

**Nomination of Silvia Carreño-Coll to the United States District Court for the
District of Puerto Rico
Questions for the Record
Submitted October 23, 2019**

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 a concurring opinion? What about a dissent?

It is not proper for a district judge to question Supreme Court precedent. Supreme Court precedent is binding on lower courts until and if it is overturned. What a lower court can do is distinguish and explain the application of Supreme Court precedent to the facts of the case before the lower court.

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

The Supreme Court stated that a decision of “[a] federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.” *Camreta v. Greene*, 563 U.S. 692, 709 n. 7 (2011), (internal quotation omitted).

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

This is a matter for the consideration and purview of the Supreme Court. The lower courts are bound to faithfully apply Supreme Court precedent.

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”?

Roe v. Wade is binding precedent and as such it must be faithfully applied by lower courts.

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. *Obergefell v. Hodges*, is binding Supreme Court precedent and as such it must be faithfully applied by lower courts.

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?

It would not be appropriate to express my opinion on Justice Stevens’ dissent. As a sitting magistrate judge and judicial nominee, I am bound by the Code of Conduct for United States Judges, Canons 1, 2(A) and 3(A)(6). If confirmed, I will faithfully apply *District of Columbia v. Heller* and all other Supreme Court precedents.

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

In *Heller* the Supreme Court left room for regulations and it will be up to Congress to legislate.

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

Even though the majority opinion in *Heller* states that the Supreme Court was resolving an issue of first impression, it also concluded that: “[N]othing in our precedents forecloses our adoption of the original understanding of the Second Amendment. It should be unsurprising that such a significant matter has been for so long judicially unresolved. For most of our history, the Bill of Rights was not thought applicable to the States, and the Federal Government did not significantly regulate the possession of firearms by law-abiding citizens.” *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008).

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?

In *Citizens United v. FEC*, the Supreme Court held that “First Amendment protection extends to corporations.” 558 U.S. 310, 342 (2010). As a sitting magistrate judge and judicial nominee, I am bound by the Code of Conduct for United States Judges, Canons 1, 2(A) and 3(A)(6). If confirmed, I will faithfully apply the *Citizens United* and all other Supreme Court precedents.

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

Please see response to question 5.a.

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

In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), the Supreme Court held that closely held corporations are entitled to First Amendment protection under the Religious Freedom Restoration Act. As a sitting magistrate judge and judicial nominee, I am bound by the Code of Conduct for United States Judges, Canons 1, 2(A) and 3(A)(6) and it is not appropriate to discuss my personal beliefs. If confirmed, I will faithfully apply the *Hobby Lobby* precedent.

6. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), former 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?**

No one has asked me about my views on any issue related to administrative law.

- 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 one with or affiliated with the Federalist Society or the Heritage Foundation has asked me about my views on any issue related to administrative law.

- c. What are your "views on administrative law"?**

Administrative Law includes a wide range of subject matters and regulations. If presented with an issue that would require the interpretation or scope of an administrative action I would follow Supreme Court precedent in *Auer v. Robbins*, 519 U.S. 452 (1997) and *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

7. Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court? If so, please identify when, who was involved, and what was discussed.

I have not had any contact with anyone at the Federalist Society.

8. Do you believe that human activity is contributing to or causing climate change?

As a Special Assistant United States Attorney for Environmental Crimes and as an attorney for the Environmental Protection Agency I prosecuted actions, both civil and criminal under most federal environmental statutes. These actions were brought for environmental violations committed by individuals and corporations. As to climate change, I should not voice an opinion since I am a sitting magistrate judge and judicial nominee bound by the Code of Conduct for United States Judges, Canons, 2, 3(A)(6) and 5.

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

The Supreme Court has clearly stated that legislative history may be considered when the text of a statute is ambiguous. *See: Milner v. Dep't of Navy*, 562 U.S. 562, 574 (2011); *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). Where a statute is clear and unambiguous, to resort to legislative history is not appropriate.

10. 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.

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

I received the questions on the morning of 10/24/2019. I reviewed the questions, my responses to the Senate Judiciary Questionnaire, and attachments and other legal sources. I submitted draft responses to the Office of Legal Policy at the Department of Justice and upon considering comments authorized their filing.

Nomination of Sylvia Carreño-Coll
to the United States District Court for the District of Puerto Rico
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QUESTIONS FROM SENATOR WHITEHOUSE

1. A Washington Post report from May 21, 2019 (“A conservative activist’s behind-the-scenes campaign to remake the nation’s courts”) documented that Federalist Society Executive Vice President Leonard Leo raised \$250 million, much of it contributed anonymously, to influence the selection and confirmation of judges to the U.S. Supreme Court, lower federal courts, and state courts. If you haven’t already read that story and listened to recording of Mr. Leo published by the Washington Post, I request that you do so in order to fully respond to the following questions.

- a. Have you read the Washington Post story and listened to the associated recordings of Mr. Leo?

Yes.

- b. Do you believe that anonymous or opaque spending related to judicial nominations of the sort described in that story risk corrupting the integrity of the federal judiciary? Please explain your answer.

Judicial independence is essential for the proper balance of our three-branch form of government. The Washington Post story and associated recordings present a political matter relating to the confirmation of federal judges. As a judicial nominee, going through the constitutional process of confirmation, it would be inappropriate to comment any further.

- c. Mr. Leo was recorded as saying: “We’re going to have to understand that judicial confirmations these days are more like political campaigns.” Is that a view you share? Do you believe that the judicial selection process would benefit from the same kinds of spending disclosures that are required for spending on federal elections? If not, why not?

Please see response to question 1.b.

- d. Do you have any knowledge of Leonard Leo, the Federalist Society, or any of the entities identified in that story taking a position on, or otherwise advocating for or against, your judicial nomination? If you do, please describe the circumstances of that advocacy.

No. I have no knowledge whether Leonard Leo, the Federalist Society, or any of the entities identified in the story have advocated for or against my nomination.

- e. As part of this story, the Washington Post published an audio recording of Leonard Leo stating that he believes we “stand at the threshold of an exciting moment” marked by a “newfound embrace of limited constitutional government in our country [that hasn’t happened] since before the New Deal.” Do you share the beliefs espoused by Mr. Leo in that recording?

Please see response to question 1.b.

- 2. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”

- a. Do you agree with Justice Roberts’ metaphor? Why or why not?

I agree that the role of a judge is to be an impartial arbiter, not a player in the game.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

A judge must be aware of the practical consequences of a decision, but judicial decisions should be governed by the just and reasonable application of the rule of law not on a particular outcome.

- 3. Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact” in a case. Do you agree that determining whether there is a “genuine dispute as to any material fact” in a case requires a trial judge to make a subjective determination?

No. It is an objective determination that if there are no controverted material facts a judgement must follow as a matter of law. *See: Celotex v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

- 4. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old.”

- a. What role, if any, should empathy play in a judge’s decision-making process?

Empathy is important to understand the litigants, defendants, witnesses and victims’ perspectives. All appearing before the court should be treated with respect and dignity and a judge’s personal feelings should not interfere with the application of the law.

- b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?

None. A judge's life experiences should not play a role in the decision-making process. Cases must be decided in accordance to the applicable law and the facts. A judge must put aside any preconceived notion formed by past experiences.

5. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

No.

6. The Seventh Amendment ensures the right to a jury "in suits at common law."
a. What role does the jury play in our constitutional system?

The role assigned by the 7th amendment to the Constitution that guarantees citizens with a jury trial in controversies exceeding a minimum amount. Juries are the judges of the facts and are critical in dispensing justice.

- b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses?

While preserving a citizen's right under the Constitution should always be a concern, each case must be decided on its merits, and decisions regarding the enforceability of mandatory pre-dispute arbitration clauses must be examined considering Supreme Court precedent.

- c. Should an individual's Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act?

See response to 6.b.

7. What deference do congressional fact-findings merit when they support legislation expanding or limiting individual rights?

The precedent established by the Supreme Court in *Whole Woman's Health v. Hellersted* provides the precedent in this issue: courts "must review legislative factfinding under a deferential standard but not give them dispositive weight." 136 S. Ct. 2292, 2310 (2016) (internal quotation omitted). If confirmed, I will follow this precedent, as well as First Circuit precedent.

8. Earlier this year, the Federal Judiciary's Committee on the Codes of Conduct issued "Advisory Opinion 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates." I request that before you complete these questions you review that Advisory Opinion.

- a. Have you read Advisory Opinion #116?

Yes.

- b. Prior to participating in any educational seminars covered by that opinion will you commit to doing the following?

- i. Determining whether the seminar or conference specifically targets judges or judicial employees.

I will ensure that my participation in any seminar or conference is compliant with the Codes of Conduct for United States Judges.

- ii. Determining whether the seminar is supported by private or otherwise anonymous sources.

Please see response to 8.b.i.

- iii. Determining whether any of the funding sources for the seminar are engaged in litigation or political advocacy.

Please see response to 8.b.i.

- iv. Determining whether the seminar targets a narrow audience of incoming or current judicial employees or judges.

Please see response to 8.b.i.

- v. Determining whether the seminar is viewpoint-specific training program that will only benefit a specific constituency, as opposed to the legal system as a whole.

Please see response to 8.b.i.

- c. Do you commit to not participate in any educational program that might cause a neutral observer to question whether the sponsoring organization is trying to gain influence with participating judges?

Please see response to 8.b.i.

Questions for the Record for Silvia Luisa Carreño-Coll
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. Prior nominees before the Committee have spoken about the importance of training to help judges identify their implicit biases.

a. Do you agree that training on implicit bias is important for judges to have?

Judges should be aware of any implicit bias and training would be useful in making them aware of it.

b. Have you ever taken such training?

Yes, I attended a Magistrate Judges' National Workshop, held on August 1, 2017, in which a training on implicit bias was offered. The training was called: "Thinking, Blinking, and Judging: Addressing Implicit Biases."

c. If confirmed, do you commit to taking training on implicit bias?

Yes, I commit to taking any training that will help me in my duties as a fair and impartial judge.

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United States District Court for the District of Puerto Rico
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QUESTIONS FROM SENATOR BOOKER

1. Do you consider yourself an originalist? If so, what do you understand originalism to mean?

No.

2. Do you consider yourself a textualist? If so, what do you understand textualism to mean?

Although I have never labeled myself as such, my approach to statutory interpretation is to read a statute and understand its words by their plain and ordinary meaning.

3. 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. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress's intent. Most federal judges are willing to consider legislative history in analyzing a statute, and the Supreme Court continues to cite legislative history.

- a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

The Supreme Court has clearly stated that legislative history may be considered when the text of a statute is ambiguous. *Milner v. Dep't of Navy*, 562 U.S. 562, 574 (2011); *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

- b. If you are confirmed to serve on the federal bench, your opinions would be subject to review by the Supreme Court. Most Supreme Court Justices are willing to consider legislative history. Isn't it reasonable for you, as a lower-court judge, to evaluate any relevant arguments about legislative history in a case that comes before you?

Please see response to 3.a.

4. Do you believe that judicial restraint is an important value for a district judge to consider in deciding a case? If so, what do you understand judicial restraint to mean?

Yes, I believe judicial restraint is important to avoid the third branch from overreaching. Congress enacts the laws and the judiciary defers to Congress. It is not for the judiciary to say what the law should be, but to follow the rule of law as it is at the moment of the decision.

- a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.¹ Was that decision guided by the principle of judicial restraint?

Even though the majority opinion in *District of Columbia v. Heller* states that the Supreme Court was resolving an issue of first impression, it also concluded that: "[N]othing in our precedents forecloses our adoption of the original understanding of the Second Amendment. It should be unsurprising that such a significant matter has been for so long judicially unresolved. For most of our history, the Bill of Rights was not thought applicable to the States, and the Federal Government did not significantly regulate the possession of firearms by law-abiding citizens." *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008). As a sitting magistrate judge and judicial nominee, it is inappropriate to comment on the correctness of a Supreme Court decision.

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.² Was that decision guided by the principle of judicial restraint?

As a sitting magistrate judge and judicial nominee, it is inappropriate to comment on the correctness of a Supreme Court decision.

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.³ Was that decision guided by the principle of judicial restraint?

Please see response to 4.b.

¹ 554 U.S. 570 (2008).

² 558 U.S. 310 (2010).

³ 570 U.S. 529 (2013).

5. Since the Supreme Court's *Shelby County* decision in 2013, states across the country have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study after study has demonstrated, however, that widespread voter fraud is a myth.⁴ In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to impersonate someone at the polls.⁵

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

As a sitting magistrate judge and judicial nominee, it would be inappropriate to express an opinion on this issue because I am bound by the Code of Conduct for United States Judges. *See*: Canons 2, 3(A)(6) & 5.

- b. In your assessment, do restrictive voter ID laws suppress the vote in poor and minority communities?

Please see response to 5.a.

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

Please see response to 5.a.

6. 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.⁶ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.⁷ 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.⁸ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁹

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

I attended a Magistrate Judges' National Workshop, held on August 1, 2017, in which a training on implicit bias was offered. The training was called: "Thinking, Blinking, and Judging: Addressing Implicit Biases."

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

⁵ *Id.*

⁶ 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>.

⁷ *Id.*
⁸ 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>.

⁹ *Id.*

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.¹⁰ Why do you think that is the case?

I do not have sufficient information to adequately respond to this question.

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.¹¹ Why do you think that is the case?

Please see response to 6.d.

- f. What role do you think federal judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

Judges must be aware of any bias, implicit or otherwise and take corrective measures to treat everyone equally under the law.

7. 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.¹² In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.¹³

- 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 do not have sufficient information to adequately respond to this question.

- 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 response to 7.a.

8. 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.

9. Would you honor the request of a plaintiff, defendant, or witness in a case before you who is transgender to be referred to in accordance with that person's gender identity?

Yes.

10. Do you believe that *Brown v. Board of Education*¹⁴ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive

citation.

Yes. Even though as a sitting magistrate judge and judicial nominee I am not supposed to comment on the correctness of a Supreme Court decision, *Brown* has a unique place in constitutional jurisprudence. It is a landmark decision that corrected grave racial injustice and I feel comfortable in saying that in fact it is correct.

11. Do you believe that *Plessy v. Ferguson*¹⁵ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No. Please see response to 10.

¹⁰ U.S. SENTENCING COMM’N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (Nov. 2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf.

¹¹ Sonja B. Starr & M. Marit Rehaui, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)

¹² 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>.

¹³ *Id.*

¹⁴ 347 U.S. 483 (1954).

¹⁵ 163 U.S. 537 (1896).

12. 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?

No.

13. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had “an absolute conflict” in presiding over civil fraud lawsuits against Trump University because he was “of Mexican heritage.”¹⁶ Do you agree with President Trump’s view that a judge’s race or ethnicity can be a basis for recusal or disqualification?

No. I do not believe a judge’s race or ethnicity can be the basis for recusal or disqualification. The reasons for disqualification are enumerated at Canon 3(c) of the Code of Conduct for United States Judges.

14. 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.”¹⁷ Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

Yes, and in the past eight years as a magistrate judge I have treated everyone equally under the law.

¹⁶ Brent Kendall, *Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict,'* WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

¹⁷ 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 October 23, 2019
For the Nomination of

Silvia Carreño-Coll, to the U.S. District Court for the District of Puerto Rico

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?**

I would review the sentencing memorandums filed by the parties and the pre-sentence report submitted by the United States Probation Office. I would calculate the applicable Sentencing Guidelines and the defendant's criminal history. I would then consider the following sentencing factors: the nature and circumstances of the offense, the history and characteristics of the defendant, the seriousness of the offense, just punishment for the offense, deterrence of criminal conduct, the need to protect the public from further crimes, and the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment. See 18 U.S.C. § 3553(a). I would also consider witnesses' testimonies, defendant's allocution and arguments from counsels. See *Gall v. United States*, 522 U.S. 38, 49-50 (2007).

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

A fair and proportional sentence is one that embodies the congressional mandate of a sentence "sufficient but not greater than necessary" to comply with the directives designated by Congress at 18 U.S.C. § 3553. Within my limited jurisdiction as a Magistrate Judge I have sentenced defendants applying these principles.

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

Because the Sentencing Guidelines are advisory in nature, according to the Supreme Court and the First Circuit, I believe it is appropriate to depart when the application of the sentencing factors enumerated in 18 U.S.C. § 3553(a), together with the presentence report, parties' sentencing memoranda, witnesses' testimonies and defendant's allocution so warrant.

- 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

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

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

I have no information to support or counter Judge Reeves' position. If confirmed, I would apply such sentencing laws as enacted regardless of my personal views as to the mandatory minimum. As a sitting magistrate judge and judicial nominee, it would not be appropriate for me to comment on my personal views of mandatory minimum sentences.

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

As a sitting magistrate judge and judicial nominee, it would not be appropriate for me to comment on my personal views of mandatory minimum sentences or their impact in our criminal justice system.

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

I cannot identify such instances, nor would it be appropriate for me to do so, since as a sitting magistrate judge and judicial nominee I am bound by the Code of Conduct for United States Judges, Canons, 1, 2, 3(A)(6) and 5.

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.¹ **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?**

Yes, I would, but being very careful in the language used not to appear as overreaching into congressional policy decisions resulting in mandatory minimums.

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

No, it is not appropriate to reach out to the Executive Branch to discuss its prosecutorial discretion.

¹ 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>

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

I would have that colloquy on the record and in open court to allow the Executive Branch the opportunity of exercising its clemency power.

- 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, I would.

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, and as a sitting magistrate judge I have devoted the past 8 years in ensuring that I work towards a fair and equitable justice system. If confirmed I will continue to do so.

- 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.**

In the District of Puerto Rico, where I serve, and where I hope to be confirmed as a District Judge, I believe there are more social and economic disparities than racial disparities. These disparities can be seen from the intervention and arrest to pre-trial detention and sentence. I believe that a judicial officer should be aware of these disparities to treat everyone equally and fairly.

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.

- 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, as a magistrate judge, my chambers' staff has been diverse.