled with law enforcement officers?

Response: The federal pardon power is held by the President of the United States under Article II, Section 2, Clause 1 of the U.S. Constitution: “The President . . . shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.” U.S. Const. art. III, § 2; *see Trump v. United States*, 603 U.S. 593, 608 (2024) (“To the executive alone is intrusted the power of pardon, and the legislature cannot change the effect of such a pardon any more than the executive can change a law. The President’s authority to pardon, in other words, is conclusive and preclusive, disabling the Congress from acting upon the subject.” (citations and internal quotation marks omitted)). To the extent the subject matter of this question implicates political or policy debates regarding President Trump’s decision to grant particular pardons, it would be improper for me, as a federal judge, to comment. *See* Code of Conduct for United States Judges, Canons 2(A), 5.

- b. Do you support President Trump’s pardon of Jacob Lang, who was filmed hitting law enforcement officers with a baseball bat and riot shield?

Response: Please see my response to Question 2(a).

c. Do you support President Trump's pardon of Jeffrey McKellop, who stabbed a police officer in the face with a flagpole?

Response: Please see my response to Question 2(a).

d. Do you support President Trump's pardon of Daniel "D.J." Rodriguez, who plunged a stun gun into the neck of Metropolitan Police Officer Michael Fanone and repeatedly shocked him?

Response: Please see my response to Question 2(a).

3. In 2022, Jacob Deutsch pled guilty in a nearly \$50 million mortgage fraud scheme in Hartford. He falsified documents, misleading financial institutions, Fannie Mae, Freddie Mac, and the Department of Housing and Urban Development. He was sentenced in 2024 to over five years of prison. Do you support President Trump's pardon of Jacob Deutsch?

Response: I am not familiar with the prosecution of Jacob Deutsch. As I wrote in my response to Question 2(a), the federal pardon power is held by the President of the United States under Article II, Section 2, Clause 1 of the U.S. Constitution: "The President . . . shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." U.S. Const. art. III, § 2; *see Trump v. United States*, 603 U.S. 593, 608 (2024) ("To the executive alone is intrusted the power of pardon, and the legislature cannot change the effect of such a pardon any more than the executive can change a law. The President's authority to pardon, in other words, is conclusive and preclusive, disabling the Congress from acting upon the subject." (citations and internal quotation marks omitted)). To the extent the subject matter of this question implicates political or policy debates regarding President Trump's decision to grant a pardon to Mr. Deutsch, it would be improper for me, as a federal judge, to comment. *See* Code of Conduct for United States Judges, Canons 2(A), 5.

4. In July 2025, the Department of Justice secured an indictment against Timothy Leiweke, alleging that he had conspired to rig the bidding for construction of a new arena for the University of Texas at Austin. Leiweke's actions allegedly ensured that his company was the sole qualified bidder for the contract. Do you support President Trump's pardon of Timothy Leiweke?

Response: I am not familiar with the prosecution of Timothy Leiweke. As I wrote in my response to Question 2(a), the federal pardon power is held by the President of the United States under Article II, Section 2, Clause 1 of the U.S. Constitution: "The President . . . shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." U.S. Const. art. III, § 2; *see Trump v. United States*, 603 U.S. 593, 608 (2024) ("To the executive alone is intrusted the power of pardon, and the legislature cannot change the effect of such a pardon any more than the executive can change a law. The President's authority to pardon, in other words, is conclusive and preclusive, disabling the Congress from acting upon the subject." (citations and internal quotation marks omitted)). To the extent the subject matter of this question implicates political or policy debates regarding President Trump's decision to grant a pardon to Mr. Leiweke, it would be improper for me, as a federal judge, to comment. *See* Code of Conduct for United States Judges, Canons 2(A), 5.

5. David Gentile was convicted of conspiring to defraud investors of approximately \$1.6 billion. His victims included thousands of investors, many of whom were retirees. Under his conviction, he was required to pay \$15.5 million in restitution and was sentenced to seven years in prison. Do you support President Trump's pardon of David Gentile?

Response: I am not familiar with the prosecution of David Gentile. As I wrote in my response to Question 2(a), the federal pardon power is held by the President of the United States under Article II, Section 2, Clause 1 of the U.S. Constitution: "The President . . . shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." U.S. Const. art. III, § 2; *see Trump v. United States*, 603 U.S. 593, 608 (2024) ("To the executive alone is intrusted the power of pardon, and the legislature cannot change the effect of such a pardon any more than the executive can change a law. The President's authority to pardon, in other words, is conclusive and preclusive, disabling the Congress from acting upon the subject." (citations and internal quotation marks omitted)). To the extent the subject matter of this question implicates political or policy debates regarding President Trump's decision to grant a pardon to Mr. Gentile, it would be improper for me, as a federal judge, to comment. *See Code of Conduct for United States Judges*, Canons 2(A), 5.

6. In a 2001 law review article, you wrote that "Black inmates are most likely to become the sexual aggressors." Do you still hold that view?

Response: In the cited article, my co-author and I discussed a very troubling issue, namely, multiple studies and reports suggesting that inmates were being victimized by sexual abuse at an alarming rate. My co-author and I relied upon various studies, conducted by others, that identified certain factors that reflect the incidence of sexual abuse or victimization. We surveyed and assembled those studies and the various factors identified in them, and suggested that an understanding of the dynamics of prison rape and the relevant factors identified in those studies could allow prison officials to assess which inmates are more likely to be violent and which are more likely to be victimized, and take preventive measures accordingly.

My co-author and I did not conduct independent research on our own concerning the incidence of prison sexual abuse, nor did we conduct any inmate interviews or otherwise perform our own studies on what factors inform the likelihood of sexual assault in prison. In retrospect, and having re-read the article, I believe that my co-author and I overly relied upon studies conducted by others.

The quotation mentioned in your question was a reference to a study conducted by Wayne S. Wooden and Jay Parker, not to any studies that my co-author and I conducted or any conclusions that we independently reached. *See* Way S. Wooden & Jay Parker, *Men Behind Bars: Sexual Exploitation in Prison 2* (1982). Indeed, the words immediately before the truncated quotation contained in your question make clear that my co-author and I were referring the "finding" by Wooden and Parker. *See* Christopher D. Man & John P. Cronan, *Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity as a Backdrop for "Deliberate Indifference"*, 92 J. CRIM. L. & CRIMINOLOGY 127, 163 (2001/2002) (referring to "Wooden and Parker's study of the California penal system" and their "finding that Black inmates are most likely to become the

sexual aggressors”). As that excerpt makes clear, my co-author and I were discussing Wooden and Parker’s study of the California penal system, including their findings as to the role of race in prison sexual assaults. As explained, in this article, my co-author and I surveyed various studies, conducted by others, that examined the dynamics of prison sexual assault and the factors that indicate the likelihood of sexual assault in prison.

To be sure, my view is not now, nor was it ever, that black inmates are inherently more violent than other inmates. I would find such a suggestion patently offensive. Once again, my co-author and I were attempting to digest and summarize various studies—conducted by others—that discussed the subculture that exists in prison and the factors within that subculture that researchers found inform the likelihood of sexual assault in prison.

7. In a 2000 law review article, you proposed “catalog[ing] the genetic profiles of all persons in the country” by collecting DNA “at birth and upon entry into the country” in order to build a federal DNA databank. You argued this would “spur unprecedented law enforcement benefits” and would represent only a “minimal” privacy intrusion.

a. Do you still believe that the United States should develop a federal DNA databank?

Response: In addition to my below response, I respectfully point you to my testimony at my hearing on March 4, 2020, before this Committee in connection with my nomination for the U.S. District Court for the Southern District of New York, as well as my responses to the Questions that I received following that hearing.

As I wrote in my written responses in 2020, I do not today believe that mandatory collection of genetic profiles of all people at birth or upon entry into the country would be a “minimal” privacy intrusion, nor do I support such a proposal. The law review article you reference began as a paper I wrote for a class at Yale Law School called “Convicting the Innocent,” which examined why individuals are wrongfully convicted. The purpose of that article was to present a proposal to reduce wrongful convictions, increase law enforcement efficiency and effectiveness, promote deterrence, and reduce law enforcement costs. In addition, I wrote this article at a time when I thought I might be interested in pursuing a career in academia and, as such, was thinking about proposals that were original and might be thought-provoking.

I also wrote this article before having spent a day practicing law. Since then, I practiced for nearly twenty years as an attorney with the U.S. Department of Justice, and for most of that time working as a federal prosecutor, and I have served as a federal judge for over six years. From that experience, I have a far more refined and matured understanding of the Fourth Amendment, the limited exceptions to the Fourth Amendment warrant requirement, privacy issues, and the potential abuses and misuses of DNA information than I had when I was a law student in my early 20s. I now realize that the proposal in my article would not be workable, and, more importantly, would come with troubling privacy implications and significant constitutional problems.

b. Do you still believe such a databank would represent only a minimal privacy intrusion?

Response: Please see my response to Question 7(a).

**Senator Mazie K. Hirono
Senate Judiciary Committee**

**Nomination Hearing
Questions for the Record for Judge John Cronan**

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

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

Response: No.

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

Response: No.

2. You served as an AUSA for many years before joining DOJ's Criminal Division and taking the bench, so it's fair to say you have significant experience with federal sentencing law and policy. The Sentencing Commission recently amended the Sentencing Guidelines to prohibit federal judges from using acquitted conduct—conduct of which a jury specifically found a defendant *not guilty*—to increase a defendant's prison sentence. **Based on your experience, do you agree with that decision—why or why not?**

Response: As part of the 2024 Amendments to the U.S. Sentencing Guidelines, Section 1B1.3 was amended to exclude, in many circumstances, acquitted conduct from the scope of relevant conduct used to calculate a defendant's offense level and resulting sentencing range. Section 1B1.3(c) now provides: "ACQUITTED CONDUCT.—Relevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court, unless such conduct also establishes, in whole or in part, the instant offense of conviction." U.S. Sent'g Guidelines Manual § 1B1.3(c). The 2024 Amendments also added Application Note 10 to Section 1B1.3, which provides: "Subsection (c) provides that relevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court, unless such conduct establishes, in whole or in part, the instant offense of conviction. There may be cases in which certain conduct underlies both an acquitted charge and the instant offense of conviction. In those cases, the court is in the best position to determine whether such overlapping conduct establishes, in whole or in part, the instant offense of conviction and therefore qualifies as relevant conduct." U.S. Sent'g Guidelines Manual § 1B1.3, cmt. n.10. In announcing the amendment to Section 1B1.3, the Sentencing Commission explained that "[a]cquitted conduct is unique, and this amendment does not comment on the use of uncharged, dismissed, or other relevant conduct as defined in §1B1.3 for purposes of calculating the guideline range." https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202405_RF.pdf. I understand Section 1B1.3(c) to mean that acquitted

conduct cannot go into calculating a defendant's offense level under the Guidelines or otherwise impact the resulting Guidelines range, unless the acquitted conduct in whole or part established the offense or offenses for which the defendant was convicted.

I understand from the Commission's public statements that this amendment was a response to concerns among "many within the criminal justice system" and "robust debate over [the prior] several years" about the use of acquitted conduct to increase a defendant's sentence, as well as the urging of various judges for the Commission to examine this issue. *Id.* Having not served on the Commission, I am not familiar with specific considerations that led to the decision to amend Section 1B1.3, including particular concerns raised "within the criminal justice system," details of the "robust debate," any positions conveyed to the Commission, and discussions among the Commissioners. Without the benefit of that knowledge, I am not comfortable expressing a view as to whether I agree with this amendment.

To be sure, Section 1B1.3(c) is in effect and, as a federal judge, I must follow and apply that provision when calculating a defendant's sentencing range under the Guidelines and imposing sentence. In addition, as I understand the law, there is an argument that a sentencing judge retains discretion to consider acquitted conduct under 18 U.S.C. § 3661, which affords a judge wide latitude at sentencing to consider a defendant's background, character, and conduct. *See* 18 U.S.C. § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."); U.S. Sent'g Guidelines Manual § 6A1.3, cmt. (commentary to policy statement concerning "Resolution of Disputed Factors" providing: "Acquitted conduct, however, is not relevant conduct for purposes of determining the guideline range. *See* §1B1.3(c) (Relevant Conduct). Nonetheless, nothing in the Guidelines Manual abrogates a court's authority under 18 U.S.C. § 3661."); *cf. Nichols v. United States*, 511 U.S. 738, 747 (1994) (explaining that the Supreme Court has upheld sentences that "have not only taken into consideration a defendant's prior convictions, but have also considered a defendant's past criminal behavior, even if no conviction resulted from that behavior"). Because the question of whether it is appropriate to consider acquitted conduct pursuant to Section 3661 may come before me as a judge, it would be inappropriate for me to further comment on whether a judge should be prohibited from considering acquitted conduct at sentencing. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

**Nomination of John Cronan
United States Sentencing Commission
Questions for the Record
Submitted August 19, 2026**

QUESTIONS FROM SENATOR BOOKER

1. In *Chen v. Almodovar*, you contradicted decisions made in similar cases around the country to deny a habeas petition to a detained noncitizen who was held without a bond hearing.¹ In your opinion, you acknowledged that, “the overwhelming majority of judges in this District and around the country to consider the issue have reached a contrary conclusion.”²

a. Since your appointment as a Federal Judge, have you ever had direct discussions with President Donald Trump, his appointees, or any other executive-branch officials about policies related to mandatory detention of detained noncitizens? If so, identify when, who and the nature of the discussions.

Response: No.

2. As you are aware, the First Step Act, passed by a bipartisan majority of Senators and House Members and signed into law by President Trump, allowed incarcerated people to file a compassionate release motion directly to a federal judge requesting a judge to shorten their prison term due to “extraordinary and compelling reasons”, such as terminal illness, severe medical conditions, or a family emergency. In Fiscal Year 2024, the Southern District of New York, where you are a judge, granted 29% of its compassionate release motions.³ In Fiscal Year 2025, the Southern District of New York granted 33% of its compassionate release motions.⁴

a. How many of those motions did you grant?

Response: I have not granted a compassionate release motion.

b. Do you disagree with Congress’ decision to allow incarcerated people to petition judges directly? Please explain.

Response: The standard for a judge to grant a motion for compassionate release is established by statute at 18 U.S.C. § 3582(c)(1)(A). As a federal judge, I am obliged to follow and apply that law unless or until it is repealed or found invalid by a superior court. And I have followed Section 3582(c)(1)(A) with respect to all compassionate release motions that have been filed before me.

¹ *Chen v. Almodovar*, No. 25 CIV. 9670 (JPC), 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026).

² *Id.* at 1.

³ U.S. Sentencing Comm’n, Compassionate Release Data Report: Fiscal Year 2024 (2025), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24-Compassionate-Release.pdf>.

⁴ U.S. Sent’g Comm’n, Compassionate Release Data Report: Fiscal Year 2025 (2026), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY25-Compassionate-Release.pdf>.

In every ruling I have issued as a district judge, I have gone to great lengths to clearly explain my analysis and reasoning. All of my written decisions in immigration cases are available on Westlaw. In each, I considered the particular circumstances presented in that case, and explained in detail why I arrived at the result I did. I examined whether the defendant's individualized circumstances qualified as "extraordinary and compelling circumstances" to warrant a reduction under 18 U.S.C. § 3582(c)(1)(A), as well as, as required by the statute, how the factors under 18 U.S.C. § 3553(a) applied in that case. See 18 U.S.C. § 3582(c)(1)(A) (providing that the court "may reduce the term of imprisonment . . . , after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that . . . (i) extraordinary and compelling reasons warrant such a reduction" and (ii) "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission"). As explained in those decisions, I found either that "extraordinary and compelling circumstances" were not present or that the Section 3553(a) factors weighed against early release.

It would be inappropriate for me to offer my opinion or otherwise comment on the statute, as I am a sitting federal judge who is likely to receive more compassionate release motions in the future and further doing so would implicate political or policy debates. See Code of Conduct for United States Judges, Canons 3(A)(6), 5.

3. Were you ever told or led to believe that your nomination to the United States Sentencing Commission was contingent on your willingness to abide by certain political, ideological, or other agendas?

Response: No.

4. The United States is the only industrialized nation that still has the death penalty, an inherently flawed and imperfect application of justice. Since 1973, at least 202 people who were wrongly convicted have been exonerated from death sentences.⁵ One study conservatively estimated that 4% of people sentenced to death are innocent.⁶ Still, 27 states and the Federal Government allow the death penalty.

a. Do you support the federal death penalty? Please explain your position.

Response: The Supreme Court has held death penalty constitutional under the Eighth Amendment to the U.S. Constitution, see, e.g., *Baze v. Rees*, 553 U.S. 35 (2008); *Gregg v. Georgia*, 428 U.S. 153 (1976), with various limitations, see, e.g., *Kennedy v. Louisiana*, 554 U.S. 407 (2008); *Roper v. Simmons*, 543 U.S. 551 (2005); *Atkins v. Virginia*, 536 U.S. 304 (2002). As a federal judge, I am obliged to follow and apply precedent from the Supreme Court. As a sitting federal judge, it would be inappropriate for me to offer my opinion or otherwise comment on my personal views as to the death

⁵ *Innocence*, Death Penalty Info. Ctr., <https://deathpenaltyinfo.org/policy-issues/policy/innocence> (Aug. 4, 2026).

⁶ Samuel R. Gross et al., *Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death*, 111 Proc. Nat'l Acad. Sci. 7230 (2014), <https://www.pnas.org/doi/full/10.1073/pnas.1306417111> (Aug. 4, 2026).

penalty, as it would implicate political or policy debates as well as matters that may come before me as a judge. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

b. What justifies death penalty's continued use, even if that necessarily means innocent people are wrongfully executed?

Response: As a sitting federal judge, it would be inappropriate for me to offer my opinion or otherwise comment on my personal views as to the death penalty, as it would implicate political or policy debates as well as matters that may come before me as a judge. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

c. Do you believe the likelihood of wrongful conviction is a necessary consideration in determining sentencing guidelines for a crime? Explain.

Response: The Sentencing Guidelines assume that a criminal defendant was properly convicted of the federal crime for which she or he is being sentenced. As such, I do not believe that the calculation of a defendant's offense level and resulting sentencing range should account for the possibility of a wrongful conviction. In the extremely unfortunate and sad circumstance that a defendant was wrongfully convicted, there are mechanisms under the law for the defendant's exoneration and vacatur of the conviction.

5. In 2025, the Council on Criminal Justice reported the national homicide rate was the lowest it has been since 1900.⁷

a. What do you think explains the historic drop in violent crime across the United States?

Response: I am not familiar with these particular statistics, nor have I have I studied any analyses for any drop in violent crime in the United States.

b. Do you believe the death penalty is an effective deterrent of capital crime? Explain.

Response: I have not examined any studies as to the deterrent impact of the death penalty. Moreover, to the extent this question suggests that the death penalty should not exist in our country's federal criminal regime, it would be inappropriate for me to offer my opinion or otherwise comment, as it would implicate political or policy debates as well as matters that may come before me as a judge. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

⁷ Ernesto Lopez & Bobby Boxerman, *Crime Trends in U.S. Cities: Year-End 2025 Update*, Coun. Crim. Just., (Jan. 2026), <https://counciloncj.org/crime-trends-in-u-s-cities-year-end-2025-update/>.

c. Similar to national homicide rates, the proportion of sentences awarding the death penalty are also at a historic low. Death penalty sentences have fallen by more than 90% since 1993.⁸ How do you think this trend affects crime?

Response: I am not familiar with these particular statistics, nor have I have I studied any analyses for any drop in homicide rates in the United States.

d. Have changes to USSC sentencing guidelines been in any way responsible for the historic drop in violent crime? Please explain.

Response: I am not familiar with these particular statistics, nor have I have I studied any analyses examining whether the U.S. Sentencing Guidelines contributed to any drop in violent crime in the United States.

6. During your 2020 nomination for District Judge, you told then-Senator Harris that, when determining what constitutes a fair and proportional sentence, you “would consider rehabilitation interests—such as the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment—to help the defendant make a successful transition from incarceration (if the sentence entails incarceration) and reentry into society.”

a. Has your position changed since you submitted this answer in 2020?

Response: No.

b. Do you think all judges should consider these same factors when sentencing a defendant?

Response: Yes.

c. Are these rehabilitation interests adequately incorporated into current US Sentencing Guidelines?

Response: At sentencing, a judge should consider, to the extent applicable, the considerations set forth in 18 U.S.C. § 3553(a), and arrive at a sentence that is sufficient but not greater than necessary to achieve the purposes of sentencing, which are (1) incapacitation to protect society from future harm, 18 U.S.C. § 3553(a)(2)(C); (2) deterrence to prevent the crime from occurring again, *id.* § 3553(a)(2)(B); (3) retribution to reflect the seriousness of the criminal conduct, *id.* § 3553(a)(2)(A), and (4) rehabilitation to help the defendant return to life outside of custody and be a productive member of society, *id.* § 3553(a)(2)(D). That last purpose is important, and every participant in the criminal justice system should be thinking about rehabilitation, including the educational, medical, and vocational needs of the defendant, to assist the individual’s return to society

⁸John Gramlich, *10 Facts About the Death Penalty in the U.S.*, Pew Research Center (July 19, 2021), <https://www.pewresearch.org/short-reads/2021/07/19/10-facts-about-the-death-penalty-in-the-u-s/>.

A point when judges should thoughtfully consider rehabilitation is when imposing a term of supervised release. Supervised release can serve an important role in assisting a defendant's rehabilitation and return to society after a period of incarceration. Judges should carefully consider rehabilitation when ordering a term of supervised release and impose particular supervised release conditions that make sense for the defendant being sentenced. A judge should carefully think about supervised release not just at the time of sentencing, but throughout a defendant's term of supervised release, to ensure that the supervision is achieving the goal of assisting the defendant's rehabilitation and return to society. The 2025 Amendments to the Guidelines made significant changes to the supervised release guidelines emphasizing the importance of individual determinations, the need to reassess supervised release decisions after a defendant's release from custody, and the rehabilitative purposes of supervised release.

7. The Bureau of Prisons (BOP) has made clear overcrowding, staffing shortages, and poor facilities pose obstacles in administering rehabilitative programming for incarcerated people. As a result, wait-time in 2023 for some educational or vocational training programs across BOP is more than 28,500 people long.⁹ What, if anything, should the USSC do to help alleviate these issues?

Response: Congress has directed that the U.S. Sentencing Guidelines “be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission.” 28 U.S.C. § 994(g). At the same time, a sentencing judge should consider, to the extent applicable, all of the factors under 18 U.S.C. § 3553(a), and impose a sentence that achieves the four primary purposes of sentence: retribution to reflect the seriousness of the criminal conduct, 18 U.S.C. § 3553(a)(2)(A), deterrence to prevent the crime from occurring again, *id.* § 3553(a)(2)(B), incapacitation to protect society from future harm, *id.* § 3553(a)(2)(C), and rehabilitation to help the defendant return to life outside of custody and be a productive member of society, *id.* § 3553(a)(2)(D). The Guidelines have most value to a sentencing judge when they effectively account for as many § 3553(a) factors as possible for a particular offense and offender. While as required under Section 994(g), the Sentencing Commission should strive to formulate Guidelines that “minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons,” 28 U.S.C. § 994(g), the Commission should not do so at the expense of the statutory purposes of sentencing, including protecting the public.

If I am confirmed to the Commission, I will study the data and information related to “the nature and capacity of the penal, correctional, and other facilities and services available,” 28 U.S.C. § 994(g). When considering any amendments to the Guidelines, I would take into account that consideration and all other appropriate considerations under the law. Congress further directed the Commission to “make recommendations to Congress concerning modification or enactment of statutes relating to sentencing, penal, and correctional matters that the Commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy.” 28 U.S.C. § 995(a)(2). Accordingly, if appropriate, I also would consider how the Commission’s

⁹ Liz Komar, *The First Step Act: Ending Mass Incarceration in Federal Prisons*, The Sentencing Project (Aug. 22, 2023), <https://www.sentencingproject.org/policy-brief/the-first-step-act-ending-mass-incarceration-in-federal-prisons/>.

collection of data and information on this and other issues should be shared with Congress to assist legislative efforts, including addressing any concerns with overcrowding at federal prisons.

8. 18 U.S.C. § 3624 stipulates that the Bureau of Prisons “shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted.”¹⁰

a. As a general policy, do you support maximum use of home confinement for low-risk prisoners? Why or why not?

Response: Home confinement may be appropriate for certain defendants, and is expressly contemplated by the U.S. Sentencing Guidelines. The Guidelines provide for noncustodial sentences, or a reduced custodial sentences, for defendants who lack a criminal history and whose conviction does not exceed certain offense levels. A defendant in Criminal History Category I (meaning that the defendant has zero or one criminal history point) with a final offense level of eight or lower is in Zone A pursuant to the Sentencing Table at Chapter 5, Part A. Subject to certain restrictions, a defendant in Zone A may receive a sentence of probation and the conditions of that probation may include a period of home detention. U.S. Sent’g Guidelines Manual §§ 5B1.1(a)(1), 5B1.3(e)(2), 5C1.1(b). If a defendant in Criminal History Category I has a final offense level of nine to eleven, the defendant is in Zone B. Subject to certain restrictions, a defendant in Zone B may receive a sentence of probation if the sentence includes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention. *Id.* § 5B1.1(a)(2). If a defendant in Criminal History Category I has a final offense level of twelve or thirteen, the defendant is in Zone C. A defendant in Zone C may receive a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention, provided that at least one-half of the minimum term is satisfied by imprisonment. *Id.* § 5C1.1(d)(2).

b. What are the most important factors to consider when determining if a prisoner is low-risk (e.g. in consideration for home confinement)?

Response: In determining whether a sentence of home confinement, instead of a period of incarceration, is appropriate, a sentencing judge should consider the purposes of sentencing under 18 U.S.C. § 3553(a)(2)—the needs for (1) incapacitation to protect society from future harm, (2) deterrence to prevent the crime from occurring again, (3) retribution to reflect the seriousness of the criminal conduct, and (4) rehabilitation to help the defendant return to life outside of custody and be a productive member of society—and determine whether a sentence of home confinement is sufficient but not greater than necessary to achieve those purposes.

9. African Americans are incarcerated at more than 5 times the rate of white Americans.¹¹ Additionally, a 2017 study by the United States Sentencing Commission found that Black male

¹⁰ 18 U.S. Code § 3624(c)(2)

¹¹ Criminal Justice Fact Sheet, NAACP, <https://naacp.org/resources/criminal-justice-fact-sheet>.

offenders received sentences on average 19.1% longer than similarly situated white male offenders.¹²

a. What do you think explains the racial disparity in sentencing?

Response: I do not have an explanation for the racial disparity in incarceration, but every participant in our criminal justice system, including the courts and Congress, must strive to ensure equal treatment under the law regardless of race. That is an important responsibility of the Sentencing Commission, as Congress has directed that the Commission “shall assure that the guidelines and policy statements are entirely neutral as to the race . . . of offenders,” 28 U.S.C. § 994(d), and identified a purpose of the Commission as establishing sentencing policies and practices that “avoid . . . unwarranted sentencing disparities,” *id.* § 991(b)(1)(B); *see also id.* § 3553(a)(6). Moreover, the Commission can serve an important role in providing unbiased and reliable data and analysis to Congress as it considers possible criminal justice legislation.

b. Since their creation in 1984, how have changes to the USSC Sentencing Guidelines affected racial disparity in sentencing outcomes?

Response: I have not studied the impact of any changes to the Sentencing Guidelines on racial disparities at sentencing.

c. How important are USSC studies, like the one cited above, for informing sentencing outcomes across the criminal justice system?

Response: Research and studies of the Sentencing Commission, done in an unbiased and reliable manner, can be valuable to Congress in considering and enacting criminal justice legislation.

d. As a USSC Commissioner, will you support continued investment into studies like the one cited above?

Response: While I would just be one voting member of a seven-person Commission, and therefore cannot commit on behalf of the Commission, if I am confirmed to the Commission, I would be amenable to supporting studies into such matters provided the Commission’s resources and other priorities permit.

e. Even for sentences falling within the USSC recommended ranges, Black male offenders received sentences that were 7.9% longer than similarly situated white males.¹³ What effect does judicial bias have on sentencing outcomes?

Response: I am not familiar with the statistics you cited in this Question, and I do not have an explanation for difference in sentence length. As mentioned, though, every participant in our criminal justice system, including Congress, must strive to ensure equal

¹² U.S. Sent’g Comm’n, Demographic Differences in Sentencing: An Update to the 2012 Booker Report (2017).

¹³ *Id.* at Figure 4

treatment under the law regardless of race. That is an important responsibility of the Sentencing Commission, as Congress has directed that the Commission “shall assure that the guidelines and policy statements are entirely neutral as to the race . . . of offenders,” 28 U.S.C. § 994(d), and identified a purpose of the Commission as establishing sentencing policies and practices that “avoid . . . unwarranted sentencing disparities,” *id.* § 991(b)(1)(B); *see also id.* § 3553(a)(6).

10. If President Trump directs you to take an illegal action or unethical action, how would you respond?

Response: I cannot envision a scenario where this would occur, but I would never take an illegal or unethical action, regardless of who directed me to do so. I also note that I currently serve as a federal district judge, which is part of the judicial branch, and I am being considered for an independent commission of the judiciary. I do not serve in, nor am I being considered for, a position within the Executive Branch.

11. If any official in the Department of Justice directs you to take an illegal action or unethical action, how would you respond?

Response: I cannot envision a scenario where this would occur, but I would never take an illegal or unethical action, regardless of who directed me to do so. I also note that I currently serve as a federal district judge, which is part of the judicial branch, and I am being considered for an independent commission of the judiciary. I do not serve in, nor am I being considered for, a position within the Executive Branch.

12. If any member of the Administration directs you to take an illegal action or unethical action, how would you respond?

Response: I cannot envision a scenario where this would occur, but I would never take an illegal or unethical action, regardless of who directed me to do so. I also note that I currently serve as a federal district judge, which is part of the judicial branch, and I am being considered for an independent commission of the judiciary. I do not serve in, nor am I being considered for, a position within the Executive Branch.

13. Have you ever spoken or corresponded with any individuals convicted and later pardoned of offenses related to the January 6, 2021 attack on the U.S. Capitol? If yes, identify the individual(s) and provide the dates, mode, and content of those discussions and communications.

Response: No.

14. Did you discuss the possibility of an appointment to this position, or any other role in the Administration, with President Trump or anyone else associated with him? Please provide name of the individual, the dates, mode, and content of those discussions and communications.

Response: I do not consider the Sentencing Commission to be part of the Administration, as it is “an independent commission in the judicial branch of the United States.” 28 U.S.C. § 991(a). I

have not interviewed for any position in the current Trump Administration. (In around July 2017, I interviewed with then-Attorney General Jeff Sessions, then-Deputy Attorney General Rod Rosenstein, and the White House Counsel's Office for my prior position of Principal Deputy Assistant Attorney General of the U.S. Department of Justice's Criminal Division, which I held until 2020.)

With respect to the Sentencing Commission, in around February 2026, I was asked by someone at the White House Counsel's Office if I was interested in being considered by President Trump to be nominated as a Commissioner on the U.S. Sentencing Commission, and I responded that I would be. On March 3, 2026, I was interviewed by staff with the White House Counsel's Office and the U.S. Department of Justice for that position. On June 29, 2026, I received a call from President Trump advising that he would be announcing my nomination for the Sentencing Commission shortly and congratulating me on the nomination. That evening, President Trump announced my nomination on Truth Social. On July 14, 2026, the White House announced on its website that my nomination was sent to the U.S. Senate.

15. Under what circumstances would it be acceptable for an executive branch official to ignore or defy a federal court order?

Response: Generally, a litigant, including an Executive Branch official, must follow court orders issued in a proceeding to which that litigant is a party. The normal recourse if a litigant disagrees with a judicial order is to seek reconsideration of that order, to appeal, and/or to seek a stay. In narrow circumstances, it might be appropriate for a litigant not to follow a court order, such as if the order can only be appealed if it is violated and is otherwise unappealable. *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 111 (2009) ("Another long-recognized option is for a party to defy a disclosure order and incur court-imposed sanctions.").

16. Under what circumstances, if any, would it be acceptable to change the United States Sentencing Guidelines, not because of the strength of the policy, but because of an Administration policy priority? Please provide each one and the justification.

Response: The Sentencing Commission is an "independent commission in the judicial branch." 28 U.S.C. § 991(a). The Sentencing Commission is not part of the Executive Branch and therefore not bound by any policy priorities of that branch.

At the same time, the Commission's policy role is cabined by its statutory authority. Under 28 U.S.C. § 994(a), the Commission must act consistent with provisions of federal law. In addition, Congress identified various duties of the Commission. Section 994(v) requires the Commission to issue a policy statement "limiting consecutive terms of imprisonment for an offense involving a violation of a general prohibition and for an offense involving a violation of a specific prohibition encompassed within the general prohibition." Section 994(i)(4) directs that punishment should be greater if the defendant commits a crime of violence while released pending trial, sentence, or appeal. Section 994(u) requires the Commission to specify in what circumstances a reduction in the recommended sentence is retroactive. Section 991(b)(1)(B) discusses the Commission's purpose of "establish[ing] sentencing policies and practices for the Federal criminal justice system that . . . provide certainty and fairness in meeting the purposes of

sentencing,” which I understand to include addressing splits among the Courts of Appeals in interpreting Guidelines provisions. *See Braxton v. United States*, 500 U.S. 344, 384-50 (1991).

17. Do you believe that the policy guidance issued by the USSC must be impartial and insulated from political influence? Why or why not?

Response: Yes, subject to the caveat that the Commission’s policy role is cabined by its statutory authority and Congress has identified various duties of the Commission, as I discuss in my response to Question 17. The Sentencing Commission is an “independent commission in the judicial branch.” 28 U.S.C. § 991(a).

a. Do you believe that it is appropriate for USSC commissioners to use their position to pursue personal political objectives?

Response: No.

18. Please explain, with particularity, the process whereby you answered these written questions, including the name of any individual who helped draft, review, or edit the answers.

Response: I personally wrote a first draft of my responses to these Questions after consulting my record, the ethical canons, relevant legal authorities, and responses of past nominees before this Committee. No one assisted me in preparing that draft. I then provided that draft to the U.S. Department of Justice’s Office of Legal Policy (“OLP”). After receiving limited feedback from OLP staff, I finalized my responses based on my independent judgment. In preparing these responses, I received no assistance from anyone in the White House or from any organization other than the aforementioned limited feedback from OLP.

19. How would you characterize your judicial philosophy?

Response: My judicial philosophy is to decide the case or controversy before me, and to do so with fidelity to precedent and, in the absence of binding precedent, with adherence to the plain text and original understanding of the statutory or constitutional provision at issue. I believe that a judge should exercise restraint and independence, be unbiased and neutral, and limit his or her authority to that conferred by Article III of the U.S. Constitution. A judge also should set aside any personal preferences or policy views, and decide what the law is, not what the judge believes the law should be.

20. What do you understand originalism to mean?

Response: My understanding of originalism is that a constitutional or statutory provision should be interpreted according to its plain text, understood from the perspective of the public meaning at the time of the framing of the Constitution, when the constitutional Amendment was enacted, or when the statute was passed.

21. Do you consider yourself an originalist?

Response: I do not ascribe titles reflecting my judicial philosophy to myself, but I direct you to my response to Question 20.

22. What do you understand textualism to mean?

Response: My understanding of textualism is that a constitutional or statutory provision should be interpreted according to the plain text.

23. Do you consider yourself a textualist?

Response: I do not ascribe titles reflecting my judicial philosophy to myself, but I direct you to my response to Question 22.

24. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. Some federal judges consider legislative history when analyzing the meaning of a statute.

a. Would you consult and cite legislative history to analyze or interpret a federal statute?

Response: As a federal judge, I am bound by Supreme Court and Second Circuit precedents. That includes the precedent that governs the consideration of legislative history to construe a statute. The Supreme Court has made clear that if the text of a statute is clear, the inquiry ends there. *See, e.g., Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019). The Supreme Court similarly has instructed that legislative history should be considered only if the statutory text is ambiguous. *See, e.g., id.* (“Even those of us who sometimes consult legislative history will never allow it to be used to ‘muddy’ the meaning of ‘clear statutory language.’” (citations omitted)); *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992). The Supreme Court further has cautioned that “[e]xtrinsic 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,” noting that “[n]ot all extrinsic materials are reliable sources of insight into legislative understandings.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). The Court additionally observed that “legislative history is itself often murky, ambiguous, and contradictory,” and that “judicial reliance on legislative materials like committee reports, which are not themselves subject to the requirements of Article I, may give unrepresentative committee members—or, worse yet, unelected staffers and lobbyists—both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text.” *Id.*

b. Do you believe that congressional intent matters when interpreting a statute? Why or why not.

Response: See my response to Question 24(a).

25. What role do you think federal judges, who review difficult, complex criminal cases, can play in ensuring that a person's race did not factor into a prosecutor's decision or other instances where officials exercise discretion in our criminal justice system?

Response: Every federal judge has an obligation to ensure that every litigant is treated fairly and equally under the law, regardless of race. That is how I conduct my courtroom, and I would do the same if I am confirmed to the Commission. Indeed, Congress has required the Commission to "assure that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed and socioeconomic status of offenders." 28 U.S.C. § 994(d).

26. Indicate whether you have ever published written material or made any public statements relating to the following topics. If so, provide a description of the written or public statement, the date and place/publication where the statement was made or published, and a summary of its subject matter. Mere reference to the list of publications and statements provided in your Senate Judiciary Questionnaire is insufficient; provide specific responses. If you have not disclosed a copy of the publication or a transcript of the statement to the Judiciary Committee, attach a copy or link to the materials and explain why you have not previously disclosed them.

a. Abortion

Response: John P. Cronan, Article, *The Next Challenge for the First Amendment: The Framework for an Internet Incitement Standard*, 51 CATH. U. L. REV. 425 (2002) (this article is not about abortion, but rather about the First Amendment, but discusses a pro-life website); John P. Cronan, Note, *Incitement on the Internet: Does the First Amendment Protect the "Nuremburg Files" Website?*, 2 YALE SYMP. ON L. & TECH. 5 (2000) (this article is not about abortion, but rather about the First Amendment, but focuses on a pro-life website).

b. Affirmative action

Response: John P. Cronan, Article, *The Diversity Justification in Higher Education: Evaluating Disadvantaged Status in School Admissions*, 34 SUFFOLK U. L. REV. 305 (2001).

c. Contraceptives or birth control

Response: None.

d. Gender-affirming care

Response: None.

e. Firearms

Response: None, other than decisions I have written as a federal judge or briefs I authored with the U.S. Department of Justice.

f. Immigration

Response: None, other than decisions I have written as a federal judge or briefs I authored with the U.S. Department of Justice.

g. Same-sex marriage

Response: None.

h. Miscegenation

Response: None.

i. Participation of transgender people in sports

Response: None.

j. Service of transgender people in the U.S. military

Response: None.

k. Racial discrimination

Response: None, other than decisions I have written as a federal judge or briefs I authored with the U.S. Department of Justice.

l. Sex discrimination

Response: None, other than decisions I have written as a federal judge or briefs I authored at the U.S. Department of Justice.

m. Religious discrimination

Response: None, other than decisions I have written as a federal judge or briefs I authored at the U.S. Department of Justice.

n. Disability discrimination

Response: None, other than decisions I have written as a federal judge or briefs I authored at the U.S. Department of Justice.

o. Climate change or environmental disasters

Response: None.

p. “DEI” or Diversity Equity and Inclusion

Response: None.

27. Does the Supremacy Clause of the U.S. Constitution establish that federal laws supersede conflicting state laws?

Response: The Supremacy Clause of the Constitution is located at Article VI, Clause 2, and provides: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” As a sitting federal judge, it would be inappropriate for me to offer a further interpretation of the Supremacy Clause beyond reciting its plain text. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

28. Does the U.S. Constitution apply to non-citizens present in the United States?

Response: As I have noted, the Supreme Court has stated that “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Palma v. Arteta*, 823 F. Supp. 3d 311, 319 (S.D.N.Y. 2026) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). The Twenty-Sixth Amendment expressly only extends to U.S. citizens: “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.” U.S. Const. amend. XXVI, § 1.

There is a debate among jurists and academics as to whether non-citizens present in the United States are part of “the people” whose rights are protected by other provisions of the U.S. Constitution, *e.g.*, U.S. Const. amend. IV (protecting “[t]he right of the people . . . against unreasonable searches and seizures” (emphasis added)). *See, e.g., United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) (“‘[T]he people’ seems to have been a term of art employed in select parts of the Constitution . . . [to] refer[] to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.”); *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008) (“[I]n all six other provisions of the Constitution [aside from three provisions that refer to ‘the people’ in a context other than rights], that mention ‘the people,’ the term unambiguously refers to all members of the political community, not an unspecified subset.”); *United States v. Escobar-Temal*, 161 F.4th 969, 1007 (6th Cir. 2025) (Thapar, J., dissenting in part and concurring in the judgment) (concluding that “illegal aliens are not part of the ‘political community’ and thus not entitled to the same rights as citizens”). Because of the ongoing legal debate, the possibility of the issue coming before me given the significant number of immigration cases on my docket, and the political and policy implications of the issue, it would be inappropriate for me as a sitting federal judge to offer my opinion or further comment on this issue. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

29. Is it constitutional for Congress to delegate to federal agencies the power to implement statutes through rulemaking?

Response: Given the possibility of the issue coming before me in a case, as well as political and policy implications of the issue, it would be inappropriate for me as a sitting federal judge to offer my opinion or otherwise comment on this issue. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

30. Have you spoken or corresponded with Stephen Miller since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

Response: No.

31. Have you spoken or corresponded with Todd Blanche since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

Response: Yes. Attorney General Blanche and I have been friends since we began working together at the United States Attorney's Office for the Southern District of New York in early 2007. Attorney General Blanche and I remain in occasional contact and speak every few weeks, but we never discuss any cases pending before me involving the Department of Justice or otherwise any non-public matters.

32. Have you spoken or corresponded with Emil Bove since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

Response: Yes. Judge Bove and I worked together at the United States Attorney's Office for the Southern District of New York from around 2012 to 2017, and we have remained in occasional contact since. I also saw Judge Bove at a conference earlier this year. Judge Bove and I never discuss any non-public matters.

33. Have you—personally or through any of your affiliated companies or organizations, agents, or employees—provided financial support or other resources to any members of the Proud Boys or of the Oath Keepers for their legal fees or for other purposes? If yes, state the amount of financial support provided, dates provided, and for what purposes.

Response: No.

34. Have you ever spoken or corresponded with any of the following individuals? If yes, provide the dates, mode, and content of those discussions and communications.

- a. Enrique Tarrio
- b. Stewart Rhodes
- c. Kelly Meggs
- d. Kenneth Harrelson
- e. Thomas Caldwell

- f. Jessica Watkins
- g. Roberto Minuta
- h. Edward Vallejo
- i. David Moerschel
- j. Joseph Hackett
- k. Ethan Nordean
- l. Joseph Biggs
- m. Zachary Rehl
- n. Dominic Pezzola
- o. Jeremy Bertino
- p. Julian Khater

Response: To the best of my knowledge and recollection, I have never spoken or corresponded with any of the individuals listed above.

35. Have you ever spoken or corresponded with any individuals convicted and later pardoned of offenses related to the January 6, 2021 attack on the U.S. Capitol? If yes, identify the individual(s) and provide the dates, mode, and content of those discussions and communications.

Response: No.

**Questions for the Record from Senator Alex Padilla Senate Judiciary Committee
“Nominations”**

August 5, 2026

Questions for John Peter Cronan (Nominee to the United States Sentencing Commission):

1. The following are yes or no questions related to the 2020 election:

a. According to Wisconsin’s certified 2020 General Election results, did Joe Biden receive more than 19,000 votes more than Donald Trump?

Response: I am not familiar with the specific vote totals in the State of Wisconsin that were certified for the 2020 Presidential Election. To allow me to respond to your question, I conducted searches on the Internet, and found information indicating that the State of Wisconsin reported Joe Biden and Kamala Harris as receiving 1,630,866 votes and Donald Trump and Mike Pence as receiving 1,610,184 votes in the 2020 Presidential Election. I have no personal knowledge as to the accuracy of those reported vote totals.

b. According to Pennsylvania’s certified 2020 General Election results, did Joe Biden receive more than 80,000 votes more than Donald Trump?

Response: I am not familiar with the specific vote totals in the Commonwealth of Pennsylvania that were certified for the 2020 Presidential Election. To allow me to respond to your question, I conducted searches on the Internet, and found information indicating that the Commonwealth of Pennsylvania reported Joe Biden and Kamala Harris as receiving 3,458,229 votes and Donald Trump and Mike Pence as receiving 3,377,674 votes in the 2020 Presidential Election. I have no personal knowledge as to the accuracy of those reported vote totals.

c. According to Georgia’s certified 2020 General Election results, did Joe Biden receive more than 11,000 votes more than Donald Trump?

Response: I am not familiar with the specific vote totals in the States of Georgia that were certified for the 2020 Presidential Election. To allow me to respond to your question, I conducted searches on the Internet, and found information indicating that the State of Georgia reported Joe Biden and Kamala Harris as receiving 2,473,633 votes and Donald Trump and Mike Pence as receiving 2,461,854 votes in the 2020 Presidential Election. I have no personal knowledge as to the accuracy of those reported vote totals.

d. According to Arizona’s certified 2020 General Election results, did Joe Biden receive more than 10,000 votes more than Donald Trump?

Response: I am not familiar with the specific vote totals in the State of Arizona that were certified for the 2020 Presidential Election. To allow me to respond to your question, I conducted searches on the Internet, and found information indicating that the State of

Arizona reported Joe Biden and Kamala Harris as receiving 1,672,143 votes and Donald Trump and Mike Pence as receiving 1,661,686 votes in the 2020 Presidential Election. I have no personal knowledge as to the accuracy of those reported vote totals.

e. According to Nevada's certified 2020 General Election results, did Joe Biden receive more than 20,000 votes more than Donald Trump?

Response: I am not familiar with the specific vote totals in the State of Nevada that were certified for the 2020 Presidential Election. To allow me to respond to your question, I conducted searches on the Internet, and found information indicating that the State of Nevada reported Joe Biden and Kamala Harris as receiving 703,486 votes and Donald Trump and Mike Pence as receiving 669,890 votes in the 2020 Presidential Election. I have no personal knowledge as to the accuracy of those reported vote totals.

f. According to Michigan's certified 2020 General Election results, did Joe Biden receive more than 154,000 votes more than Donald Trump?

Response: I am not familiar with the specific vote totals in the State of Michigan that were certified for the 2020 Presidential Election. To allow me to respond to your question, I conducted searches on the Internet, and found information indicating that the State of Michigan reported Joe Biden and Kamala Harris as receiving 2,804,040 votes and Donald Trump and Mike Pence as receiving 2,649,852 votes in the 2020 Presidential Election. I have no personal knowledge as to the accuracy of those reported vote totals.

g. Setting aside the precise vote totals, do you accept that, according to each state's certified results, Joe Biden received more votes than Donald Trump in Wisconsin, Pennsylvania, Georgia, Arizona, Nevada, and Michigan in the 2020 General Election?

Response: Yes.

h. Are you aware of any evidence that Joe Biden did not win more votes than Donald Trump in each of the states listed above? If so, please explain.

Response: As mentioned above, I have no personal knowledge as to the accuracy of any of the reported vote totals for the 2020 Presidential Election (or for any election, for that matter).

2. Some judicial nominees have stated that Joe Biden "legally" won the 2020 election or won the election "as a matter of law." Setting aside any legal characterization: as a matter of fact, did Joe Biden win the 2020 presidential election?

Response: The U.S. Constitution sets forth the process by which a person is elected President of the United States. That process is contained in the Twelfth Amendment to the Constitution, which requires that electors meet in their states and vote by ballot for President and Vice President, and then the President of the Senate, at a joint session of Congress, must open the certificates and the votes are counted. The Twelfth Amendment further provides that the person

who receives the majority of the votes for President shall be the President. I understand that this process occurred in connection with the 2020 Presidential Election. Pursuant to that process, Joe Biden was certified as the winner of 2020 Presidential Election because he received a majority of the votes of the electoral college. As a result, Joe Biden then served as President from early 2021 to early 2025.

3. Do you have any reason to believe that the outcome of any state's presidential vote was impacted by irregularities or fraud? If so, please explain.

Response: As a sitting federal judge at the time of the 2020 Presidential Election, I would have no personal knowledge as to the reliability of any state's election results or whether any fraud or irregularities occurred in connection with that state's election, unless I learned such information while presiding over a case involving a challenge to the election. I have not presided over any such case.

4. On January 7, 2021, a joint session of Congress certified 306 electoral votes for Joseph Biden and 232 electoral votes for Donald Trump. Joe Biden received more votes than Donald Trump across 25 states, DC, and NE-02 in the 2020 election.

a. Do you have any reason to believe that Congress was wrong to certify each state's electoral votes?

Response: I understand that, on January 7, 2021, at a joint session of Congress, Joe Biden was certified as receiving 306 electoral votes and Donald Trump was certified as receiving 232 electoral votes. This process was pursuant to the procedures set forth in the Eleventh Amendment by which a person is elected President of the United States. With respect to whether "Congress was wrong to certify each state's electoral votes," it would be inappropriate for me, as a sitting federal judge, to comment about a matter that is the subject of political or policy debate. *See* Code of Conduct for United States Judges, Canon 5.

5. More than 60 federal and state courts, including courts presided over by judges appointed by Republican presidents, dismissed legal challenges to the 2020 presidential election results for lack of evidence, lack of standing, or lack of merit.

a. Do you have any reason to believe that any of those courts reached the wrong conclusion?

Response: As a sitting federal judge, it would be inappropriate for me to opine on a political or policy debate regarding the integrity of any election, including the 2020 Presidential Election, or the correctness of court decisions concerning that election. *See* Code of Conduct for United States Judges, Canons 3(A)(6), 5.

b. Do you have any reason to believe that any one of those judges -- many of whom were appointed by Republican presidents, including President Trump -- acted improperly or in bad faith in dismissing those challenges?

Response: Please see my response to Question 5(a).

6. Have you ever, publicly or in an official capacity, questioned or disparaged: (i) the legitimacy of the 2020 presidential election results; (ii) Congress's certification of those results; or (iii) any federal or state court ruling rejecting legal challenges to those results? If so, please explain.

Response: No.

7. To the extent you would decline to answer any election-related question on the ground that the 2020 result is a "subject of political debate," please identify what you believe remains genuinely debatable about whether Joe Biden received more votes than Donald Trump in the states at issue, given that those results were certified by the responsible state officials and upheld in more than sixty state and federal proceedings.

Response: Please see my responses to Questions 2, 4, and 5.

8. In the documents you provided the Senate Judiciary Committee, have you identified every publicly accessible -- or previously publicly accessible -- social media, blog, forum, or other online account that you have created, maintained, controlled, contributed to, or posted under, on any platform?

Response: Yes.

If not, please identify any publicly accessible social media, blog, forum, or other online account that you have created, maintained, controlled, contributed to, or posted under, on any platform. Please include any non-private (or any previously non-private) accounts on Twitter/X, Facebook, Instagram, LinkedIn, YouTube, TikTok, Truth Social, Substack, Reddit, any personal blogs or websites, or any comparable platforms. For each account, please state:

- a. the platform or service;
- b. the username, handle, screen name, and any display name associated with the account;
- c. the approximate dates the account was active;
- d. whether the account was maintained in your own name, under a pseudonym, or anonymously; and
- e. the account's current status (active, deactivated, deleted, or set to private).

9. Since you were first under consideration for this nomination, have you deleted, deactivated, archived, restricted the visibility of, or removed content from any online account, or directed or requested that anyone does so on your behalf? If so, please identify the account and

describe what was changed or removed and when.

Response: No.

10. Justices Sotomayor and Barrett have each asked this Commission to fix the career offender guidelines, which have led to differing approaches across judicial circuits. Under the current framework, the same conduct can lead to an additional decade behind bars depending on which circuit sentences the defendant.

a. In your view, should a prior drug conviction count toward career offender status if the drug was illegal under state law but not under federal law?

Response: Congress has provided that a purpose of the Sentencing Commission is to “establish sentencing policies and practices for the Federal criminal justice system that . . . provide certainty and fairness in meeting the purposes of sentencing,” 28 U.S.C. § 991(b)(1)(A), which I understand to include addressing splits among the Courts of Appeals in interpreting Guidelines provisions. *See Braxton v. United States*, 500 U.S. 344, 348-50 (1991). Rule 5.2(c) of the Commission’s Rules of Practice and Procedure set out a non-exhaustive list of factors that the Commission considers in deciding whether a particular circuit conflict warrants resolution. One circuit conflict that the Commission has considered in the past, and I believe warrants priority consideration, concerns the definition of a “controlled substance offense” in Section 4B1.2. With respect to the issue raised in this question, certain circuits have held that a “controlled substance offense” includes only offenses controlled by federal law, and a state drug offense will not qualify if the state statute includes substances not covered by federal law. Other circuits have held that a state conviction involving a drug regulated by state law, but not identified under federal law, can qualify as a “controlled substance offense.” Before arriving at a view on this important issue, however, I would want to fully appreciate the work already performed by the Commission and consider comments from various stakeholders.

b. When the drug schedule at the time of a defendant’s prior conviction differs from the schedule at the time of federal sentencing, which drug schedule should apply: the one in effect at conviction, or the one in effect at sentencing?

Response: Please see my response to Question 10(a). In addition to the issue I mentioned in that response, circuits have split on which temporal version of the applicable drug schedule should be used in deciding if a prior offense qualifies as a “controlled substance offense” under Section 4B1.2: the schedule in place at the time of the prior conviction or the schedule in place at the time of the instant federal offense or sentencing for that federal offense. Before arriving at a view on this important issue, however, I would want to fully appreciate the work already performed by the Commission and consider comments from various stakeholders.

11. If confirmed, will you commit to reaching your own conclusions on any amendment to the Sentencing Guidelines independent of any view or position expressed by the Department of Justice?

Response: Yes. If I am confirmed to the Commission, I will fairly and fully consider any comments expressed to the Commission, whether from the U.S. Department of Justice, the criminal defense community, defendants, or the public. I commit to always keeping an open mind, and I will reach independent conclusions based on my own judgment as to any amendments to the Guidelines.

12. Congress established the USSC as “an independent commission in the judicial branch of the United States.”

a. In your own words, what does it mean for the Sentencing Commission to be an independent body and what is the value in its independence?

Response: The independent role of the Sentencing Commission and its relationship to the branches of our Government is reflected in the authorizing statute, 28 U.S.C. §§ 991 *et seq.* In the Commission, Congress established as an independent commission of the judicial branch, composed of Commissioners who bring expertise in sentencing matters. *Id.* § 991(a). While Congress is responsible for passing federal criminal statutes and setting the relevant considerations at sentencing, the Commission plays an independent role to help establish and implement national sentencing policies and practices. *Id.* § 991(b)(1). This includes conducting independent and unbiased research and studies to assess the degree to which sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing, and serving as information resource on federal crime and sentencing for Congress, the Executive Branch, the judiciary, and other stakeholders.

b. If confirmed, what steps will you take to ensure you remain independent as a commissioner?

Response: If I am confirmed to the Commission, I will fairly and fully consider any comments expressed to the Commission, whether from the U.S. Department of Justice, the criminal defense community, defendants, or the public. I commit to always keeping an open mind, and I will reach independent conclusions based on my own judgment as to any amendments to the Guidelines.

13. Do you believe that federal drug sentencing guidelines are too high, too low, or about right?

Response: As a sitting federal judge who is presiding over numerous drug prosecutions and likely will be assigned many more, it would be inappropriate for me to opine on whether I believe the provisions at Section 2D1.1 for drug offenses are appropriate. *See* Code of Conduct for United States Judges, Canons 3(A)(6). If I am confirmed to the Commission, I would examine this and other issues, including by looking at the relevant data and considering whether further research is needed. Before arriving at a view on this important issue, I also would first explore the work already done by the Commission and consider the positions of various stakeholders.

Senator Peter Welch
Senate Judiciary Committee
Written Questions for John Peter Cronan
Hearing on “Nominations”
Wednesday, August 5, 2026

1. In all seven cases involving the mandatory detention of immigrants that have appeared before you, you have ruled in favor of the U.S. government. In one of those opinions, you wrote: “It is not lost on the undersigned that the overwhelming majority of judges in this District and around the country to consider the issue have reached a contrary conclusion. . . .” Please explain the issues of each of the seven cases, the holdings you reached, and how you reached each one.

Response: In every ruling I have issued as a district judge, I have gone to great lengths to clearly explain my analysis and reasoning. All of my written decisions in immigration cases are available on Westlaw. The decision referenced in your question is *Chen v. Almodovar*, No. 25 Civ. 9670 (JPC), 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026), and can be viewed on that case’s public docket at Docket Number 13. In my twenty-nine-page decision in *Chen*, I explained in detail why I concluded that the relevant statutory provisions, 8 U.S.C. §§ 1225(b)(2)(a) and 1226(a), as well as applicable precedents and other caselaw, compelled the result I reached. It would be inappropriate for me to elaborate on *Chen* and my other immigration decisions beyond what is on the public docket for a couple of reasons. First, many of the issues implicated in those decisions are either on appeal or may be heard by the U.S. Supreme Court. Second, as a sitting federal judge on the Southern District of New York, I have a heavy immigration docket and expect to be assigned more immigration cases in the future. Thus, aside from pointing to what I wrote in public filings explaining my rulings in those cases, it would be inappropriate for me to discuss any of these legal issues further. *See* Code of Conduct for United States Judges, Canons 3(A)(6).

2. Is it correct that of the approximately 20 compassionate release motions that you have presided over, you have denied all of them? If so, please explain the factors you considered for deciding to deny each of these motions.

Response: By my count, I have decided twenty-two compassionate release motions (although some were successive motions filed by the same defendant) and I denied each motion by a written decision. As I explained in my response to Question 1, when I render a decision in a case, I strive to clearly and thoroughly explain my analysis and reasoning. All of my rulings resolving compassionate release motions are available on Westlaw. In each, I considered the particular circumstances presented in that case and explained in detail why I arrived at the result I did. I examined whether the defendant’s individualized circumstances qualified as “extraordinary and compelling circumstances” to warrant a reduction under 18 U.S.C. § 3582(c)(1)(A), as well as, as required by the statute, how the factors under 18 U.S.C. § 3553(a) applied in that case. *See* 18 U.S.C. § 3582(c)(1)(A) (providing that the court “may reduce the term of imprisonment . . . , after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that . . . (i) extraordinary and compelling reasons warrant such a reduction” and (ii) “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission”). As explained in those decisions, I found either that

“extraordinary and compelling circumstances” were not present or that the Section 3553(a) factors weighed against early release.

3. In *Spivey v. United States*, you argued that police could gain a lawful consent to search the home of a defendant on a deceitful premise. Police officers visited the defendants’ house, claiming they were investigating burglaries the defendants had reported, when their real purpose was to investigate potential credit card fraud and the investigations of the burglary was a pretext.

a. Under what circumstances do you believe it is lawful for police officers to deceive defendants?

Response: I do not specifically recall the facts and legal issues implicated in *Spivey v. United States*, but from conducting searches online, I believe you are referring to a brief filed in May 2018 by the United States of America opposing a petition for a writ of *certiorari*. At that time, I served as the Acting Assistant Attorney General of the U.S. Department of Justice’s Criminal Division and oversaw the Division’s seventeen offices and sections, including the Criminal Appellate Section. In that role, my name appeared on many briefs filed before the United States Supreme Court, which are listed in my Senate Judiciary Questionnaire. (I listed eleven merits-stage briefs and over 210 *certiorari*-stage briefs during my time as Acting Assistant Attorney General.) But regardless, as a sitting federal judge who is assigned many criminal matters and likely will be assigned many more, it would be inappropriate for me to opine on the legal question of under what circumstances it would be lawful for law enforcement to deceive a defendant. *See* Code of Conduct for United States Judges, Canons 3(A)(6).

b. Under what circumstances do you believe it is lawful for police officers to deceive individuals to gain their consent to cooperate in a law enforcement investigation?

Response: As a sitting federal judge who is assigned many criminal matters and likely will be assigned many more, it would be inappropriate for me to opine on the legal question of under what circumstances it would be lawful for law enforcement to deceive a person to gain their cooperation. *See* Code of Conduct for United States Judges, Canons 3(A)(6).

4. You have been a member of the Federalist Society since 2017.

a. Please explain the nature of your participation and activities in the Federalist Society, including any leadership roles you have held in the organization.

Response: My involvement with the Federalist Society has entailed occasionally attending events such as the National Lawyers’ Conference and local events in New York City, speaking to students at law school chapters around the country, and moderating a “fireside chat” with then-Deputy Attorney General Todd Blanche in Philadelphia, Pennsylvania, on April 25, 2025.

b. You moderated a fireside chat with then-Deputy Attorney General Todd Blanche at a Federalist Society Third Circuit Chapter Conference. Please describe the questions you raised during the fireside chat and the nature of the conversation.

Response: The “fireside chat” was an informal discussion with then-Deputy Attorney General Blanche. To the best of my recollection, I asked Mr. Blanche about his background, why he became a federal prosecutor, his work at the U.S. Attorney’s Office for the Southern District of New York, trial advocacy tips, and advice for young attorneys.

Questions for the Record

John P. Cronan – Nominee to be U.S. Sentencing Commissioner

Sen. Adam Schiff (D-CA)

1. How would you define public corruption as a matter of federal law?

Response: Public corruption is a concept with various definitions under federal law. In my prior positions as Acting Assistant Attorney General and Principal Deputy Assistant Attorney General of the U.S. Department of Justice’s Criminal Division, I oversaw the Public Integrity Section, which prosecuted a wide range of public corruption offenses across the country. Those offenses included bribery, extortion, fraud, and embezzlement involving elected or appointed officials, other government employees, and people doing business with government. I also oversaw the Fraud Section’s Foreign Corrupt Practices Act Unit, which prosecuted offenses involving bribery of foreign officials.

2. The Sentencing Commission is designed to be a bipartisan, independent body within the judicial branch. Previously, you served in the Department of Justice’s Criminal Division under the Trump administration and carried out the Administration’s policy agenda.

- a. How would you establish and maintain independence from the Department of Justice and the White House on sentencing guidelines?

Response: If confirmed to the Sentencing Commission, while I will fairly and fully consider any views expressed to the Commission, whether from the U.S. Department of Justice, the criminal defense community, defendants, or the public, and I commit to always keeping an open mind, I will reach independent conclusions based on my own judgment as to any amendments to the Guidelines.

- b. If the Attorney General issued a sentencing memorandum that the Commission’s own empirical data showed increased unwarranted racial disparities, how would you respond as a Commissioner?

Response: Congress has directed that the Commission “shall assure that the guidelines and policy statements are entirely neutral as to the race . . . of offenders,” 28 U.S.C. § 994(d), and defines one of the purposes of the Commission as establishing sentencing policies and practices that “avoid . . . unwarranted sentencing disparities,” *id.* § 991(b)(1)(B); *see also id.* § 3553(a)(6). The Commission plays an important role in providing unbiased and reliable data and analysis to Congress and the Executive Branch as they consider sentencing policies, including if that data and analysis indicate that a policy would yield unwarranted racial disparities.

3. What do you view as the role of the U.S. Sentencing Commission in the criminal justice system?

Response: Congress has provided that the purposes of the Sentencing Commission are to:

- (b) The purposes of the United States Sentencing Commission are to--
 - (1) establish sentencing policies and practices for the Federal criminal justice system that--
 - (A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;
 - (B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and
 - (C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and
 - (2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

28 U.S.C. § 991(b). In addition, Section 994 sets forth numerous duties of the Commission. If I am confirmed to the Commission, I will work to pursue these purposes and duties.

With that said, I believe the Commission serves two particularly important roles. First, the Commission assists federal district judges perform their most difficult task, deciding whether a criminal defendant should lose his or her liberty and, if so, for how long and under what conditions. This is largely through the Sentencing Guidelines and policy statements. While not mandatory, a defendant's Guidelines range is an important factor at sentencing, and the Supreme Court has described the Guidelines as a sentencing judge's "starting point and the initial benchmark." *Gall v. United States*, 552 U.S. 38, 49 (2007). The Guidelines have most value to a sentencing judge when they capture as many factors under 18 U.S.C. § 3553(a) as possible for a particular offense and offender. So it is essential that the Commission constantly examines the Guidelines to explore how they can be amended to most effectively account for the other Section 3553(a) factors.

Second, the Commission's unbiased collection of data and information can be very valuable to Congress in enacting criminal justice legislation, as well as to district judges in arriving at sentences that are sufficient but not greater than necessary to account for the purposes of sentencing, *see* 18 U.S.C. § 3553(a)(2), and "to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct," *id.* § 3553(a)(6).

- a. Do you believe it is important to eliminate racial disparities in the sentencing guidelines? If so, what steps would you take to solve this problem.

Response: Every participant in our criminal justice system, including federal judges, Congress, and the Sentencing Commission, should strive to ensure equal treatment under

the law regardless of race. Congress has directed that the Commission “shall assure that the guidelines and policy statements are entirely neutral as to the race . . . of offenders,” 28 U.S.C. § 994(d), and identified a purpose of the Commission as establishing sentencing policies and practices that “avoid . . . unwarranted sentencing disparities,” *id.* § 991(b)(1)(B); *see also id.* § 3553(a)(6). The Commission plays an important role in providing unbiased and reliable data and analysis to Congress and the Executive Branch as they consider sentencing policies that ensure that all are treated equal regardless of race.

b. If the Attorney General issued a sentencing memorandum that the Commission’s own empirical data showed increased unwarranted racial disparities, how would you respond as a Commissioner?

Response: Please see my response to Question 2(b).

c. What is your position on the role and scope of compassionate release in the criminal justice system?

Response: Compassionate release is appropriate when, after considering the factors set forth in 18 U.S.C. § 3553(a), there are “extraordinary and compelling circumstances” warranting a reduction. *See* 18 U.S.C. § 3582(c)(1)(A) (providing that the court “may reduce the term of imprisonment . . . , after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that . . . (i) extraordinary and compelling reasons warrant such a reduction” and (ii) “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission”).

d. What is your position on the role of supervised release in the criminal justice system?

Response: Supervised release can serve an important role in assisting a defendant’s rehabilitation and return to society after a period of incarceration, as well as protecting the public of future crimes by the defendant and providing deterrence. Judges should thoughtfully consider these interests in ordering a term of supervised release and impose particular supervised release conditions that make sense for the defendant being sentenced. A judge should carefully think about supervised release not just at the time of sentencing, but throughout a defendant’s term of supervised release, to ensure that the supervision is achieving the goal of assisting the defendant’s rehabilitation and return to society. The 2025 Amendments to the Guidelines made significant changes to the supervised release guidelines emphasizing the importance of individual determinations, the need to reassess supervised release decisions after a defendant’s release from custody, and the rehabilitative purposes of supervised release.

4. You rejected compassionate release in all of the approximately twenty requests that have come before you as a federal judge. Please explain what role you think compassion should play in sentencing policy.

Response: Please see my response to Question 3(c). In every ruling I have issued as a district judge, I have gone to great lengths to clearly explain my analysis and reasoning. All of my written decisions in immigration cases are available on Westlaw. In each, I considered the particular circumstances presented in that case, and explained in detail why I arrived at the result I did. I examined whether the defendant’s individualized circumstances qualified as “extraordinary and compelling circumstances” to warrant a reduction under 18 U.S.C. § 3582(c)(1)(A), as well as, as required by the statute, how the factors under 18 U.S.C. § 3553(a) applied in that case. See 18 U.S.C. § 3582(c)(1)(A) (providing that the court “may reduce the term of imprisonment . . . , after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that . . . (i) extraordinary and compelling reasons warrant such a reduction” and (ii) “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission”). As explained in those decisions, I found either that “extraordinary and compelling circumstances” were not present or that the Section 3553(a) factors weighed against early release.

5. In *Srouf v. New York City*, you struck down a firearms restriction and reasoned that it gave the government too much unchecked discretion over individual constitutional rights. Yet in *Chen v. Almodovar*, you denied an individual’s habeas petition and upheld their mandatory detention without bond. You yourself acknowledged that your decision in *Chen* departed from the overwhelming majority of judges in this District and around the country to consider the issue.

a. Please explain why you hold skepticism towards the government’s expanded discretion in the context of a Second Amendment case but do not appear to hold the same concerns for the government’s expanded discretion over constitutional rights in the context of immigration detention?

Response: In every ruling I have issued as a judge, I have gone to great lengths to explain my analysis and reasoning. Both decisions you referenced are publicly available. The first decision is *Srouf v. New York City*, 699 F. Supp. 3d 258 (S.D.N.Y. 2023), and can be found on that case’s public docket at Docket Number 43. In that forty-eight-page decision, I explain why I concluded that elements of New York City’s gun-licensing regime violated the Second Amendment (made applicable to the states by the Fourteenth Amendment). The second decision you referenced is *Chen v. Almodovar*, No. 25 Civ. 9670 (JPC), 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026), and can be viewed on that case’s public docket at Docket Number 13. In that twenty-nine-page decision, I explained in detail why I concluded that the relevant statutory provisions, 8 U.S.C. §§ 1225(b)(2)(a) and 1226(a), as well as applicable precedents and other caselaw, compelled the result I reached. It would be inappropriate for me to elaborate on *Chen* and my other immigration decisions beyond what is on the public docket for a couple of reasons. First, many of the issues implicated in those decisions are either on appeal or may be heard by the U.S. Supreme Court. Second, as a sitting federal judge on the Southern District of New York, I have a heavy immigration docket and expect to be assigned more immigration cases in the future. Moreover, the issues in *Srouf* also may come before me again, given that the Second Circuit vacated the appeal on mootness grounds after the City issued the plaintiff a permit, *Srouf v. New York City*, 117 F.4th 72 (2d Cir. 2024), and there are issues in *Srouf* still pending before me. Thus, aside from pointing to what I

wrote in public filings explaining my rulings in those cases, it would be inappropriate for me to discuss any of these legal issues further. *See* Code of Conduct for United States Judges, Canons 3(A)(6).

6. You were Acting Assistant Attorney General for the Criminal Division in April 2018, when Attorney General Jeff Sessions announced his “Zero Tolerance” policy that led to the separation of families at the border.

a. Please explain your involvement in these efforts.

Response: I was not involved in any so-called “Zero Tolerance” policy efforts.

b. Did you assist with the drafting, implementation, or execution of the “Zero Tolerance” policy?

Response: No.

7. As part of your roles at the Department of Justice, you also led many of the Department’s efforts to prosecute alleged members of MS-13.

a. Please explain your involvement in these efforts.

Response: As the Acting Assistant Attorney General and the Principal Deputy Assistant Attorney General of the U.S. Department of Justice’s Criminal Division, I oversaw the Division’s Organized Crime and Gang Section (“OCGS”). OCGS is responsible for, among other things, investigating and prosecuting violent gangs and criminal organizations across the country, with a top priority at the time being MS-13. In addition, Criminal Division employees were assigned to El Salvador, where a major focus of their efforts is to combat MS-13. From working with these individuals, and also working with law enforcement officers, I became familiar with the actions of MS-13 and worked closely with the leadership at the Department of Justice in combatting the threat posed by the gang. In connection with that work, I attended with President Trump a roundtable discussion on immigration in Bethpage, New York, on May 23, 2018, at which I discussed the threat posed by MS-13, and spoke at a White House Press Briefing on February 6, 2018, regarding MS-13.

b. You equated the supposed rise of MS-13 in the country with what you described as the failure to enforce immigration and human smuggling laws. What evidence or data did you review to arrive at this conclusion?

Response: On the occasions when I spoke about the threat posed by MS-13 in the United States, my comments were specifically referring to members of that murderous transnational criminal organization. As I discussed on multiple occasions, MS-13 is a violent and ruthless gang, which boasts the motto, “Mata, Viola, Controla,” or “Kill, Rape, Control,” and was terrorizing communities across the United States. I also learned about MS-13’s transnational activities. MS-13 is based and operates in El Salvador, and

MS-13 leadership largely directs the organization's murderous mission from prisons in El Salvador. In certain statements I made, I noted that because of the transnational nature of the MS-13 threat, merely enforcing our laws criminalizing violent crimes is insufficient to combat the threat. My point was that without enforcement of our lawful immigration statutes, MS-13 could more easily replenish its ranks by bringing additional gang members into the United States from El Salvador and elsewhere. I therefore emphasized the importance of the Department of Justice working with its foreign partners to apprehend MS-13 members before they could attempt to travel to the United States to commit unspeakable acts of murder and other violence.

c. In March 2025, the Trump administration attempted to invoke the Alien Enemies Act to transfer nearly 300 immigrants to El Salvador unlawfully, without any due process. When they arrived to El Salvador, the individuals were detained at the Center for Terrorism Confinement (CECOT), a prison notorious for systematic human rights violations, including torture. The Trump administration accused the individuals in this group of being members of various gangs, including MS-13. Subsequent reporting, including by the Cato Institute, has revealed that the Administration labeled individuals as gang members merely by the presence of certain tattoos—an unreliable indicator of gang affiliation. Given your past positions and comments on MS-13, what is your position on whether the Alien Enemies Act was properly invoked to deport individuals with certain tattoos?

Response: As a sitting federal judge, it would be inappropriate for me to opine on matters that are the subject of pending or impending litigation, such as whether a particular statute was properly invoked, and on matters that implicate political or policy debates. *See Code of Conduct for United States Judges, Canon 3(A)(6), 5.*

8. You wrote a law review article published in 2001, titled “Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity as a Backdrop for ‘Deliberate Indifference.’” In the article, you referenced a study finding that “Black inmates are most likely to become the sexual aggressors” and you wrote that “rape serves as a mechanism by which Black inmates can obtain retribution and assert their dominance over Whites.”

a. Do you stand by these statements?

Response: In the cited article, my co-author and I discussed a very troubling issue, namely, multiple studies and reports suggesting that inmates were being victimized by sexual abuse at an alarming rate. My co-author and I relied upon various studies, conducted by others, that identified certain factors that reflect the incidence of sexual abuse or victimization. We surveyed and assembled those studies and the various factors identified in them, and suggested that an understanding of the dynamics of prison rape and the relevant factors identified in those studies could allow prison officials to assess which inmates are more likely to be violent and which are more likely to be victimized, and take preventive measures accordingly.

My co-author and I did not conduct independent research on our own concerning the incidence of prison sexual abuse, nor did we conduct any inmate interviews or otherwise perform our own studies on what factors inform the likelihood of sexual assault in prison. In retrospect, and having re-read the article, I believe that my co-author and I overly relied upon studies conducted by others.

The first quotation mentioned in your question was a reference to a study conducted by Wayne S. Wooden and Jay Parker, not to any studies that my co-author and I conducted or any conclusions that we independently reached. See Way S. Wooden & Jay Parker, *Men Behind Bars: Sexual Exploitation in Prison 2* (1982). Indeed, the words immediately before the truncated quotation contained in your question make clear that my co-author and I were referring the “finding” by Wooden and Parker. See Christopher D. Man & John P. Cronan, *Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity as a Backdrop for “Deliberate Indifference”*, 92 J. CRIM. L. & CRIMINOLOGY 127, 163 (2001/2002) (referring to “Wooden and Parker’s study of the California penal system” and their “finding that Black inmates are most likely to become the sexual aggressors”). As that excerpt makes clear, my co-author and I were discussing Wooden and Parker’s study of the California penal system, including their findings as to the role of race in prison sexual assaults. The second quotation in your question was a citation to an observation made by an individual named Stephen Donaldson in a publication. See *id.* at 160. As explained, my co-author and I were surveying various studies, conducted by others, that examined the dynamics of prison sexual assault and the factors that indicate the likelihood of sexual assault in prison.

b. At your most recent Senate Judiciary Committee nomination hearing, you responded to Senator Durbin’s questions on this article by noting that you do not feel that black inmates are more violent than white inmates. Has your position changed since writing the article in 2001?

Response: My view is not now, nor was it ever, that black inmates are inherently more violent than white inmates. I would find such a suggestion patently offensive. As explained in my response to Question 8(a), my co-author and I were attempting to digest and summarize various studies—conducted by others—that discussed the subculture that exists in prison and the factors within that subculture that researchers found inform the likelihood of sexual assault in prison.

c. Given these statements, how can we be certain that you will play an objective role on the Sentencing Commission?

Response: During my six years as a United States District Judge, I have faithfully and impartially decided cases without bias, prejudicial, or regard to the race, gender, religion, or any other characteristic of the litigant before me, consistent with the judicial oath I took and with Canon 1 of the Conduct of Conduct for United States Judges.

Throughout my over 17-year career in public service with the Department of Justice prior to taking the federal bench, I dedicated myself to promoting the rule of law, ensuring

justice and due process, and treating all colleagues, defendants, and attorney adversaries fairly, equally, and with dignity. As a prosecutor, my career in the Department was devoted to pursuing just and appropriate results under the law and the facts.

9. At your most recent Senate Judiciary Committee nomination hearing, Senator Blumenthal asked you which candidate won the 2020 election. Instead of answering the question, you noted that Joe Biden received the majority of the Electoral College vote.

a. As a matter of fact, which of the two general election candidates lost the 2020 election?

Response: The U.S. Constitution sets forth the process by which a person is elected President of the United States. That process is contained in the Twelfth Amendment to the Constitution, which requires that electors meet in their states and vote by ballot for President and Vice President, and then the President of the Senate, at a joint session of Congress, must open the certificates and the votes are counted. The Twelfth Amendment further provides that the person who receives the majority of the votes for President shall be the President. I understand that this process occurred in connection with the 2020 Presidential Election. Pursuant to that process, Joe Biden was certified as the winner of 2020 Presidential Election because he received a majority of the votes of the electoral college. As a result, Joe Biden then served as President from early 2021 to early 2025.

b. As a matter of fact, which of the two general election candidates lost the 2024 presidential election?

Response: The U.S. Constitution sets forth the process by which a person is elected President of the United States. That process is contained in the Twelfth Amendment to the Constitution, which requires that electors meet in their states and vote by ballot for President and Vice President, and then the President of the Senate, at a joint session of Congress, must open the certificates and the votes are counted. The Twelfth Amendment further provides that the person who receives the majority of the votes for President shall be the President. I understand that this process occurred in connection with the 2024 Presidential Election. Pursuant to that process, Donald Trump was certified as the winner of 2024 Presidential Election because he received a majority of the votes of the electoral college. As a result, Donald Trump has served as President since early 2025.

c. As a matter of fact, did Donald Trump lose the 2020 election? Yes or no.

Response: Pursuant to our electoral college system, Joe Biden was certified as the winner of the 2020 Presidential Election because he received the majority of the votes of the electoral college.

d. Who won the popular vote in the 2020 presidential election?

Response: From publicly available information based reported vote totals, Joe Biden received the most votes among the population during the 2020 Presidential Election. I have no personal knowledge as to the accuracy of those reported vote totals.

e. Who won the majority of the electoral college votes in the 2020 presidential election?

Response: Please see my answer to Question 9(c).

f. Do you have any doubts about the outcome or integrity of the 2020 presidential election results?

Response: As a sitting federal judge at the time of the 2020 Presidential Election, I would have no personal knowledge as to the reliability of any state's election results or whether any fraud or irregularities occurred in connection with that state's election, unless I learned such information while presiding over a case involving a challenge to the election. I have not presided over any such case.