

**Nomination of Hala Y. Jarbou**  
**United States District Court for the Western District of Michigan**  
**Questions for the Record**  
**Submitted July 1, 2020**

**QUESTIONS FROM SENATOR BOOKER**

1. In 2007, you worked on a sexual assault case against a Michigan doctor.<sup>1</sup> Several years later, the doctor was released from prison after the accuser confessed to fabricating the incident for financial gain.<sup>2</sup> According to a news article, you failed to verify a series of nearly identical letters that were submitted to the judge during sentencing urging the judge to hand down a harsh sentence.<sup>3</sup>

- a. Is it accurate that you failed to look into the veracity of the letters?

I handled the prosecution of that case; the jury convicted the defendant of one count of First Degree Criminal Sexual Conduct and two counts of Fourth Degree Criminal Sexual Conduct. I handled the sentencing in April of 2010, where the defendant was sentenced to prison. I left the office in April of 2010 when I was appointed as an Assistant United States Attorney in the Eastern District of Michigan. Subsequently, on April 15, 2011, the original charges were dismissed by the prosecutor and the defendant pled no contest to an added count of Aggravated Assault; he was sentenced the same day to 1 day in jail, with credit for time served and to two years nonreporting probation. Although I do not recall the specifics of those letters, letters of allocution from victims and defendants and letters of support from family members, employers, and others for both the victim and the defendant are routinely submitted to the court by third parties and sometimes by the parties on behalf of their client or the victim. Those letters are the opinions or views of those individuals writing the letters. They are submitted to the court to consider before sentencing. I do not recall anyone, including the defense or the judge, raising any issue with, or challenging any of the letters submitted by or on behalf of the victim or the defendant in that case.

- b. If you did not verify the letters as the news article alleges, please explain why.

Please see my response to Question 1(a).

2. As the Presiding Judge at the Male Adult Treatment Court in the Oakland County Circuit Court, you oversee a program that uses “social and therapeutic intervention” in substance abuse cases to shift sentencing decisions away from incarceration and towards rehabilitative justice.<sup>4</sup>
  - a. How has your involvement in this program impacted your views on our criminal

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<sup>1</sup> Natasha Dado, *Physician incarcerated for years after false accusation of sexual assault*, THE ARAB AMERICAN NEWS (Sept. 10, 2011).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> SJQ Attachments to 12(d) at 94–102.

justice system?

In fashioning a sentence, the court is to consider many factors, including the history and characteristics of a defendant. Unfortunately, addiction is an issue for many individuals that are involved in the criminal justice system. My involvement in this program has aided and strengthened my commitment to fashioning a reasonable sentence, considering all the relevant factors, for each defendant.

- b. Has this experience changed your thought process on sentencing criminal defendants?

It has not changed my thought process in that I still consider all the factors allowable in sentencing a defendant. Presiding over a drug treatment court has highlighted one alternative sentencing program and has aided and strengthened my commitment to fashioning a reasonable sentence for each defendant.

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

I do not subscribe to any particular label. Labels mean different things to different people. I apply the law fairly and impartially as written. If confirmed, I will follow Sixth Circuit and Supreme Court precedent that address acceptable methods of constitutional and statutory construction.

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

I do not subscribe to any particular label. Labels mean different things to different people. I apply the law fairly and impartially as written. If confirmed, I will follow Sixth Circuit and Supreme Court precedent that address acceptable methods of constitutional and statutory construction.

5. 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?

Yes, where appropriate. If confirmed, I will follow Sixth Circuit and Supreme Court precedent that address acceptable methods of constitutional and statutory construction.

- 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?

Yes, where appropriate. If confirmed, I will follow Sixth Circuit and Supreme Court precedent that address acceptable methods of constitutional and statutory construction.

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

Trial and appellate judges should apply the law fairly and impartially to the facts of a case before them, following appropriate Circuit and Supreme Court precedent. If confirmed, I will follow Canon 3A(1) of the Code of Conduct for United States Judges and Sixth Circuit and Supreme Court precedent in deciding a case. I understand judicial restraint to be a theory of interpretation that encourages restraint in deciding cases that might involve a law being struck down.

- a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.<sup>5</sup> Was that decision guided by the principle of judicial restraint?

As a district court nominee, it would be inappropriate under Canon 2A of the Code of Conduct for United States Judges to opine on the propriety of any portion of an opinion of the Supreme Court. If confirmed as a district court judge, I will fully and faithfully apply all Supreme Court precedent.

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.<sup>6</sup> Was that decision guided by the principle of judicial restraint?

As a district court nominee, it would be inappropriate under Canon 2A of the Code of Conduct for United States Judges to opine on the propriety of any portion of an opinion of the Supreme Court. If confirmed as a district court judge, I will fully and faithfully apply all Supreme Court precedent.

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.<sup>7</sup> Was that decision guided by the principle of judicial restraint?

As a district court nominee, it would be inappropriate under Canon 2A of the Code of Conduct for United States Judges to opine on the propriety of any portion of an opinion of the Supreme Court. If confirmed as a district court judge, I will fully and faithfully apply all Supreme Court precedent.

7. 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

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<sup>5</sup> 554 U.S. 570 (2008).

<sup>6</sup> 558 U.S. 310 (2010).

<sup>7</sup> 570 U.S. 529 (2013).

after study has demonstrated, however, that widespread voter fraud is a myth.<sup>8</sup> 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.<sup>9</sup>

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

I have not read any of the studies referenced in your question nor any studies that indicated voter fraud is a widespread problem in American elections. Therefore, it would be inappropriate for me to answer your question. Additionally, as a district court nominee it would be inappropriate under Canons 2A and 3A(6) of the Code of Conduct for United States Judges to opine on an issue that might appear before me. If confirmed as a district judge, I will fully and faithfully apply both Sixth Circuit and Supreme Court precedent.

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

I have not read any of the studies referenced in your question nor any studies that indicated voter fraud is a widespread problem in American elections. Therefore, it would be inappropriate for me to answer your question. Additionally, as a district court nominee it would be inappropriate under Canons 2A and 3A(6) of the Code of Conduct for United States Judges to opine on an issue that might appear before me. If confirmed as a district judge, I will fully and faithfully apply both Sixth Circuit and Supreme Court precedent.

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

I have not read any of the studies referenced in your question nor any studies that indicated voter fraud is a widespread problem in American elections. Therefore, it would be inappropriate for me to answer your question. Additionally, as a district court nominee it would be inappropriate under Canons 2A and 3A(6) of the Code of Conduct for United States Judges to opine on an issue that might appear before me. If confirmed as a district judge, I will fully and faithfully apply both Sixth Circuit and Supreme Court precedent.

8. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.<sup>10</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>11</sup> These shocking statistics are reflected in our nation's prisons and jails. Blacks are five

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<sup>8</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

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

<sup>10</sup> Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

<sup>11</sup> *Id.*

times more likely than whites to be incarcerated in state prisons.<sup>12</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>13</sup>

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

Yes.

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

Yes.

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

I have not studied the issue of implicit racial bias in our criminal justice system but I have participated in at least two trainings in the last five years on implicit bias. Also, as a member of the Michigan Supreme Court Committee on Model Criminal Jury Instructions, in the last year, I participated in drafting and implementing new criminal jury instructions that address implicit bias.

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.<sup>14</sup> Why do you think that is the case?

I have not studied that report or similar reports and therefore cannot opine as to the reasons for that disparity, but I do recognize that a number of factors, including implicit racial bias, may contribute to the disparity.

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.<sup>15</sup> Why do you think that is the case?

I have not studied that report or similar reports and therefore cannot opine as to the reasons for that disparity, but I do recognize that a number of factors, including implicit racial bias, may contribute to the disparity.

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

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<sup>12</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

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

<sup>14</sup> U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (Nov. 2017), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114\\_Demographics.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

<sup>15</sup> Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)

justice system?

I believe awareness of the issue of implicit racial bias by every participant in our criminal justice system will help all of us in playing a role in addressing the issue. Training for all involved will also help in addressing the issue.

9. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.<sup>16</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>17</sup>

- 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 cannot give an opinion on the issue.

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

I have not studied this issue and cannot give an opinion on the issue.

10. 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.

11. 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.

12. Do you believe that *Brown v. Board of Education*<sup>18</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Generally, Canons 2A and 3A(6) of the Code of Conduct for United States Judges prohibit me from grading or commenting on the propriety of a Supreme Court opinion. However, due to *Brown v. Board of Education*'s unique importance in our nation's history and the fact that I do not believe this issue will ever appear before me, I am comfortable in saying that I do believe it was correctly decided.

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<sup>16</sup> Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

<sup>17</sup> *Id.*

<sup>18</sup> 347 U.S. 483 (1954).

13. Do you believe that *Plessy v. Ferguson*<sup>19</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No. The Supreme Court overturned *Plessy* in *Brown*.

14. 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.

15. 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.”<sup>20</sup> Do you agree with President Trump’s view that a judge’s race or ethnicity can be a basis for recusal or disqualification?

I will assess a basis for recusal or disqualification in accordance with 28 U.S.C. §§ 144 and 455. As a district judge nominee, it is inappropriate for me to opine on any statement made by the President or any other political figure.

16. President Trump has stated on Twitter: “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”<sup>21</sup> Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

As a district judge nominee, it is inappropriate for me to opine on any statement made by the President or any other political figure. The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) has indicated 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.” If confirmed, I will fully and faithfully apply all applicable Sixth Circuit and Supreme Court precedent.

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<sup>19</sup> 163 U.S. 537 (1896).

<sup>20</sup> Brent Kendall, *Trump Says Judge’s Mexican Heritage Presents ‘Absolute Conflict,’* WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

<sup>21</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.