

**Nomination of Franklin Ulyses Valderrama  
United States District Court for the Northern District of Illinois  
Questions for the Record  
Submitted July 1, 2020**

**QUESTIONS FROM SENATOR BOOKER**

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

I do not subscribe to any particular label regarding constitutional or statutory interpretation as those terms mean different things to different people. I understand the term “originalism” to be an approach to constitutional and statutory interpretation based on the plain and ordinary meaning of the words as those words were understood by the public when the constitutional provision was ratified or the statutory provision enacted. If confirmed, I will fully and faithfully apply all binding precedents of the Supreme Court and the Seventh Circuit, including precedent concerning constitutional and statutory interpretation.

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

I do not subscribe to any particular label regarding constitutional or statutory interpretation as those terms mean different things to different people. I understand the term “textualism” to be an approach to statutory interpretation based on the original public meaning of its terms at the time of its enactment. The Supreme Court itself has considered the original public meaning of texts in its majority opinions and dissents. See, e.g. *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed, I will fully and faithfully apply all binding precedents of the Supreme Court and the Seventh Circuit, including precedent concerning constitutional and statutory interpretation.

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 stated, that when a statute is ambiguous, one of the canons of statutory interpretation that a court may employ is legislative history. See, *Exxon Mobil v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). If confirmed, I will fully and faithfully apply all binding precedents of the Supreme Court and the Seventh Circuit, including precedent concerning constitutional and statutory interpretation.

- 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 my answer to Question 3 (a).

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

Yes, I believe that judicial restraint is an important value for an appellate judge to consider in deciding a case. I understand judicial restraint to mean that the judge applies the law to the facts of the specific case before the court and does so without regard to the judge's personal policy or outcome preferences.

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

Canons 2(A) and 3(A)(6) of the Code of Conduct for United States Judges make it inappropriate for me, as a judicial nominee to comment on the merits of binding Supreme Court precedent, including *Heller*.

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

Please see my answer to Question 4(a).

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

Please see my answer to Question 4(a).

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.<sup>4</sup> In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to

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<sup>1</sup> 554 U.S. 570 (2008).

<sup>2</sup> 558 U.S. 310 (2010).

<sup>3</sup> 570 U.S. 529 (2013).

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

impersonate someone at the polls.<sup>5</sup>

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

I believe that the right to vote is one of the foundational rights of our democracy. However, as a judicial nominee bound by the Code of Conduct for United States Judges, it would be improper for me to discuss my personal views on whether in-person voter fraud is a widespread problem, because the question calls for an opinion on a matter that is or may become the subject of pending or impending litigation. See Canons 2(A) and 3(A)(6) of the Code of Conduct for United States Judges

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

Please see my answer to Question 5(a).

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

Please see my answer to Question 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.<sup>6</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>7</sup> 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.<sup>8</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>9</sup>

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

Although I am not familiar with the study referenced above, I believe that implicit racial bias exists in our criminal justice system.

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

Yes.

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<sup>5</sup> *Id.*

<sup>6</sup> 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>.

<sup>7</sup> *Id.*

<sup>8</sup> 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>.

<sup>9</sup> *Id.*

- 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 have not studied the issue of implicit racial bias in the criminal justice system. However, I have attended presentations at judicial conferences about implicit racial bias. I have not read any books or articles on the subject.

- 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.<sup>10</sup> Why do you think that is the case?

I have not read the report, nor have I studied the underlying data referenced in the report. Therefore, I do not have sufficient information to offer a fully informed view on the 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.<sup>11</sup> Why do you think that is the case?

I have not read the study, nor have I reviewed the underlying data referenced in the report. Therefore, I do not have sufficient information to offer a fully informed view on the question. However, racial bias cannot be tolerated in our criminal justice system.

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

All judges, including appellate court judges must be cognizant of implicit racial bias and strive to ensure that all litigants are treated fairly, respectfully and with dignity.

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

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<sup>10</sup> 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](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

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

<sup>12</sup> 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>.

<sup>13</sup> *Id.*

- 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 issue closely enough to offer an informed opinion on 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.

I have not studied the issue closely enough to offer an informed opinion on this question.

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*<sup>14</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

While it is generally inappropriate for a judicial nominee to express a personal opinion on a Supreme Court precedent, I believe that *Brown v. Board of Education*, 347 U.S. 483 (1954) is an exception to the general rule, as *Brown* overruled *Plessy v. Ferguson*, 163 U.S. 537 (1896) the case in which the separate but equal doctrine was formulated.

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

The Supreme Court in *Brown* made clear that *Plessy v. Ferguson* was wrongly decided. 347 U.S. 483, 495 (1954)

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,

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<sup>14</sup> 347 U.S. 483 (1954).

<sup>15</sup> 163 U.S. 537 (1896).

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.”<sup>16</sup> Do you agree with President Trump’s view that a judge’s race or ethnicity can be a basis for recusal or disqualification?

A judge’s race or ethnicity is not a basis for disqualification. *See* Title 28, United States Code Section 455.

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

It is well established 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.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *See also Capric v. Ashcroft*, 355 F.3d 1075, 1087 (7th Cir. 2004) (“Aliens in the United States are entitled to due process). If confirmed, I would fully and faithfully follow Supreme Court and Seventh Circuit precedent on this issue.

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<sup>16</sup> 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>.

<sup>17</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.