

**Nomination of J.P. Boulee
to the United States District Court for the Northern District of Georgia
Questions for the Record November 20, 2018**

QUESTIONS FROM SENATOR FEINSTEIN

1. Please respond with your views on the proper application of precedent by judges.

a. When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?

It is never appropriate for lower courts to depart from Supreme Court precedent.

b. Do you believe it is proper for a district court judge to question Supreme Court precedent in an opinion?

I do not believe it is proper for a district court judge to question Supreme Court precedent in an opinion.

c. When, in your view, is it appropriate for a district court to overturn its own precedent?

Judges sitting on the United States District Court for the Northern District of Georgia are bound by United States Supreme Court precedent and Eleventh Circuit precedent. The district court judges, however, are not constitutionally or legally bound by the decisions of their fellow district court judges. *See McGinley v. Houston*, 361 F.3d 1328, 1331 (11th Cir. 2004) (“The general rule is that a district judge’s decision neither binds another district judge nor binds him, although a judge ought to give great weight to his own prior decisions.”). Nonetheless, recognizing the importance of judicial economy, stability and predictability in the judicial process, some district courts in the past have followed the doctrine of intra-court comity to provide a uniform interpretation of the law. *See Fishman & Tobin, Inc. v. Tropical Shipping & Const. Co.*, 240 F.3d 956, 965 (11th Cir. 2001) (noting the “paucity of case law dealing with intra-court comity”). The doctrine of intra-court comity “establishes a general rule that, absent unusual or exceptional circumstances, judges of coordinate jurisdiction within a jurisdiction should follow brethren judges’ rulings.” *See United States v. Anaya*, 509 F. Supp. 289, 293 (S.D. Fla. 1980), *aff’d sub nom. United States v. Zayas-Morales*, 685 F.2d 1272 (11th Cir. 1982). Even though the doctrine is advisory and not binding, I believe it is important for district court judges to recognize the persuasiveness of decisions of their fellow judges to better facilitate judicial economy, stability and predictability.

d. When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?

Only the Supreme Court can determine when it is appropriate for the Court to overturn its own precedent. The Court considers a variety of factors when making such a

determination. *Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448 (2018) is a recent example of the application of those factors.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as “super-stare decisis.” A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a “super-precedent” because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that “superprecedent” is “precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation.” (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

a. Do you agree that *Roe v. Wade* is “super-stare decisis”? Do you agree it is “superprecedent”?

All Supreme Court precedent, including *Roe v. Wade*, is equally binding on federal district courts. As a nominee to a federal district court, it would be inappropriate for me to rank the precedential value of different Supreme Court cases. If I am fortunate enough to be confirmed, I will faithfully apply *Roe v. Wade* along with all other Supreme Court precedent.

b. Is it settled law?

Yes.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

Yes.

4. In Justice Stevens’s dissent in *District of Columbia v. Heller* he wrote: “The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature’s authority to regulate private civilian uses of firearms.”

a. Do you agree with Justice Stevens? Why or why not?

According to Canon 2 of the Code of Conduct for United States Judges, it would be inappropriate for me to comment on whether I agree or disagree with Justice Stevens because such comments could suggest something other than my respect for the law and impartiality as a judge. If I am fortunate enough to be confirmed, I will faithfully apply all binding Supreme Court precedent, including *District of Columbia v. Heller*.

b. Did *Heller* leave room for common-sense gun regulation?

Yes. The Supreme Court stated, “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008).

c. Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?

Please see my answer to question 4.a. above.

5. In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations’ independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

a. Do you believe that corporations have First Amendment rights that are equal to individuals’ First Amendment rights?

According to Canon 2 of the Code of Conduct for United States Judges, it would be inappropriate for me to comment on my personal beliefs regarding this issue because such comments could suggest something other than my respect for the law and impartiality as a judge. If I am fortunate enough to be confirmed, I will faithfully apply all binding Supreme Court precedent, including *Citizens United v. FEC*, regardless of my own personal beliefs.

b. Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?

Please see my answer to question 5.a. above.

c. Do you believe corporations also have a right to freedom of religion under the First Amendment?

According to Canon 2 of the Code of Conduct for United States Judges, it would be inappropriate for me to comment on my personal beliefs regarding this issue because such comments could suggest something other than my respect for the law and impartiality as a judge. If I am fortunate enough to be confirmed, I will faithfully apply all binding Supreme Court precedent, including *Burwell v. Hobby Lobby*, regardless of my own personal beliefs.

6. During your nominations hearing, Senator Leahy asked you whether the First Amendment allows a religious litmus test. You refused to answer, stating it would be inappropriate for you, as a judicial nominee, “to preview how I would rule on a case involving a

religious litmus test.” Although Senator Leahy asked his question in relation to the Trump Administration’s Muslim travel ban, he did not ask you to “preview” how you would rule on any specific case or controversy. Instead, he asked simply whether the First Amendment permits a religious litmus test.

a. Without addressing any pending case that might come before you if you are confirmed, does the First Amendment allow the government to impose a religious litmus test?

The First Amendment to the Constitution states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Regarding the issue of imposing a religious litmus test, as I noted in my confirmation hearing, this topic is currently the subject of litigation, so I cannot comment further. According to Canon 3 of the Code of Conduct for United States Judges, it is inappropriate for me to comment on any matter that is or might come before a court.

b. The First Amendment’s Establishment and Free Exercise Clauses state that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” How is the imposition of a religious litmus test consistent with the First Amendment?

Please see my answer to question 6.a. above.

7. In your time on the bench, you have issued opinions in several cases implicating a criminal defendant’s constitutional right to a speedy trial. The Sixth Amendment’s Speedy Trial Clause states that “in all criminal prosecutions, the accused shall enjoy the right to a speedy trial.”

a. What is your understanding of the Sixth Amendment’s Speedy Trial Clause? What requirements does this clause impose on trial court judges and criminal prosecutors?

The Sixth Amendment to the United States Constitution guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.” The right to a speedy trial is a fundamental right that protects both the public and the accused. In determining whether the speedy trial right has been violated, the Court is required to consider the guiding principles found in *Barker v. Wingo* and *Doggett v. United States*.

Although the Sixth Amendment does not contain any specific requirements for judges or prosecutors, judges should ensure that cases timely progress through the criminal justice system. It is the judge’s responsibility to manage the caseload and work with counsel regarding scheduling and other pressing matters. Importantly, judges shall promptly schedule cases for trial and endeavor to resolve all pending motions as quickly as possible.

b. Please explain the importance of guaranteeing a criminal defendant’s right to

a speedy trial.

A defendant's right to a speedy trial is important for several reasons. Primarily, a speedy trial guarantee protects against prolonged or oppressive loss of personal liberty if the accused is incarcerated or under strict bond conditions. Also, the speedy trial guarantee is important in reducing anxiety and concern as a result of being indicted of a crime, which every defendant experiences to some degree. Lastly, guaranteeing a criminal defendant's right to a speedy trial is important because delay can interfere with a defendant's ability to defend his or her case.

c. If confirmed, what steps would you take to ensure that criminal defendants are afforded the right to a speedy trial?

If confirmed, I would endeavor to work efficiently through the cases assigned to me by promptly setting matters for trial, working with counsel regarding scheduling and resolving any pending motions expeditiously. When I was initially appointed as a judge, numerous criminal cases (including murder and child molestation cases) had been pending for more than one year. Since my appointment, I have reduced my case load by over 40%. In significantly reducing my case load, I prioritized moving the oldest criminal cases first.

8. On your Senate Questionnaire, you indicate that you have been a member of the Federalist Society since 2011, and a member of the Board of Advisors of the Federalist Society's Atlanta Lawyers Chapter since 2015. The Federalist Society's "About Us" webpage explains the purpose of the organization as follows: "Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law." It says that 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. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community."

a. Could you please elaborate on the "form of orthodox liberal ideology which advocates a centralized and uniform society" that the Federalist Society claims dominates law schools?

This statement is not my own, so I am unable to elaborate on what the Federalist Society is referencing in the statement.

b. How exactly does the Federalist Society seek to "reorder priorities within the legal system"?

Please see my answer to question 8.a. above.

c. What “traditional values” does the Federalist society seek to place a premium on?

Please see my answer to question 8.a. above.

9. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), White House Counsel Don McGahn told the audience about the Administration’s interview process for judicial nominees. He said: “On the judicial piece ... one of the things we interview on is their views on administrative law. And what you’re seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years...”

a. Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your “views on administrative law”? If so, by whom, what was asked, and what was your response?

Although I do not recall the exact question, the issue of administrative law was raised during my April 13, 2018 interview with members of the White House Counsel’s Office and the Department of Justice’s Office of Legal Policy.

I responded that although I had general knowledge of administrative law – the Administrative Procedures Act and the various deference doctrines – I did not have deep knowledge of administrative law issues based on my experiences. (In both the U.S. Army JAG Corps and at Jones Day, administrative law was a separate and distinct legal practice area; I was assigned to different practice areas.)

b. Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your “views on administrative law”? If so, by whom, what was asked, and what was your response?

No.

c. What are your “views on administrative law”?

As noted in my response to question 9.a. above, although I have a general understanding of administrative law, it is not an area I have practiced in. I have thus not formulated a “view[] on administrative law.”

10. When is it appropriate for judges to consider legislative history in construing a statute?

In general, when construing a statute, judges should first begin by determining the plain meaning of the text in the statute. If the text is ambiguous such that the judge cannot derive a plain meaning, the judge should attempt to resolve the ambiguity by applying the canons of

statutory construction. If the judge still cannot resolve the ambiguity after this process, only then can the judge review legislative history in an attempt to resolve the remaining ambiguity.

11. At any point during the process that led to your nomination, did you have any discussions with anyone — including, but not limited to, individuals at the White House, at the Justice Department, or any outside groups — about loyalty to President Trump? If so, please elaborate.

No.

12. Please describe with particularity the process by which you answered these questions.

I reviewed the questions asked and then discussed proposed answers with my staff attorney and law clerk, who assisted me in drafting the responses. I then reviewed and edited the draft responses before soliciting feedback from the Department of Justice Office of Legal Policy. After receiving feedback from the Office of Legal Policy, I revised my responses accordingly before authorizing the Office of Legal Policy to submit my responses. All of the answers submitted are my own.

Questions for the Record for Jean-Paul Boulee
From Senator Mazie K. Hirono

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

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

No.

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

No.

2. The Sixth Amendment grants all criminal defendants the right to a speedy trial, because delays can cause unfairness if witnesses die, memories fade, or physical evidence is lost. In interpreting the Sixth Amendment, the Supreme Court has suggested that a delay of approaching one year is presumptively prejudicial. Yet, in *State v. Rickman* you found that a delay of nearly two years did not violate the defendant's Sixth Amendment right. In *State v. Heppard*, you found no Sixth Amendment violation where the defendant had been awaiting trial for over four years, even though the state's only excuse for not scheduling a trial was "overcrowded dockets and the change in judges."

a. Do you agree that the right to a speedy trial is an important right?

Yes.

b. Please explain how the Sixth Amendment speedy trial right is satisfied when the state delays a criminal trial for over four years simply because it had not dedicated sufficient resources to prosecuting alleged criminals. What prevents a state from using this excuse to keep criminal defendants incarcerated indefinitely?

As a state trial court judge, I am bound by the precedents established by both the United States Supreme Court and the Georgia Supreme Court. The principles that guide a court when it considers whether the delay in bringing an accused to trial amounts to a denial of his or her right to a speedy trial are set out in *Barker v. Wingo* and *Doggett v. United States*.

The speedy trial right can be satisfied even when the delay is caused by the State's insufficient resources because binding precedent requires that I consider all factors – not just the reason for the delay – in a "difficult and sensitive balancing process." *Barker v. Wingo*, 407 U.S. 514, 533 (1972). In Georgia, it is well-settled that unintentional delay, such as the type of delay referenced in this question, is weighed only benignly against the State. *Georgia v. Pickett*, 706 S.E.2d 561, 563 (Ga. 2011). Conversely, "a defendant who fails to assert the right at any point in the trial court will have an extremely difficult time establishing a violation of his or her right to a speedy trial." *Ruffin v. Georgia*, 663 S.E.2d

189, 200 (Ga. 2008).

In *State v. Rickman*, I determined that the speedy trial right was not violated even when part of the delay was attributable to insufficient resources because the defendant also contributed to the delay by asking for or consenting to continuances and waiting more than two years to assert her right to a speedy trial. Similarly, in *State v. Heppard*, the defendant waited more than four years to assert his right to a speedy trial.¹

A state is prevented from using this excuse to keep criminal defendants incarcerated indefinitely because it is only one factor that the court considers. For example, the analysis would be different if evidence was presented that the State deliberately delayed the case, a defendant asserted his or her right at an earlier time or a defendant was able to show particularized prejudice as a result of the delay.

¹ *State v. Heppard* was pending for more than three years before I was assigned to the case. Notably, I resolved the defendant's motions, including the Constitutional Demand for Trial, less than one month after the motions were filed. Additionally, just over one month after the defendant demanded a speedy trial, I specially set the matter for a jury trial. The defendant pled soon thereafter.

Nomination of Jean-Paul Boulee
United States District Court for the Northern District of Georgia Questions for the Record
Submitted November 20, 2018

QUESTIONS FROM SENATOR BOOKER

1. From 2007 to 2015, you were a member of the Georgia Republican Party and its Election Law Team.¹ What was the nature and scope of your work for the Election Law Team?

To the best of my recollection, in both the November 2012 and November 2014 elections, I volunteered with the Republican Party's election law teams. I believe both entailed an orientation session of less than one day prior to the election. On the day of the elections, I helped man the phones, took messages from callers and passed that information on to more experienced election law counsel.

2. From 2007 to 2015, you were also a member of the Republican National Lawyers Association and its Georgia Judicial Committee.² The Republican National Lawyers Association has strongly supported strict voter ID laws³—even though study after study has shown that in-person voter fraud is extremely rare.⁴ In the twenty-first century, voter ID laws are often considered the modern-day equivalent of poll taxes. These laws disproportionately disenfranchise people of color.

a. While you were a member of the Republican National Lawyers Association, did you express any concerns to anyone in that organization about its advocacy for stringent voter ID laws?

I do not recall having conversations with anyone in the Republican National Lawyers Association regarding its advocacy for stringent voter ID laws.

b. Do you believe that in-person voter fraud is a widespread problem in American elections?

I have not studied the issue of in-person voter fraud and thus do not know whether it is a widespread problem in American elections.

c. Do you agree with the statement that voter ID laws are the twenty-first-century equivalent of poll taxes?

I have not studied the issue of voter ID laws and thus do not know whether they are

¹ SJQ at 38.

² SJQ at 38.

³ Debbie Hines, *New Republican Data Shows No Need for Voter ID Laws*, HUFFPOST (Dec. 12, 2011), https://www.huffingtonpost.com/debbie-hines/voter-fraud-statistics_b_1139085.html.

⁴ *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

the twenty-first-century equivalent of poll taxes.

3. Brian Kemp, the Governor-Elect of Georgia, engaged in highly controversial tactics during his tenure as Georgia's Secretary of State. One report called Georgia "the epicenter of Republican voter suppression tactics in 2018."⁵ As another report observed of Mr. Kemp, "His office has overseen legal purges of more than two million inactive voters from the rolls since 2012 and stalled more than 50,000 applications filed by voters, most of them black."⁶ The *Atlanta Journal-Constitution* reported that a single purge of some 500,000 voters one night in July 2017 "may represent the largest mass disenfranchisement in U.S. history."⁷

a. Based on your understanding of the facts and the law, do you think the purges of voter rolls engaged in by Mr. Kemp's office were legal?

I have not studied the issue of whether "purges of voter rolls engaged in by Mr. Kemp's office were legal" and thus have no opinion on that issue. In addition, I would note that there are several cases pending in the U.S. District Court for the Northern District of Georgia regarding the recent election for Georgia Governor (and press reports about potential additional cases); it would thus be inappropriate for me, under the Canons of the Code of Conduct for United States Judges, to comment on this issue.

b. Do you think the purges of voter rolls engaged in by Mr. Kemp's office were appropriate efforts for the Secretary of State to undertake?

Please see my answer to question 3.a. above.

c. In response to reports of voter suppression, Mr. Kemp stated, "No one has made it easier to vote and harder to cheat in our state."⁸ Mr. Kemp served as Secretary of State from 2010 to 2018. Based on your background in election law in Georgia—including your service on the Georgia Republican Party's Election Law Team from 2007 to 2015—do you think it was easier to vote in Georgia in 2018 than in 2008?

I have not studied the issue of whether it is easier to vote in Georgia in 2018 than in 2008 and thus have no opinion on that issue. In addition, I would note that there are several cases pending in the U.S. District Court for the Northern District of Georgia regarding the recent election for Georgia Governor (and press reports about potential additional cases); it would thus be inappropriate for me, under the Canons of the Code of

⁵ Ari Berman, *Brian Kemp's Win in Georgia Is Tainted by Voter Suppression*, MOTHER JONES (Nov. 16, 2018), <https://www.motherjones.com/politics/2018/11/brian-kemps-win-in-georgia-tainted-by-voter-suppression-stacey-abrams>.

⁶ Richard Fausset & Alan Blinder, *Brian Kemp's Office, Without Citing Evidence, Investigates Georgia Democrats Over Alleged 'Hack'*, N.Y. TIMES (Nov. 4, 2018), <https://www.nytimes.com/2018/11/04/us/politics/georgia-elections-kemp-voters-hack.html>.

⁷ Alan Judd, *Georgia's Strict Laws Lead to Large Purge of Voters*, ATL. J.-CONST. (Oct. 27, 2018), <https://www.myajc.com/news/state--regional-govt--politics/voter-purge-begs-question-what-the-matter-with-georgia/YAFvuk3Bu95kJIMaDiDFqJ>.

⁸ Vanessa Williams, *Georgia Gubernatorial Candidates Draw Contrasts but Little Fire in First Debate*, WASH. POST (Oct. 23, 2018), <https://www.washingtonpost.com/politics/2018/10/24/georgia-gubernatorial-candidates-draw-contrasts-little-fire-first-debate>.

Conduct for United States Judges, to comment on this issue.

d. In 2014, Mr. Kemp told a group of Georgia Republicans that “Democrats are working hard, and all these stories about them, you know, registering all these minority voters that are out there and others that are sitting on the sidelines, if they can do that, they can win these elections in November.”⁹ From your vantage point, since you were on the Georgia Republican Party’s Election Law Team in 2014, do you think it was appropriate for Georgia’s sitting Secretary of State to disparage the participation of “all these minority voters” in elections?

Other than reading the quotation in the question, I am not familiar with this statement. In addition, I would note that there are several cases pending in the U.S. District Court for the Northern District of Georgia regarding the recent election for Georgia Governor (and press reports about potential additional cases); it would thus be inappropriate for me, under the Canons of the Code of Conduct for United States Judges, to comment on this particular statement. Generally, though, I will say that I disagree with any statement that disparages a United States citizen’s right to vote.

4. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.¹⁰ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.¹¹ These shocking statistics are reflected in our nation’s prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.¹² In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.¹³

a. Do you believe there is implicit racial bias in our criminal justice system?

Yes.

b. Do you believe people of color are disproportionately represented in our nation’s jails and prisons?

Yes.

c. Prior to your nomination, have you ever studied the issue of implicit racial bias in

⁹ Jim Galloway, *What Brian Kemp Really Said About Democratic Voter Registration Efforts*, ATL. J.-CONST.: POL. INSIDER (Sept. 11, 2014), <https://politics.myajc.com/blog/politics/what-brian-kemp-really-said-about-democratic-voter-registration-efforts/gQEO53Zry1ifbLlOYtcsRI>.

¹⁰ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

¹¹ *Id.*

¹² Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

¹³ *Id.*

our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

I had not studied the issue of implicit racial bias in our criminal justice system prior to my nomination. I am, however, aware that numerous studies on this issue have been published and are continuing to be published in academia and in the popular press.

5. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.¹⁴ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.¹⁵

a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I have not studied the causal links between incarceration rates and crime rates sufficiently enough to develop a well-formulated opinion on this issue. As such, I have not formed any conclusions about causal connections between incarceration rates and crime rates.

b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

Please see my response to question 5.a. above.

6. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

Yes.

7. Do you believe that *Brown v. Board of Education*¹⁶ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

I believe that *Brown v. Board of Education* and all binding precedent was correctly decided.

8. Do you believe that *Plessy v. Ferguson*¹⁷ was correctly decided? If you cannot give a direct

¹⁴ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

¹⁵ *Id.*

¹⁶ 347 U.S. 483 (1954).

¹⁷ 163 U.S. 537 (1896).

answer, please explain why and provide at least one supportive citation.

As indicated by the Supreme Court in *Brown v. Board of Education*, *Plessy v. Ferguson* was not correctly decided.

9. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

During the nomination and confirmation process, I met with a variety of people, including officials from the White House and the Department of Justice, to prepare for my confirmation hearing. During those preparations, we discussed possible questions I could receive from the Senate Judiciary Committee. Throughout this process, however, all of my responses have been my own.

10. President Trump has stated on Twitter: “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”¹⁸ Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

I believe that every litigant is entitled to due process and fair adjudication of his or her claims.

¹⁸ Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

Questions for the Record from Senator Kamala D. Harris
Submitted November 20, 2018
For the Nomination of
Jean-Paul Boulee, to the U.S. District Court for the Northern District of Georgia

1. District court judges have great discretion when it comes to sentencing defendants. It is important that we understand your views on sentencing, with the appreciation that each case would be evaluated on its specific facts and circumstances.

a. **What is the process you would follow before you sentenced a defendant?**

If I am fortunate enough to be confirmed, I would consider a variety of factors before sentencing a defendant. I would review the particular facts of the case, the evidence and arguments presented by both parties, the presentence report, plea offers, victim impact statements, statements made by the parties to the court, etc. I would review and apply all relevant federal rules, federal statutes, Supreme Court precedent and Eleventh Circuit precedent. Specifically, I would follow the principles established by the Supreme Court in *Gall v. U.S.*, 552 U.S. 38, 49-50 (2007) and *United States v. Booker*, 543 U.S. 220, 246 (2005). Although *Booker* makes clear that the Sentencing Guidelines are advisory, pursuant to *Gall*, I would begin my analysis with the Sentencing Guidelines. Thus, as a part of the procedure outlined in *Gall*, after reviewing the facts and correctly calculating the applicable Sentencing Guidelines range, I would consider all of the factors in 18 U.S.C. § 3553(a) to make an individualized assessment regarding whether the Sentencing Guidelines range is reasonable. If I conclude that a sentence outside of the Sentencing Guidelines range is more appropriate, I would consider the extent of the deviation and adequately explain my reasoning for the deviation, including the required sufficiently compelling support for such deviation.

b. **As a new judge, how do you plan to determine what constitutes a fair and proportional sentence?**

Please see my response to question 1.a. above.

c. **When is it appropriate to depart from the Sentencing Guidelines?**

As referenced above, in *United States v. Booker*, 543 U.S. 220, 246 (2005), the Supreme Court held that the Sentencing Guidelines are advisory, not binding, on district court judges. Although the Sentencing Guidelines are advisory, the Supreme Court has instructed district court judges to begin their sentencing analysis with the Sentencing Guidelines and to keep the Sentencing Guidelines in mind throughout the sentencing process. *Gall v. United States*, 552 U.S. 38, 50 n.6 (2007). Thus, judges can keep the Sentencing Guidelines in mind while determining the appropriateness of departing from the Sentencing Guidelines by referring to Chapter 5, Part K of the Sentencing Guidelines, which explains circumstances where it would be appropriate for a judge to depart from the Sentencing Guidelines. Judges can also refer to 18 U.S.C. § 3553(b), which lists factors for courts to consider when determining the appropriateness of departing from the

Sentencing Guidelines and any other relevant Circuit Court and Supreme Court precedent.

d. **Judge Danny Reeves of the Eastern District of Kentucky—who also serves on the U.S. Sentencing Commission—has stated that he believes mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing.¹**

i. **Do you agree with Judge Reeves?**

It is my understanding that the issue of mandatory minimum sentences is currently a public policy concern and is the subject of pending legislation in Congress. According to Canon 5 of the Code of Conduct for United States Judges, it would be inappropriate for me to comment on a public policy matter. Further, in accordance with Canons 2 and 3 of the Code of Conduct for United States Judges, it would be inappropriate for me to comment on any matter that might come before a court or to make a comment that would suggest anything other than respect for the law and impartiality of the judiciary.

ii. **Do you believe that mandatory minimum sentences have provided for a more equitable criminal justice system?**

Please see my answer to question 1.d.i. above.

iii. **Please identify instances where you thought a mandatory minimum sentence was unjustly applied to a defendant.**

Please see my answer to question 1.d.i. above.

iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.² **If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

1. **Describing the injustice in your opinions?**

Under the Constitution, the Legislative Branch is responsible for creating laws. If confirmed, I would be bound to respect the separation of powers

¹ <https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf>

² See, e.g., “Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose,” NY Times, July 28, 2014, <https://www.nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose.html>

and uphold the Constitution. Thus, it would be inappropriate for me to comment on the justness of the legislature's policymaking decisions.

2. Reaching out to the U.S. Attorney and other federal prosecutors to discuss their charging policies?

Under the Constitution, the Executive Branch is responsible for charging decisions. If confirmed, I would be bound to respect the separation of powers and uphold the Constitution. In such cases, however, if I were concerned about ethical impropriety, lack of professionalism, or prosecutorial misconduct, I would raise those concerns with the chief judge of the court and the federal prosecutors in accordance with applicable rules, guidance, precedent and my ethical responsibilities.

3. Reaching out to the U.S. Attorney and other federal prosecutors to discuss considerations of clemency?

The Constitution grants clemency powers to the Executive Branch. If confirmed, I would be bound to respect the separation of powers and uphold the Constitution. In such cases, however, I would be sure to note important facts and circumstances of the case that might impact clemency decisions to ensure the record contains the necessary information for the Executive Branch to make those types of decisions.

e. 28 U.S.C. Section 994(j) directs that alternatives to incarceration are "generally appropriate for first offenders not convicted of a violent or otherwise serious offense." **If confirmed as a judge, would you commit to taking into account alternatives to incarceration?**

Yes. As a Dekalb County Superior Court Judge, I founded and currently preside over the Dekalb County Veterans Treatment Court. The Veterans Treatment Court, which is an alternative to incarceration, is an accountability court that provides drug and alcohol counseling, food, housing, education, medical attention and job opportunities to veterans facing non-violent felony charges.

2. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide whether individuals receive fairness, justice, and due process.

a. **Does a judge have a role in ensuring that our justice system is a fair and equitable one?**

Yes.

b. **Do you believe there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.**

While I have not studied the topic in depth, I am aware of statistics showing racial disparities in our criminal justice system, including racial disparities in access to justice, sentencing and incarceration rates. For example, in 2017, the United States Sentencing Commission released a report that found “Black male offenders continued to receive longer sentences than similarly situated White male offenders.” U.S. Sentencing Comm’n, Demographic Differences in Sentencing: An Update to the 2012 Booker Report 2 (2007).

3. If confirmed as a federal judge, you will be in a position to hire staff and law clerks.

a. **Do you believe it is important to have a diverse staff and law clerks?**

Yes. In my time on the state court bench, I have hired five staff attorneys and law clerks: one African-American female; one African-American male; two Caucasian females; and one Hispanic female.

b. **Would you commit to executing a plan to ensure that qualified minorities and women are given serious consideration for positions of power and/or supervisory positions?**

Yes.