Nomination of Rodolfo Armando Ruiz to the U.S. District Court for the Southern District of Florida
Questions for the Record
June 27, 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?**

    All Supreme Court precedent is binding on lower court judges, and those judges should treat all such precedents as binding unless and until the Supreme Court overrules them. In certain circumstances, however, it might be appropriate for a lower court judge to point out gaps in the law or circuit conflicts regarding proper application of a Supreme Court precedent that the lower court judge believes might warrant the Supreme Court's attention.

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

    The need for predictability in the law should make a district court judge hesitant to depart from its past decisions. But such action might sometimes be appropriate where the rationales underlying a prior decision are determined to be flawed or outdated.

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

    The Supreme Court has made clear that only it has the "prerogative . . . to overrule one of its precedents." *Bosse v. Oklahoma*, 137 S. Ct. 1, 2 (2016); *see also State Oil Co. v. Khan*, 522 U.S. 3 (1997). It would be inappropriate for me as a lower court nominee to opine on when the Supreme Court should or should not overturn its own precedent, a prerogative that it alone holds.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of the Roe case law as "super-stare decisis." One textbook on the law of judicial precedent, co-authored by Justice 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"? "superprecedent"?

From the perspective of a lower court nominee, all Supreme Court precedent is equally binding, and I will uphold and faithfully apply all such precedents.

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.

a. 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 lower court nominee, it would be inappropriate and unfitting for me to provide personal opinions about particular Supreme Court decisions or dissents from those decisions. That is particularly true for matters that could come before me as a judge. *See* Canon 3(A)(6), Code of Conduct for United States Judges. *Heller* is controlling Supreme Court precedent, and if confirmed, I would uphold and faithfully apply all Supreme Court precedent.

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

The Supreme Court in *Heller* stated that "the right secured by the Second Amendment is not unlimited," adding, "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). The Court "also recognize[d] another important limitation on the right to keep

and carry arms," namely, "that the sorts of weapons protected were those in common use at the time . . . [and] the historical tradition of prohibiting the carrying of dangerous and unusual weapons." *Id.* at 627 (internal quotation marks omitted).

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

I have not studied all of the pre-*Heller* Supreme Court precedents, but I note that the Supreme Court in *Heller* said that "this case represents this Court's first in-depth examination of the Second Amendment." *Heller*, 554 U.S. at 635. As a lower court nominee, it would be inappropriate for me to comment further.

5. In *La Bruno v. Miami-Dade Cty.* (Case No.10-22554-CIV-PCH, 2011 WL 1102806 (S.D. Fla., Mar. 23, 2011)), you represented the Miami-Dade Corrections and Rehabilitation Department ("MDCR") against an allegation that it had denied antiretroviral medications to an HIV-positive inmate for the first seven months of his incarceration. You signed a motion to dismiss in which you argued that the allegations "at best might be construed to reflect accidental delay in the administration of medical care." (Defendants . . . Joint Motion to Dismiss Counts Four, Five, Six, Fourteen, and Fifteen of Plaintiff's Second Amended Complaint and Incorporated Memorandum of Law (Filed Oct. 18, 2010)) On August 24, 2011, the U.S. Department of Justice ("DOJ") issued the results of a three-year review in which it found that "systemic failures" in Miami-Dade's corrections system "resulted in prisoners living in inhumane and shocking conditions." (Dale K. DuPont, *Miami-Dade County Jails Cited For 'Shocking Conditions,'* REUTERS (Aug. 29, 2011)) The DOJ report concluded that there was "a pattern and practice of constitutional violations in the correctional facilities," resulting in prisoners suffering "grievous harm, including death." The DOJ report specifically noted that "[p]risoners wait weeks and even months to receive consultations for care from HIV." (Investigation of the Miami Dade County Jail, U.S. Department of Justice, Civil Rights Division (August 24, 2011))

a. **In light of DOJ's findings, please provide the support for your assertion that the allegations in *La Bruno* "at best . . . reflect[ed] accidental delay."**

As an Assistant County Attorney with the Federal Litigation Section of the Miami-Dade County Attorney's Office, my role was to advocate for my clients' legal interests by advancing reasonable and professionally responsible arguments to defend against claims brought against them. Consistent with that responsibility, I thoroughly investigated all of the allegations set forth in *La Bruno*. I personally met with and interviewed corrections personnel and medical staff, as well as reviewed hospital documentation and treatment records. At the time I filed my motion to dismiss, representations made by my clients—namely nurses and doctors involved in the treatment of the plaintiff—coupled with my analysis of the plaintiff's medical records, supported the argument in the motion that County officials had not acted with an attitude of deliberate indifference. Accordingly, I argued that the complaint had failed to satisfy the standard for deliberate indifference to medical needs as articulated by the Eleventh Circuit. *See Brown v. Johnson*, 387 F.3d 1344, 1351 (11th Cir. 2004); *Taylor v. Adams*, 221 F.3d 1254, 1257 (11th Cir. 2000).

Ultimately, without divulging protected attorney-client communications, my investigation indicated that the delay in administrating medical care was, at most, the result of accidental inadequacy and/or negligence in treatment. Moreover, in evaluating the merits of the *La Bruno* matter, I was unaware of the findings contained in the DOJ report referenced above, which was released after I had settled and closed the case on behalf of my clients.

b. Based on your understanding of controlling legal precedent, can repeated "accidental delays" in some circumstances still constitute "a pattern or practice" for the purpose of showing a constitutional violation, such as the violation alleged in *La Bruno*?

Pursuant to controlling legal precedent from the Supreme Court and the Eleventh Circuit, § 1983 deliberate indifference claims can be established through repeated and prolonged delays in providing a prisoner access to medical care, provided such delays are tantamount to conduct that is more than mere negligence. *See Estelle v. Gamble*, 429 U.S. 97 (1976); *Bozeman v. Orum*, 422 F.3d 1265 (11th Cir. 2005); *see also Connick v. Thompson*, 563 U.S. 51, 52 (2011) (noting a pattern of similar constitutional violations by government officials is "ordinarily necessary" to demonstrate deliberate indifference). Deliberate indifference claims in the context of medical treatment afforded to prisoners can also be established if circumstances demonstrate a complete withdrawal of necessary treatment, or intentional interference with treatment once prescribed. *Id.* If confirmed, I would uphold and faithfully apply all such Supreme Court and Eleventh Circuit precedent in this arena of the law.

6. In *Mendez v. State* (Case No. 10-23960-CIV-WMH, 2011 WL 1348406 (S.D. Fla. Apr. 8, 2011)), you represented the Miami-Dade County and MDCR staff against allegations that staff had failed to protect the plaintiff from prison violence, despite his repeated requests for protection. You signed a motion to dismiss suggesting that the plaintiff's allegations only amounted to a "random event" and an "isolated occurrence." (Defendant Miami-Dade County's Reply to Plaintiff's Response to Motion to Dismiss, (Jan. 11, 2011)) In the U.S. Department of Justice's report referenced above, DOJ noted that prisoners have a constitutional right to be protected from harm, and corrections officials have a specific duty to protect prisoners from violence at the hands of other prisoners. DOJ concluded that MDCR was "violating that constitutional right through its deliberate indifference to the prisoner violence within the Jail. According to MDCR's own reporting of prisoner-on-prisoner assaults, the Jail is experiencing well over a hundred incidents every month." Further, in 2010, DOJ's Bureau of Justice Statistics "released a study identifying Miami-Dade County Jail as having one of the highest incidents of sexual assault of nationwide jails." (David Ovalle, *Federal Review Blasts "Constitutional Violations" in Miami Jail System; Corrections*, MIAMI HERALD (Aug. 26, 2011); *see also*, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09* (Released August 2010))

   a. In light of DOJ's findings, please provide the support for your assertion that the allegation in *Mendez* was a "random event" and an "isolated occurrence."

   My assertion was based on the minimal factual allegations contained in plaintiff's complaint, which only referenced one incident of prisoner violence before averring,

in a conclusory fashion, a violation of § 1983 based on a purported failure by Miami-Dade County and MDCR to properly supervise inmates. As noted by the trial court, which granted my motion to dismiss, "[s]eparating the plaintiff's legal conclusions from his factual allegations, the score is one legal conclusion to zero factual allegations." *Mendez*, 2011 WL 1348406 at *4. Moreover, in evaluating the merits of the *Mendez* matter, I was unaware of the findings contained in the DOJ report referenced above, which was released after the trial court dismissed the case.

b. Based on your understanding of controlling legal precedent, can a "random event" or "isolated occurrence" in some circumstances still constitute "deliberate indifference" for the purpose of showing a constitutional violation, such as the violation alleged in *Mendez*?

The Supreme Court "has not foreclosed the possibility that evidence of a single violation of federal rights, accompanied by a showing that a municipality has failed to train its employees to handle recurring situations presenting an obvious potential for such a violation, could trigger municipal liability" for deliberate indifference under § 1983. *Board of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 409 (1997) (citing *Canton v. Harris*, 489 U.S. 378, 390 (1989)); *see also Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978) (noting a city is not liable under § 1983 unless a municipal policy or custom is the moving force behind the constitutional violation). If confirmed, I would uphold and faithfully apply all such Supreme Court and Eleventh Circuit precedent in this arena of the law.

c. Based on your understanding of controlling legal precedent, what is a correctional institution's obligation to prevent prisoner violence?

The Supreme Court has held that the Eighth Amendment of the United States Constitution "imposes [a] dut[y] on [prison] officials" to "take reasonable measures to guarantee the safety of the inmates." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (internal quotation marks omitted). In particular, under the Eighth Amendment, "prison officials have a duty to protect prisoners from violence at the hands of other prisoners." *Id.* at 833; *see also Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1102 (11th Cir. 2014) (noting that "a prison guard violates a prisoner's Eighth Amendment right when that guard actually (objectively and subjectively) knows that one prisoner poses a substantial risk of serious harm to another, yet fails to take any action to investigate, mitigate, or monitor that substantial risk of serious harm.") (citations omitted). If confirmed, I would uphold and faithfully apply all such Supreme Court and Eleventh Circuit precedent in this arena of the law.

d. At any time, did you advise any official for Miami-Dade County or MDCR that the jail facilities were being operated in an unconstitutional manner?

In my role as an Assistant County Attorney, I routinely advised clients regarding constitutional issues. To the extent that this question calls for the specifics of my legal work for Miami-Dade County or MDCR, I cannot divulge those details because they are protected by several privileges, including the attorney-client privilege.

7. Few, if any, states were hit harder by the foreclosure crisis than Florida. In 2012, the federal government and 49 state attorneys general—including Florida's—entered into a $25 billion settlement with the five largest mortgage servicers to address abuses in the mortgage industry. Those five mortgage servicers were Bank of America, JPMorgan Chase & Co., Wells Fargo & Company, Citigroup, and Ally Financial (formerly GMAC). According to the U.S. Department of Justice, the abuses included "servicers' use of 'robo-signed' affidavits in foreclosure proceedings; deceptive practices in the offering of loan modifications; failures to offer non-foreclosure alternatives before foreclosing on borrowers with federally insured mortgages; and filing improper documentation in federal bankruptcy court." (Department of Justice Press Release (Feb. 9, 2012))

    a. **During your tenure as a judge, have you presided over any cases in which any of the companies referenced above were accused of abuses in the foreclosure process?**

       During my tenure as a state court judge, I have handled hundreds of foreclosure cases. In doing so, I have come across pleadings where allegations of abuse by the companies referenced above have been asserted by homeowners as affirmative defenses to a foreclosure complaint, or have been raised in counterclaims filed by the borrower.

    b. **If yes, please provide a description of the allegations and your ultimate ruling.**

       Although I do not recall specific claims, I have generally encountered allegations of 'robo-signed' affidavits, deceptive loan modification practices, and the failure to offer non-foreclosure alternatives. Many of these cases have resulted in a settlement between the parties and a dismissal of the foreclosure action; I have not made findings or rulings regarding any of the aforementioned abuses in the mortgage industry. However, I routinely scrutinize foreclosure pleadings when handling dispositive motions or presiding over a foreclosure trial to ensure, for example, that the bank has adequate standing to foreclose against the borrower.

8. On your Senate Questionnaire, you indicate that you have been a member of the Federalist Society since 2016. 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?

The statements referenced above are not mine, so I am unable to speak or elaborate any further on what they reference.

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

Please see my answer to Question 7.a above.

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

Please see my answer to Question 7.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?**

As indicated in my response to Question 26(a) on my Senate Judiciary Questionnaire, I interviewed with officials from the White House and Department of Justice on February 9, 2018. I do not recall everything discussed in the interview. I do recall providing a general description of the Supreme Court's governing framework for deference to administrative interpretations, including the Supreme Court's controlling decisions in *Auer v. Robbins*, 519 U.S. 452 (1997); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984); and *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945).

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 lower court nominee, I will uphold and faithfully apply all Supreme Court

and Eleventh Circuit precedents relating to administrative law.

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

    The Supreme Court has, on various occasions, made clear that courts may consider legislative history when statutory language and text is not clear and unambiguous.

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 at 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 received Questions for the Record from five Senators (which were transmitted to me by the Department of Justice) and drafted responses to each question. After drafting my responses, I solicited feedback regarding my answers from members of the Office of Legal Policy at the United States Department of Justice. I revised my answers in light of their feedback and made edits that I deemed appropriate, but the answers to each question are my own, and I authorized the submission of my responses.

Nomination of Rodolfo Armando Ruiz II to the United States District Court For the Southern District of Florida Questions for the Record Submitted June 27, 2018

QUESTIONS FROM SENATOR WHITEHOUSE

1. 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 consider Chief Justice Roberts' metaphor appropriate to describe the judicial role. Just as an umpire has no allegiance to either team, a judge has no allegiance to either party and does not involve himself or herself in playing the game. As with umpires, a judge's job is to apply the rules fairly and evenly—not to work towards a particular or personally desired outcome. A judge must strive to make an impartial and efficient decision for the litigants that appear before the court.

   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 rule impartially and dispassionately, with the practical considerations of the particular ruling not paramount or controlling. In other words, a judge should make a ruling based on the law and facts, even if the ruling is one that the judge might not personally prefer. There are, however, circumstances where it is appropriate for a judge to take into account the consequences or effects of his or her ruling on the parties and issues. For example, in deciding whether to grant a preliminary injunction before a case proceeds to final resolution, the trial court must consider, among other things, whether the requested injunction will prevent irreparable harm and whether the injunction is in the public interest. *See Winter v. NRDC Inc.*, 555 U.S. 7, 20 (2008). And a judge necessarily considers the practical consequences of a decision if it appears that the ruling would yield an obviously absurd result. *See U.S. v. Wilson*, 503 U.S. 329, 334 (1992) (absurd results are to be avoided).

2. 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 should not control the application of the law to a given set of facts, but it does have a role to play in the decision-making process and can assist a judge in treating every litigant with courtesy, respect, and patience. For example, case law cautions that consideration be given to *pro se* litigants who are struggling to present their cases but may be untrained in law or procedure. Another example is when judges are required to consider litigants' backgrounds and characteristics, such as when imposing criminal sentences. *See* 18 U.S.C. § 3553(a)(1) (sentencing court must consider, among other things, "the history and characteristics of the defendant"). However, except where required, judges should

strive to subordinate empathy, and decide cases "without respect to persons" and only according to "the Constitution and laws of the United States." 28 U.S.C. § 453.

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

   Every human being is influenced by his or her personal life experiences. A judge should ensure, however, that his or her decisions are made impartially and without regard to any personal history or life experience. Judges must strive to be neutral and detached, and consider the litigants' circumstances and cause within the facts and law—not the judge's personal environment. In other words, a litigant's case should not be won or lost based on the life experiences of the assigned judge.

3. 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.

4. What assurance can you provide this committee and the American people that you would, as a federal judge, equally uphold the interests of the "little guy," specifically litigants who do not have the same kind of resources to spend on their legal representation as large corporations?

   If I am so privileged as to be confirmed, I will solemnly abide by my oath to "administer justice without respect to persons," to "do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties . . . under the Constitution and laws of the United States." 28 U.S.C. § 453. Throughout the past six years as a state court judge, I have approached each and every case with an open mind, and reached a decision without regard to the parties' status, wealth, posture as plaintiff or defendant, race, sexual orientation, political affiliation, or any other variable other than how the governing law bears upon the particular case or controversy. My decisions include those both for and against the State, both for and against indigent defendants, both for and against corporations. I fully understand the importance of access to justice, and am committed to uphold the rights of all litigants.

   a. In civil litigation, well-resourced parties commonly employ "paper blizzard" tactics to overwhelm their adversaries or force settlements through burdensome discovery demands, pretrial motions, and the like. Do you believe these tactics are acceptable? Or are they problematic? If they are problematic, what can and should a judge do to prevent them?

      It is unacceptable to abuse the discovery process or misuse motion practice in such a manner, and if confirmed, I would not permit such tactics. The Federal Rules of Civil Procedure authorize judges to, among other things, ensure that discovery is proportional to the needs of the case (including consideration of parties' resources) and to sanction parties for frivolous motions and other improper filings.

Nomination of Rodolfo Armando Ruiz II, to be United States District Judge for the Southern District of Florida
Questions for the Record Submitted June 27, 2018

<u>QUESTIONS FROM SENATOR COONS</u>

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

   The Supreme Court has identified and employed many factors to guide this analysis. *See, e.g., Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Washington v. Glucksberg*, 521 U.S. 702 (1997); *Loving v. Virginia*, 388 U.S. 1 (1967); *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925). If fortunate enough to be confirmed, I would review the parties' briefs, analyze the relevant Supreme Court and Eleventh Circuit precedents, and apply the appropriate legal standards to the facts of record.

   a. Would you consider whether the right is expressly enumerated in the Constitution?

      Yes. Please see my answer to Question 1.

   b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

      Yes. Please see my answer to Question 1. The Supreme Court has focused this inquiry on historical practice under the common law, practice in the American colonies, the history of state statutes and judicial decisions, and long-established traditions. *See Glucksberg*, 521 U.S. at 710-16.

   c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of a court of appeals?

      Yes. Please see my answer to Question 1. I would begin my analysis by looking to Supreme Court and Eleventh Circuit precedent. In certain instances, I would also consult precedent from other federal circuits for its persuasive value.

   d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent? What about whether a similar right had been recognized by Supreme Court or circuit precedent?

      Yes.

   e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? *See Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

Yes. I would uphold and faithfully apply all Supreme Court precedent, including *Casey* and *Lawrence*.

f. What other factors would you consider?

Please see my answer to Question 1.

2. Does the Fourteenth Amendment's promise of "equal protection" guarantee equality across race and gender, or does it only require racial equality?

The Supreme Court has repeatedly held that the Equal Protection Clause requires heightened scrutiny for gender-based classifications as well as for race-based classifications. *See, e.g., United States v. Virginia*, 518 U.S. 515 (1996); *Craig v. Boren*, 429 U.S. 190 (1976).

a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

Please see my answer to Question 2. If I am fortunate enough to be confirmed as a lower court judge, I would be duty-bound to uphold and faithfully apply Supreme Court precedent in this arena of the law.

b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

Please see my answer to Question 2. I do not have any information as to why this protection was recognized in 1996.

c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

The Fourteenth Amendment requires same-sex couples to be afforded the right to marry "on the same terms as accorded to couples of the opposite sex." *Obergefell*, 135 S. Ct. at 2607.

d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

The Supreme Court has yet to address this issue, and it is the subject of active litigation in the lower courts. As a judicial nominee, I am therefore prohibited from commenting. *See* Canon 3(A)(6), Code of Conduct for United States Judges.

3. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives?

The Supreme Court recognized such a constitutional right to privacy in *Griswold v. Connecticut*, 381 U.S. 479 (1965) and *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

a. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?

The Supreme Court recognized such a constitutional right to privacy in *Roe v. Wade*, 410 U.S. 113 (1973) and reaffirmed *Roe's* central principle in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). If so privileged as to be confirmed, I would uphold and faithfully apply these precedents.

b. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

The Supreme Court recognized such a constitutional right in *Lawrence v. Texas*, 539 U.S. 558 (2003). If so privileged as to be confirmed, I would uphold and faithfully apply *Lawrence* and any other applicable Supreme Court or Eleventh Circuit precedents.

c. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

Not applicable. Please see my answers to Questions 3, 3.a, and 3.b.

4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "[h]igher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600-01 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.

a. When is it appropriate to consider evidence that sheds light on our changing understanding of society?

The Supreme Court at times has considered changing understandings of society. *See, e.g., Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Riley v. California*, 134 S. Ct. 2473 (2014); *United States v. Virginia*, 518 U.S. 515 (1996). I would consider such evidence when appropriate in light of Supreme Court and Eleventh Circuit precedent.

b. What is the role of sociology, scientific evidence, and data in judicial analysis?

Scientific and social science evidence is often adduced, typically through expert witnesses, in a party's attempt to prove an element of its case. There is a significant body of law and commentary relating to the admissibility and weight of such evidence. *See, e.g., Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999); *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993); Reference Manual on Scientific Evidence (Federal Judicial Center, 3d ed. 2011). If I am so privileged as to be confirmed, I would follow all

laws enacted by Congress and precedents of the Supreme Court and Eleventh Circuit concerning the role of such evidence in judicial analysis.

5. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the "circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light" on the amendment's original meaning, "it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." 347 U.S. at 489, 490-93.

   a. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

      I have not had occasion to study the question of whether *Brown* is consistent with the original public meaning of the Fourteenth Amendment. I am aware that some commentators who have closely studied the issue have concluded that *Brown* is consistent with originalism. *See, e.g.,* Michael W. McConnell, *Originalism and the Desegregation Decisions*, 81 Va. L. Rev. 947 (1995). While this is an interesting academic question, should I be confirmed as a lower court judge I will uphold and faithfully apply *Brown* in any applicable case.

   b. How do you respond to the criticism of originalism that terms like "'the freedom of speech,' 'equal protection,' and 'due process of law' are not precise or self-defining"? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, https://constitutioncenter.org/interactive-constitution/white-papers/democratic-constitutionalism (last visited June 27, 2018).

      Although an interesting academic point, if I am so privileged as to be confirmed, my analysis of these terms would fully and fairly follow Supreme Court and Eleventh Circuit precedent in interpreting them.

   c. Should the public's understanding of a constitutional provision's meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?

      From the perspective of a lower court judge, the original public meaning of a constitutional provision would be dispositive if the Supreme Court, or, in my case, the Eleventh Circuit, has said that it is dispositive. I would uphold and faithfully apply all Supreme Court and Eleventh Circuit precedent, regardless of the methodology employed in such binding decisions.

   d. Does the public's original understanding of the scope of a constitutional provision constrain its application decades later?

      Please see my answer to Question 5.c.

   e. What sources would you employ to discern the contours of a constitutional provision?

If I am so privileged as to be confirmed, I would first apply all binding Supreme Court and Eleventh Circuit precedent. If Supreme Court and Eleventh Circuit precedent does not address the particular case, then I would consider persuasive opinions from other circuit courts, scholarly commentary, and of course the text and context of the relevant constitutional provision together with historical sources bearing upon the original public meaning of the provision.

6. In a 2016 case, *State v. Castro*, you determined that the warrantless search of the defendant's vehicle was legal. In another 2016 case, *State v. Facen*, you concluded that the defendant's presence in a high-crime area late at night, the odor of marijuana, and the attempt to flee constituted an adequate basis for an investigatory stop.

   a. Please provide examples of cases in which you suppressed evidence obtained in a warrantless search, and distinguish those cases from *Castro*.

      Over the past six years as a state court judge in Florida, I have handled a multitude of motions to suppress evidence in a wide range of criminal matters—from misdemeanor offenses to drug and homicide cases. Whenever I have encountered evidence obtained through an illegal search and seizure in violation of the Fourth Amendment of the United States Constitution, I have suppressed such evidence and found it inadmissible against the accused. Many of my rulings to suppress evidence were heard pretrial; therefore, no formal written order was issued separate from my ruling on the record. One such example is *State v. Ynfiesta*, F14-24033A (Fla. 11th Cir. Ct.), where I suppressed the seizure of the defendant's house key after an evidentiary hearing. Specifically, I found that defendant's consent to search his person was obtained after an illegal search of his home, thereby presumptively tainting defendant's consent and rendering it involuntary pursuant to Florida law. I further held that there was no clear break in the chain of events between the illegal police conduct and defendant's consent, so as to overcome the presumption that the consent was tainted, and granted the motion to suppress. In *Castro*, the motion to suppress centered on the making of incriminating statements—to wit, defendant's admission that credit cards in his possession did not belong to him. Moreover, the warrantless search of his vehicle was permissible pursuant to *Arizona v. Gant*, 556 U.S. 332 (2009), because it was reasonable to believe the vehicle contained evidence of the offense of arrest. Therefore, *Castro* is readily distinguishable from the type of illegal search in *Ynfiesta*.

   b. Please provide examples of cases in which you concluded that there was not an adequate basis for an investigatory stop, and distinguish those cases from *Facen*.

      Please see answer to Question 6.a. I do not have any written opinions addressing the absence of an adequate basis for an investigatory stop, but have routinely handled motions raising the legality of searches and seizures, and have suppressed evidence that has been obtained as a result of an unjustified investigatory stop given the absence of "reasonable suspicion that a citizen has committed, is committing, or is about to commit a crime." *Popple v. State*, 626 So. 2d 185, 186 (Fla. 1993).

   c. How do you ensure that law enforcement consideration of presence in a high-crime area late at night does not have a discriminatory impact on minority individuals?

As explained by the Supreme Court, an individual's presence in a high-crime area, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime. *Illinois v. Wardlow*, 528 U.S. 119 (2000). Therefore, by following binding precedent and carefully analyzing the totality of the circumstances in a given case, judges are able to ensure that police officers articulate factors above and beyond the mere existence of a high-crime area as a basis for reasonable suspicion. Motions to suppress, for example, give judges an opportunity to ascertain whether an officer has considered multiple permitted factors in determining reasonable suspicion, such as a suspect's behavior. In doing so, a judge can guarantee that the Fourth Amendment rights of minority individuals are not being inappropriately infringed.

d. How would you recommend enhancing trust between law enforcement and the communities they serve?

Trust between law enforcement and the communities they serve is paramount, and communication is the key. Throughout my tenure as a state court judge, I have routinely met with police officers in training and encouraged them to interact with their communities outside of ongoing investigations. I have also reminded officers that they must always be mindful of their appearance and behavior when they come to my courtroom; professionalism on the part of law enforcement instills faith in the communities they serve.

7. In *Castro*, you denied a motion to suppress evidence, despite that the non-English-speaking defendant confessed through a translator prior to being notified of his *Miranda* rights or his ability to leave a police interview.

a. When should an individual be informed of his/her *Miranda* rights?

As explained by the Supreme Court, *Miranda* warnings are implicated when an individual is undergoing custodial interrogation by the police. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (defining "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.").

b. What factors should be considered when determining whether an individual is in custody?

The Supreme Court has set forth numerous factors that may be considered in order to determine whether an individual is in custody for purposes of *Miranda* warnings. *See, e.g., J.D.B. v. North Carolina,* 564 U.S. 261 (2011); *Yarborough v. Alvarado*, 541 U.S. 652 (2004); *Stansbury v. California*, 511 U.S. 318 (1994); *New York v. Quarles*, 467 U.S. 649 (1984); *Berkemer v. McCarty*, 468 U.S. 420 (1984); *Oregon v. Mathiason*, 429 U.S. 492 (1977). If I am fortunate enough to be confirmed as a lower court judge, I would uphold and faithfully apply Supreme Court precedent in this arena of the law.

c. Is the absence of a coercive tone, threats, or trickery sufficient to render an interrogation noncustodial?

Please see my answer to Question 7.b. The Supreme Court has defined "interrogation," for Fifth Amendment purposes, in *Rhode Island v. Innis*, 446 U.S. 291 (1980). The

determination of whether an interrogation is custodial in nature is based on the totality of the circumstances, and is fact intensive. The Supreme Court has set forth numerous factors that may be considered in determining whether an interrogation occurs in a custodial vs. noncustodial setting, such as the place and time of interrogation, whether there has been a formal arrest or restraint on freedom of movement, the coercive nature of official questioning, and whether the advice of freedom to decline to answer has been given. *See, e.g., McNeil v. Wisconsin*, 501 U.S. 171 (1991); *Arizona v. Roberson*, 486 U.S. 675 (1988); *Edwards v. Arizona*, 451 U.S. 477 (1981); *Oregon v. Mathiason*, 429 U.S. 492 (1977); *Beckwith v. United States*, 425 U.S. 341 (1976). If I am fortunate enough to be confirmed as a lower court judge, I would uphold and faithfully apply Supreme Court precedent in this arena of the law.

Nomination of Rodolfo Armando Ruiz II
United States District Court for the Southern District of Florida
Questions for the Record
Submitted June 27, 2018

QUESTIONS FROM SENATOR BOOKER

1. According to a Brookings Institute 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.[1] Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.[2] 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.[3] In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.[4]

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

    I believe bias, both explicit and implicit, is a problem in American society generally and that the justice system is no exception. I have extensively taught judges throughout the State of Florida how to recognize and combat implicit racial bias in and outside of the courtroom. As an appointed member of the Eleventh Judicial Circuit Fairness and Diversity Committee, as well as the Florida Supreme Court Standing Committee on Fairness and Diversity, I am responsible for developing, publishing, and distributing educational material on implicit bias. I have also served as a moderator and panelist on the topic of implicit bias at bench and bar events in order to build awareness. It is vital that judges, who are duty-bound to administer the law fairly and equally, take all necessary efforts to eliminate biases from court operations based on race, gender, ethnicity, age, disability, financial status, or any characteristic that is without legal relevance.

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

    Yes—the percentage of people of color in custody in our nation's jails and prisons exceeds the percentage of such persons in the national population.

---

[1] JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), *available at* https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/.
[2] *Id.*
[3] ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), *available at* http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/.
[4] *Id.* at 8.

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 extensively studied the issue of implicit racial bias in our criminal justice system and have routinely lectured on the subject. I have read numerous reports and articles on implicit racial bias, including, but not limited to, the following: National Center for State Courts, *Helping Courts Address Implicit Bias – Frequently Asked Questions* (2012); Jerry Kang, et al., *Implicit Bias in the Courtroom*, 59 UCLA L. Rev. 1124 (2012); and Samuel R. Sommers & Phoebe C. Ellsworth, *White Juror Bias: An Investigation of Prejudice Against Black Defendants in the American Courtroom*, Psychology, Public Policy, and Law, Vol. 7 No. 1, 201-229 (2001).

2. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.[5] In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.[6]

   a. Do you believe there is a direct link between increases of 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 criminology statistics concerning relative incarceration rates and their causative relationship to crime statistics, and have not developed any opinions on this issue.

   b. Do you believe there is a direct link between decreases of 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 2.a.

3. 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.

4. Since Shelby County, Alabama v. Holder, states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a

---

[5]THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), *available at*http://www.pewtrusts.org/~/media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf.

[6]*Id.*

disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate someone voter at the polls.[7] One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.[8] Despite this, President Trump, citing no information, alleged that widespread voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.

a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion?

   I have not studied the national incidence of voter fraud and do not have any well-developed opinions regarding this particular issue. However, I am aware that the existence and prevalence of voter fraud are frequently litigated issues throughout the country. Accordingly, as a federal court nominee and a sitting state court judge in Florida, I cannot ethically opine on this matter. *See* Canon 3(A)(6) & Canon 5, Code of Conduct for United States Judges.

b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?

   Please see my answer to Question 4.a.

c. Do you believe that restrictive voter ID laws suppress the vote in poor and minority communities?

   Please see my answer to Question 4.a.

5. The color of a criminal defendant plays a significant role in capital punishment cases. For instance, people of color have accounted for 43 percent of total executions since 1976 and 55 percent of those currently awaiting the death penalty.[9]

   a. Do those statistics alarm you?

      It would be improper for me to state my personal views on these statistics, because doing so would mistakenly suggest that I might decide a case based on something other than the relevant law and facts. Should I be fortunate enough to be confirmed, I will faithfully uphold and follow Supreme Court and Eleventh

---

[7] JUSTIN LEVITT, THE TRUTH ABOUT VOTER FRAUD, BRENNAN CENTER FOR JUSTICE 6 (2007), *available at* http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf.

[8] Justin Levitt, *A comprehensive investigation of voter impersonation finds 31 credible incidents out of one billion ballots cast*, THE WASHINGTON POST, Aug. 6, 2014, *available at*https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.4da3c22d7dca.

[9] The American Civil Liberties Association, Race and the Death Penalty, https://www.aclu.org/other/race-and-death-penalty (Last visited June 13, 2018).

Circuit precedent on capital cases, or cases bearing on the death penalty, and do so without any regard whatsoever to race.

b. Do you believe it is cruel and unusual to disproportionately apply the death penalty on people of color in compared to whites? Why not?

   It would be inappropriate for me to express my views on this question because a similar issue might come before me as a district judge, should I be fortunate enough to be confirmed. *See* Canons 2 and 3, Code of Conduct for United States Judges. Before determining whether or how the Eighth Amendment's prohibition on cruel and unusual punishment applies to this question, I would want the benefit of a developed factual record, the parties' briefs and any amicus briefs, and a thorough review of all relevant Supreme Court and Eleventh Circuit precedent.

c. The color of the victim also plays an important role in determining whether the death penalty applies in a particular case. White victims account for about half of all murder victims, but 80 percent of all death penalty cases involve white victims. If you were a judge, and those statistics were playing out in your courtroom, what would you do?

   Please see my answer to Question 5.b. If I am fortunate enough to be confirmed, I will carefully and rigorously scrutinize the facts and proceedings in each death penalty case for errors or bias, consistent with Supreme Court and Eleventh Circuit precedent.

Questions for the Record from Senator Kamala D. Harris
Submitted June 27, 2018
For the Nominations of

Rodolfo Armando Ruiz II, to be United States District Judge for the Southern District of Florida

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?**

   Having sentenced numerous defendants as a sitting state court judge in Florida for the past six years, I can attest that sentencing is unquestionably one of the most solemn and important responsibilities of any trial judge. If confirmed, I would approach each sentencing mindful that every case must be based on its own specific facts and circumstances. I would begin by ensuring that the applicable advisory sentencing guidelines range for the offense conduct is correctly calculated. I would then proceed to consider all applicable statutes, the presentence report, argument from the parties, statements from victims or other witnesses, and any allocution by the defendant. Throughout the sentencing process, I would be consistently mindful of Congress' direction that any sentence should be "sufficient, but not greater than necessary, to comply" with the congressionally designated purposes of federal sentencing: "the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; [] to afford adequate deterrence to criminal conduct; [] to protect the public from further crimes of the defendant; and [] to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553.

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

   In addition to my response to Question 1.a above, if confirmed, I intend to discuss the issue of sentencing extensively with my colleagues within the Southern District of Florida to ensure that our sentencing practices are consistent, and that like cases are treated alike regardless of which judge is presiding over the case.

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

   Pursuant to Supreme Court and Eleventh Circuit precedent, the Sentencing Guidelines are not binding on trial judges, but provide valuable guidance on when a departure sentence is appropriate. The factors listed in 18 U.S.C. § 3553(a) may call for varying from the Guidelines range. Part K of Section 5 of the Guidelines also lists specific circumstances that can justify a departure from the advisory

Guidelines range. I would also carefully consider the positions of the parties before deciding whether a departure sentence was appropriate.

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?**

      The establishment of mandatory minimum sentences is a policy matter subject to legislative judgment. The Florida Legislature has adopted mandatory minimum sentences for certain categories of crimes, and as a sitting state court judge, I have applied those laws as required. However, I have never studied whether mandatory minimum sentences are likely to deter certain types of crime, and I am unfamiliar with Judge Reeves' position on that issue. If confirmed, I would apply sentencing laws as enacted, without regard to any personal views as to the efficacy of the required sentences.

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

      The equity of mandatory minimum sentences is a political question that is reserved for the judgment of Congress. As a federal court nominee and a sitting state court judge in Florida, I cannot ethically opine on legislative policy judgments. *See* Canon 3(A)(6) & Canon 5, Code of Conduct for United States Judges.

   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.ii.

   iv. **Former-Judge John Gleeson has previously 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]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

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

   If confirmed, I would apply mandatory minimum sentencing statutes to the extent such statutes are constitutional. I do believe it may be appropriate for a judge to state for the record that he or she would not have sentenced a particular defendant to a particular sentence if not compelled by a statute. Judges should provide detailed opinions explaining the facts and circumstances of the crime and the law that required the sentence imposed, but must refrain from injecting their personal views regarding the wisdom of a policy decision by Congress to impose a mandatory minimum sentence.

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

   The question of what crime to charge is one that our Constitution leaves to the Executive Branch. However, I would raise charging decisions with federal prosecutors if I were concerned about ethical impropriety, lack of professionalism, or prosecutorial misconduct, and would address such issues consistent with the Code of Judicial Conduct and other ethical obligations.

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

   The clemency power is reserved to the Executive Branch. However, as explained above, I believe a judge may, in an appropriate case, state on the record that he or she would not have imposed a certain sentence but for a statutory requirement so that Executive Branch officials are aware of the judge's views for the purposes of considering clemency.

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?**

   To the extent consistent with law, yes.

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

Yes. It is my understanding that there are racial disparities in our criminal justice system. For example, racial minorities are statistically more likely to be incarcerated than whites, and racial minorities comprise a greater percentage of the incarcerated population than they do 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 that 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.