

**Nomination of Mark Christopher Scarsi to the United States District Court for the
Central District of California
Questions for the Record
Submitted November 20, 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?

I do not believe that it is proper for a district court judge to question Supreme Court precedent. A district court judge must faithfully apply all Supreme Court precedent.

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

As the Supreme Court discussed in *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011), district court decisions are not precedent. Federal Rules of Civil Procedure 59(e) and 60 provide the appropriate standards a district court should follow in revisiting its decisions.

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

When to overturn precedent is a question solely within the authority of the Supreme Court. In *Gamble v. United States*, 139 S. Ct. 1660, 1669 (2019), the Supreme Court discussed the factors it considers in exercising this authority. As a nominee to the district court, it is not appropriate for me to express a personal view on when the Supreme Court should overturn its own precedent.

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

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

Roe v. Wade is Supreme Court precedent that is binding on the lower courts. If I am 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 judicial nominee bound by the Code of Conduct for United States Judges, I am not at liberty to comment on the merits of a Supreme Court opinion. If I am confirmed, I will faithfully apply all Supreme Court precedent, including *District of Columbia v. Heller*.

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

In *District of Columbia v. Heller*, the Supreme Court stated 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.” 554 U.S. 570, 626-627 (2008).

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

Please see my response to Question 4a.

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 (1990), the Supreme Court held that “First Amendment protection extends to corporations.” As a judicial nominee bound by the Code of Conduct for United States Judges, I am not at liberty to comment further on this question.

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

Please see my response to Question 5a.

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

In *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 707-708 (2014), the Supreme Court held that “corporations” are persons under the Religious Freedom Restoration Act. As a judicial nominee bound by the Code of Conduct for United States Judges, I am not at liberty to comment further on this question.

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

As a judicial nominee bound by the Code of Conduct for United States Judges, I am not at liberty to discuss my personal views on hypothetical questions that may bear on matters that are pending or impending in the federal courts. See Code of Conduct for United States 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 response to Question 6.

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 response to Question 6.

9. You indicated on your Senate Questionnaire that you have been a member of the Federalist Society since 2017. 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?**

I did not draft this statement and am not familiar with what it intends.

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

Please see my response to Question 9a.

- c. What "traditional values" does the Federalist society seek to place a**

premium on?

Please see my response to Question 9a.

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

I have discussed my interest in serving as a district court judge with multiple individuals within the legal community, including individuals who are members of the Federalist Society.

- e. Why did you decide to join the Federalist Society in 2017, more than 20 years after you began practicing law?**

I had been a member of the Federalist Society in law school and recalled the Federalist Society's debates and programs on Constitutional Law and the Supreme Court. I hoped that rejoining the Federalist Society would provide me with an opportunity to expand my continuing legal education beyond my historical focus of federal litigation and intellectual property law.

10. On your Senate Questionnaire, you indicated that you have been a member of the Republican National Lawyers Association ("RNLA") since 2017. The RNLA's "About Us" webpage states that "[e]ach member . . . must ascribe to the accomplishment" of the organizations missions, which include: "Advancing Republican Ideals. The RNLA further builds the Republican Party goals and ideals through a nationwide network of supportive lawyers who understand and directly support Republican policy, agendas and candidates."

- a. Please detail the activities that your membership in this organization has entailed.**

While I became a member of the RNLA in 2017, I have not participated in the RNLA in any meaningful way.

- b. In what ways do you believe that you have "directly support[ed] Republican policy, agendas and candidates"?**

I did not draft this statement and am not familiar with what it intends. Please also see my response to Question 10a.

- c. Why did you decide to join the RNLA in 2017, more than 20 years after you began practicing law?**

To the best of my recollection, I decided to join the RNLA after receiving a solicitation by mail. I had hoped that involvement in the organization would provide me with an additional opportunity to interact with legal colleagues.

11. 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 judicial nominee bound by the Code of Conduct for United States Judges, I am not at liberty to discuss my personal views on administrative law as issues relating to administrative law may be pending or impending in the federal courts. See Code of Conduct for United States Judges, Canon 3(A)(6).

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

As a judicial nominee bound by the Code of Conduct for United States Judges, I am not at liberty to discuss my personal views on the causes of climate change as issues relating to the causes of climate change may be pending or impending in the federal courts. See Code of Conduct for United States Judges, Canon 3(A)(6).

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

In *Milner v. Dep't of Navy*, 562 U.S. 562, 574 (2011) and *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) the Supreme Court indicated that it is appropriate for judges to consider legislative history in construing a statute when the text of the statute is ambiguous.

14. 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.

During the process that led to my nomination, I did not have discussions with anyone about loyalty to President Trump.

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

I received these question on Wednesday, November 20, 2019. I read these questions and prepared responses, which I submitted to the Department of Justice, Office of Legal Policy for review. I received comments from the Department of Justice, Office of Legal Policy and considered those comments in finalizing these responses. I am comfortable that these responses reflect my own views.

**Questions for the Record for Mark C. Scarsi
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. According to your Senate Judiciary Questionnaire, you first reached out to the White House Counsel's Office to express interest in being nominated for a district court judge position in April 2017. Around that same time, you joined the Federalist Society and the Republican National Lawyers Association, and you started making significant political donations to Republican candidates and causes.

a. Did anyone tell you that you would increase your chances of being nominated to the federal bench if you joined the Federalist Society and the Republican National Lawyers Association, and/or made significant political donations to Republican candidates and causes?

I decided to join the Federalist Society and the Republican National Lawyers Association on my own. While I have made contributions to Republican candidates, after considering their records of service, I have not made contributions to Republican causes.

b. Why did you decide to join the Federalist Society and the Republican National Lawyers Association and start donating to Republican candidates and causes when you did?

I had been a member of the Federalist Society in law school and recalled the Federalist Society's debates and programs on Constitutional Law and the Supreme Court. I hoped that rejoining the Federalist Society would provide me with an opportunity to expand my continuing legal education beyond my historical focus of federal litigation and intellectual property law.

To the best of my recollection, I decided to join the RNLA after receiving a solicitation by mail. I had hoped that involvement in the organization would provide me with an additional opportunity to interact with legal colleagues.

I contributed to Republican candidates after conducting research into their records of service.

3. 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.

b. Have you ever taken such training?

Yes.

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

Yes. If I am confirmed I will make every effort to ensure that my courtroom is free from bias in all its forms.

Nomination of Mark C. Scarsi
United States District Court for the Central District of California
Questions for the Record
Submitted November 20, 2019

QUESTIONS FROM SENATOR BOOKER

1. You became a member of the Federalist Society in 2017, 21 years after graduating law school.

- a. What prompted you to join the Federalist Society in 2017?

I had been a member of the Federalist Society in law school and recalled the Federalist Society's debates and programs on Constitutional Law and the Supreme Court. I hoped that rejoining the Federalist Society would provide me with an opportunity to expand my continuing legal education beyond my historical focus of federal litigation and intellectual property law.

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

As a district court judge I would look to the original public meaning of a statute or constitutional provision for guidance in construing that statute or constitutional provision. I would also faithfully follow all precedent regarding statutory or constitutional construction.

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

Please see my response to Question 2.

4. 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?

In *Milner v. Dep't of Navy*, 562 U.S. 562, 574 (2011) and *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) the Supreme Court indicated that it is appropriate for judges to consider legislative history in construing a statute when the text of the statute is ambiguous. As a district court judge, I would follow Supreme Court and 9th Circuit precedent in this regard.

- 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 response to Question 4a.

5. Since the Supreme Court's *Shelby County* decision in 2013, states across the country have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study after study has demonstrated, however, that widespread voter fraud is a myth.¹ 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.²

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

As a judicial nominee bound by the Code of Conduct for United States Judges, I am not at liberty to discuss my personal views regarding the magnitude of the problem of in-person voter fraud as issues relating to voter fraud may be pending or impending in the federal courts. See Code of Conduct for United States Judges, Canon 3(A)(6).

¹ *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

² *Id.*

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

As a judicial nominee bound by the Code of Conduct for United States Judges, I am not at liberty to discuss my personal views regarding the impact of voter ID laws as issues relating to voter ID laws may be pending or impending in the federal courts. See Code of Conduct for United States Judges, Canon 3(A)(6).

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

Please see my response to Question 5b.

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.³ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.⁴ 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.⁵ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁶

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

Yes.

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

Yes.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

Prior to my nomination I had not studied the issue of implicit racial bias in our criminal justice system.

- 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.⁷ Why do you think that is the case?

I am not familiar with the report, but I believe that every effort should be taken to eliminate racial bias in our criminal justice system.

- 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.⁸ Why do you think that is the case?

I am not familiar with the study, but I believe that every effort should be taken to eliminate racial bias in our criminal justice system.

- 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?

Federal judges should be aware of the potential for racial bias and implicit bias and take steps to ensure that every criminal defendant is treated equally and fairly in the courts of the United States.

³ 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>.

⁴ *Id.*

⁵ 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>.

⁶ *Id.*

⁷ 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.

⁸ Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014).

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.⁹ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.¹⁰

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 unfamiliar with the cited report.

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

Please see my response to Question 7a.

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*¹¹ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Yes.

11. Do you believe that *Plessy v. Ferguson*¹² was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No.

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

No.

13. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had "an absolute conflict"

in presiding over civil fraud lawsuits against Trump University because he was “of Mexican heritage.”¹³ 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 judicial nominee bound by the Code of Conduct for United States Judges, I am not at liberty to comment on political statements made by President Trump. See Code of Conduct for United States Judges, Canon 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,

⁹ 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>.

¹⁰ *Id.*

¹¹ 347 U.S. 483 (1954).

¹² 163 U.S. 537 (1896).

¹³ 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>.

bring them back from where they came.”¹⁴ Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

In *Zadvydas v. Davis*, 633 U.S. 678, 693 (2001), the Supreme Court 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.” As a district court judge I would faithfully follow Supreme Court and 9th Circuit precedent on this issue.

¹⁴ Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

**Questions for the Record from Senator Kamala D. Harris
Submitted November 20, 2019
For the Nomination of**

Mark C. Scarsi, to the U.S. District 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 follow all precedent of the Supreme Court and 9th Circuit as well as all federal statutes. I would consult the sentencing guidelines and perform the required guideline calculation. I would consider the presentencing report provided by the United States Probation Office as well as arguments of the parties along with defendant's allocution, victim impact statements and letters submitted by the victim(s) or in support of the defendant. Throughout this process, I would be mindful of the congressional mandate in 18 USC § 3553 "to impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of [§ 3553(a)]."

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

In addition to the process set out in my response to Question 1, I would seek guidance from my colleagues and consult statistics from the Administrative Office of the Courts.

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

Part K of Section 5 of the Sentencing Guidelines lists specific circumstances that may justify departing from the guideline sentence range. The factors listed in 18 USC § 3553 (a) may also justify departing from the guideline sentence range. 9th Circuit precedent also establishes factors that may be considered in departing from the sentencing guidelines. If confirmed, I would consult all of these sources to ensure that any sentence I would impose would meet the goal of "sufficient, but not greater than necessary" set out in 35 USC § 3553.

- 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?**

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

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

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

I believe the issue of mandatory minimum sentences is a policy issue well within the purview of Congress and, accordingly, as a judicial nominee bound by the Code of Conduct for United States Judges, I am not at liberty to discuss my personal views on mandatory minimum sentences. See Code of Conduct for United States Judges, Canon 5.

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

Please see my response to Question 1.d.ii.

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, to the extent that such outreach would not breach any ethical or statutory rule.

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

Please see my response to Question 1.d.i.v.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?**

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>

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

Yes. I am aware that African Americans are disproportionately prosecuted and incarcerated.

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.