

**Nomination of Fernando Lazaro Aenlle-Rocha to the United States District Court for the
Central District of California
Questions for the Record
Submitted December 11, 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?

A lower court must always fully and faithfully follow Supreme Court precedent. The U.S. Court of Appeals for the Ninth Circuit instructs that “[j]udges of the inferior courts may voice their criticisms, but follow [precedent] they must.” *Hart v. Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001). Consequently, absent an extraordinary and compelling reason, a district court should not question Supreme Court precedent.

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

District court rulings are not precedent. *Camreta v. Greene*, 563 U.S. 692, 709 n. 7 (2011). In reconsidering any prior ruling, a district court must apply Federal Rules of Civil Procedure 59(e) and 60.

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

The Supreme Court has stated: “it is this Court’s prerogative alone to overrule one of its own precedents.” *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997). It will do so only under “special justification.” *Gamble v. United States*, 139 S.Ct. 1960, 1969 (2019). Among the factors it will consider are whether the precedent’s statutory or doctrinal underpinnings have eroded over time, the soundness of the reasoning, reliance, and workability. *Montejo v. Louisiana*, 556 U.S. 778, 792 (2009). As a California Superior Court judge and federal judicial nominee, it would be inappropriate for me to express my views on whether the Supreme Court should overturn any of its 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”?

Yes, *Roe v. Wade* is binding Supreme Court precedent. If confirmed, I will faithfully apply all Supreme Court precedent, including *Roe v. Wade*.

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?

As a California Superior Court judge, I cannot publicly comment on “cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of the office.” California Code of Judicial Ethics, Canons 2(A) and 4(A). Similar limitations are placed on federal judicial nominees. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). If confirmed, I will faithfully apply all Supreme Court precedent, including *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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

The Supreme Court stated in *Heller*, 554 U.S. at 626-27, that “the right secured by the Second Amendment is not unlimited” and that “nothing in [its] opinion should

be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”

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.

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*, 558 U.S. 310, 342 (2010), the Supreme Court “recognized that First Amendment protection extends to corporations.” The Supreme Court further held that “political speech does not lose First Amendment protection simply because its source is a corporation.” As a Superior Court judge, I am bound to follow all binding authority, without regard to my personal views. If confirmed, I will follow faithfully all Supreme Court precedent, including *Citizens United*.

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

As a California Superior Court judge, I cannot publicly comment on “cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of the office.” California Code of Judicial Ethics, Canons 2(A) and 4(A). Similar limitations are placed on federal judicial nominees. See Code of Conduct for U.S. Judges, Canon 3(A)(6). If confirmed, I will faithfully apply all Supreme Court precedent, including *Citizens United*.

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

The Supreme Court held that the Religious Freedom Restoration Act applies to for-profit closely held corporations and that corporations are “persons” under the Act. *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 707-08, 719 (2014). The Court further held that its “decision on that statutory question makes it unnecessary to reach the First Amendment claim.” *Id.* at 736. As set forth in my answer to Question 5.b., I am not at liberty to comment on an issue that may come before the courts. If confirmed, I will faithfully apply all Supreme Court precedent.

6. Does the Equal Protection Clause of the Fourteenth Amendment place any limits on the free exercise of religion?

The Constitution guarantees equal protection under our laws and the right to the free exercise of religion. If confirmed, I will faithfully apply and protect the Constitution. As a California Superior Court judge and federal judicial nominee, I am not at liberty to comment publicly on “cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of the office.” California Code of Judicial Ethics, Canons 2(A) and 4(A); *see also* Code of Conduct for U.S. Judges, Canon 3(A)(6).

7. Would it violate the Equal Protection Clause of the Fourteenth Amendment if a county clerk refused to provide a marriage license for an interracial couple if interracial marriage violated the clerk’s sincerely held religious beliefs?

Please see my answer to Question 6. Additionally, if confirmed, I will faithfully apply all Supreme Court precedent, including *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

8. Could a florist refuse to provide services for an interracial wedding if interracial marriage violated the florist’s sincerely held religious beliefs?

Please see my answers to Questions 6 and 7.

9. 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.

No.

10. 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.

- 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 a California Superior Court judge, I have not presided over cases involving issues of administrative law. If confirmed, I would faithfully apply Supreme Court precedent regarding administrative law, including *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

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

As a California Superior Court judge, I cannot publicly comment on “cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of the office.” California Code of Judicial Ethics, Canons 2(A) and 4(A). Similar limitations are placed on federal judicial nominees. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6).

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

The Supreme Court has held that courts may consider legislative history in construing a statute when the text of the statute is ambiguous, and that resort to legislative history is unnecessary when the statute is unambiguous. *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). If confirmed, I would faithfully apply Supreme Court precedent concerning statutory interpretation and the use of legislative history.

13. 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.

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

I received the questions on December 11, 2019. I subsequently conducted legal research concerning the issues raised therein, consulted the responses of other nominees, and drafted answers to each question. I then gave my answers to attorneys at the U.S. Department of Justice Office of Legal Policy. After receiving feedback, I incorporated edits I deemed

appropriate. I then authorized the submission of my answers to the Senate Judiciary Committee.

**Questions for Fernando Lazaro Aenlle-Rocha
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?

Yes. Judges are required to render decisions without bias or prejudice. Training to help us recognize our implicit biases is essential.

b. Have you ever taken such training?

Yes, as a judge on the Los Angeles Superior Court and as a partner of White & Case LLP, I have participated in diversity and anti-bias training.

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

To the extent such training is offered to federal judges through the Administrative Office of the Courts or another officially sanctioned educational program, I am committed to taking it throughout my judicial career.

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United States District Court for the Central District of California
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QUESTIONS FROM SENATOR BOOKER

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

I understand originalism to be a method of constitutional interpretation that focuses on the original public meaning of the text at the time of adoption. At times, the Supreme Court has considered the original public meaning of constitutional provisions when construing them. As a judge of the Los Angeles Superior Court, I am required to apply Supreme Court precedent regardless of the interpretive methodology used. If confirmed, I would continue to apply faithfully Supreme Court precedent.

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

I understand textualism to be a method of interpretation that applies to statutes whereby a court applies the plain meaning of a statutory text. The Supreme Court has held that “[i]n statutory interpretation disputes, a court’s proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself.” *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019). If “that examination yields a clear answer, judges must stop.” *Id.* As a state court trial judge, I am required to apply Supreme Court precedent regardless of the interpretive methodology used. If confirmed, I would continue to apply faithfully Supreme Court precedent.

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 held that courts may consider legislative history in construing a statute when the text of the statute is ambiguous, and that resort to legislative history is unnecessary when the statute is unambiguous. *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). If confirmed, I would faithfully apply Supreme Court precedent concerning statutory interpretation and the use of legislative history.

- 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 a district judge to consider in deciding a case? If so, what do you understand judicial restraint to mean?

Yes. I understand judicial restraint to mean that a judge will render a decision and tailor a remedy, if appropriate, based on the parties, facts, and law before the court.

- 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?

As a California Superior Court judge, I cannot publicly comment on "cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of the office." California Code of Judicial Ethics, Canons 2(A) and 4(A). Similar limitations are placed on federal judicial nominees. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6). If confirmed, I will faithfully apply all Supreme Court precedent.

- 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?

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.³ 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

¹ 554 U.S. 570 (2008).

² 558 U.S. 310 (2010).

³ 570 U.S. 529 (2013).

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 California Superior Court judge, I cannot publicly comment on “cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of the office.” California Code of Judicial Ethics, Canons 2(A) and 4(A). Similar limitations are placed on federal judicial nominees. *See* Code of Conduct for U.S. Judges, Canon 3(A)(6).

- 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.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?

Implicit racial bias exists throughout society, including in our criminal justice system.

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

I understand racial minorities are statistically more likely to be incarcerated than whites and constitute a larger percentage of the incarcerated population than of the overall population.

- 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 in the context of the criminal justice system. I have participated in multiple training sessions as a judge and practicing attorney addressing implicit bias and its impact on decision-making.

- 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?

As a judicial nominee, it would not be appropriate for me to comment on matters that could be the subject of litigation in any court. *See* Code of Conduct for United States Judges, Canon 3(A)(6).

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.*

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.

- 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 my answer to Question 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 play a critical role and are duty-bound to insure that all individuals appearing before them are treated fairly, equally, and with dignity. There is no place in our courts for racial or other forms of bias. When sentencing a defendant, a judge must consider only the relevant aggravating and mitigating factors that apply to that case and the particular defendant. Judges also have a duty to be vigilant and to correct promptly any racial bias exhibited by any individuals appearing before them.

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 have not studied this issue and am not able to offer an informed view on it.

- 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 answer to Question 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. *Brown v. Board of Education* was a landmark decision. It holds a unique place in American jurisprudence by virtue of its correction of a long-standing injustice of racial segregation originally sanctioned in *Plessy v. Ferguson*.

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 my answer to Question 10.

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”

¹¹ Sonja B. Starr & M. Marit Rehavi, *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).

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?

As a California Superior Court judge and federal judicial nominee, I am not at liberty to comment on political statements made by any political actor, including the President. *See* California Code of Judicial Ethics, Canons 2(A), 4(A), and 5; Code of Conduct for U.S. Judges, Canons 2(A), 3(A)(6), and 5.

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?

Please see my answer to Question 13 with respect to the statement made by the President. Additionally, the Supreme Court has held 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). If confirmed, I would faithfully apply all Supreme Court precedent.

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 December 11, 2019
For the Nomination of**

Fernando L. Aenlle-Rocha, to the U.S. District Court for the Central District of California

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 U.S. Probation Office's presentence report, the relevant U.S. Sentencing Guidelines and their commentary, any interpretive Supreme Court and Ninth Circuit case law, any sentencing agreement between the parties, the parties' sentencing memoranda and supporting materials, including victim impact statements, if applicable, and letters offered in support of the defendant. I would also consider the objectives and factors set forth in 18 U.S.C. section 3553. During the sentencing hearing, I would provide the defendant and, if applicable, victim(s), an opportunity to address the court, and would consider their statements and the arguments of counsel.

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

In addition to the process described in my answer to Question 1.a., I would consult available sentencing data on convictions for comparable offenses to reduce sentencing disparities.

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

Section 5.K. of the U.S. Sentencing Guidelines lists a series of circumstances that may justify upward or downward departures. Any departure would turn on the facts of the particular case and the applicable case law.

- 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?**

I have not studied the impact of mandatory minimum sentences on the incidents of crime.

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

- 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.

- 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.

- 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?**

Yes.

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

Yes, but only to the extent such communication would not violate any ethical or statutory rule. For example, “a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers.” Code of Conduct for U.S. Judges, Canon 3.

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

Please see my answer to Question 1.d.iv.2.

- 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 Los Angeles Superior Court judge, I have considered and imposed alternatives to incarceration as authorized by law. If confirmed, I would continue

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>

to do so.

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, judges play a critical role in ensuring the fairness of our justice system.

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.**

Yes, racial disparities exist throughout society, including in our criminal justice system. I understand racial minorities are statistically more likely to be incarcerated than whites and constitute a larger percentage of the incarcerated population than of the overall population.

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.