

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Claria Horn Boom
Nominee to be a Commissioner of the U.S. Sentencing Commission

- 1. What is the correct comparator for sentencing disparities and why do you think so:**
 - a. sentencing disparities among similarly situated defendants before a single judge;**
 - b. sentencing disparities among similarly situated defendants within a single district;**
 - c. sentencing disparities among similarly situated defendants within a single circuit;**
 - d. sentencing disparities among all similarly situated defendants;**
 - e. any other comparator.**

Response: The answer is d. One of the Commission's primary responsibilities under the Sentencing Reform Act is to "avoid[] unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices." 28 U.S.C. § 991(b)(1)(B).

- 2. As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?**

Response: No.

**Nomination of the Honorable Claria Horn Boom
to be a Member of the United States Sentencing Commission
Questions for the Record
Submitted June 15, 2022**

QUESTIONS FROM SENATOR COTTON

- 1. Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

Response: No.

- 2. Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

Response: No.

- 3. What are the purposes of criminal sentencing? Of those purposes, which do you believe is the most important and why?**

Response: The purposes of sentencing include retribution, incapacitation, rehabilitation, and deterrence. All the purposes of sentencing and the relevant statutory factors under 18 U.S.C. § 3553(a) are important and should be considered in each case. Generally, the relative importance of each may be driven by the particular facts of the case. If there was an irreconcilable conflict between deterrence and the other factors, I would emphasize deterrence because it furthers the important goal of public protection.

- 4. Is deterrence a product of the severity of a sentence, a product of the likelihood of punishment, or a combination of the two? If you believe that deterrence is a combination of the two, please explain which of the two is a stronger factor in deterrence.**

Response: I have not studied the deterrence theory in detail. Based on my experience as a judge, I believe deterrence is a product of both the severity of the sentence and the likelihood of punishment. Both factors serve deterrence and will shift in importance depending on the particular facts and circumstances of the offense and the offender.

- 5. Please describe what you believe to be “success” in the context of your work if you are confirmed as a member of the Sentencing Commission.**

Response: If confirmed to the Sentencing Commission, “success” would be measured by ensuring the goals of the Sentencing Reform Act are met. I would be eager to assist Congress and the Commission to ensure uniformity, fairness, and transparency in sentencing.

- 6. Do you believe that it is the purpose of the Sentencing Commission to reduce the number of criminals in prison?**

Response: The Sentencing Commission’s principal purposes are to assist in the establishment of sentencing policies and practices for the federal criminal justice system in conjunction with Congress; to measure the degree to which sentencing, penal and correctional practices are effective in meeting the purposes of sentencing; and to serve as an information resource on federal crime and sentencing issues for Congress, the executive branch, the courts, and other stakeholders. 28 U.S.C. § 991.

7. As a general matter, should criminals who commit crimes that tend to involve violence face stronger sentences, weaker sentences, or approximately the same sentences as criminals who commit crimes that do not tend to involve violence?

Response: As a judge, I consider the entire record in the respective case in making sentencing decisions and the factors enumerated by Congress in 18 U.S.C. § 3553(a), to impose a sentence that is sufficient, but not greater than necessary, to comply with the purposes set forth in § 3553(a)(2). The statutory factors include the nature and circumstances of the offense; the need for the sentence “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment,” “to afford adequate deterrence,” and “to protect the public from further crimes of the defendant.” These factors include consideration of whether violence is present in a particular case. Further, depending on the facts of the case, specific Guideline enhancements exist to increase the Guideline range where violence is part of the offense. Recent Sentencing Commission reports on recidivism rates indicate that violent offenders recidivate at some of the highest rates, which must be taken into consideration under the relevant § 3553(a) factors in determining the appropriate sentence in a particular case.

8. Does the Sentencing Commission have the authority to undermine mandatory minimum or maximum sentences passed by Congress?

Response: No.

9. Please describe what you believe to be the Supreme Court’s holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

Response: In *Apprendi v. New Jersey*, 530 U.S. 466 (2002), the Supreme Court held that the Constitution requires that any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt.

10. Please describe what you believe to be the Supreme Court’s holding in *Blakely v. Washington*, 542 U.S. 296 (2004).

Response: In *Blakely v. Washington*, 542 U.S. 296 (2004), the Supreme Court held that an exceptional sentence increase, which was allowed under Washington state law, based on the judge’s determination that Blakely had acted with “deliberate cruelty” violated Blakely’s Sixth Amendment right to trial by jury. Relying on its decision in *Apprendi v. New Jersey*, the Court ruled that

facts increasing the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.

11. Please describe what you believe to be the Supreme Court’s holding in *United States v. Booker*, 543 U.S. 220 (2005).

Response: In *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court held that the federal Sentencing Guidelines, in allowing judges to enhance sentences using facts not found by juries, violated the Sixth Amendment right to trial by jury. In addition, the Court held that the Sentencing Guidelines are advisory, and, accordingly, invalidated the provisions that made the Sentencing Guidelines mandatory and established standards of review on appeal.

12. Please describe what you believe to be the correct application of 18 U.S.C. § 3553.

Response: When determining an appropriate sentence, I follow the law as set forth by Congress and the Supreme Court. First, I consider the properly-calculated Guideline range and the entire case record. The Sentencing Guidelines are to be “the sentencing court’s ‘starting point and . . . initial benchmark.’” *Molina-Martinez v. United States*, 578 U.S. 189, 198 (2016) (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)). Then, consistent with 18 U.S.C. § 3553(a), I consider the statutory factors including: the nature and circumstances of the offense; the history and characteristics of the defendant; the need for the sentence “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment,” “to afford adequate deterrence,” and “to protect the public from further crimes of the defendant”; the sentencing range established by the Sentencing Guidelines; “any pertinent policy statement” of the Sentencing Commission; and “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.”

13. Do you believe that the Sentencing Commission has inherent authority to apply sentencing guidelines amendments retroactively? Please explain in your answer what you believe to be the limits on the Sentencing Commission’s authority to make retroactive changes.

Response: The Sentencing Commission must operate within the statutory authority proscribed by Congress and may not make a Guideline amendment retroactive unless such action is within the statutory authority granted by Congress pursuant to 28 U.S.C. §994(u). Although I have not studied this issue in any detail, the statute contemplates some capacity for retroactivity. Typically changes in the law should be applied prospectively to ensure certainty and predictability. As a general matter, Congress is responsible for developing national criminal policy. Accordingly, whether a change in the law should be made retroactive is a decision best left to Congress.

14. The Sentencing Commission recently released a report on the recidivism rates for offenders who participated in vocational training programs in federal prison, and found that participation in such job training programs had no meaningful effect on the recidivism rates of those offenders. Please explain what factors, if any, you

believe to have the greatest effect on reducing recidivism rates.

Response: Every offender is an individual and therefore programming results will vary depending on the person. The Sentencing Commission recently released a number of reports on recidivism. Of note, they found that participation and completion in the Residential Drug Abuse Program (RDAP) and similar programs has a significant impact on recidivism rates. If confirmed to the Sentencing Commission, I would be eager to study this issue in greater detail and, along with the Commission, make informed recommendations to Congress on the most effective ways to reduce recidivism rates.

15. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.

Response: I researched the issues and law implicated in the questions with some assistance by a law clerk, drew on my judicial experience, drafted responses, provided copies to officials in the Department of Justice Office of Legal Policy and Sen. Mitch McConnell's office in advance of finalizing the responses, and thereafter finalized my responses for submission.

16. Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please identify the department or agency with which those officials are employed.

Response: No.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Hon. Claria Horn Boom, Nominee to be a Member of the United States Sentencing Commission

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Commission, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Is racial discrimination wrong?

Response: Yes.

2. If confirmed, what will your top priorities be for the U.S. Sentencing Commission?

Response: If confirmed to the Sentencing Commission, my top priority would be to ensure the goals of the Sentencing Reform Act are met. I would be eager to assist Congress and the Commission to ensure uniformity, fairness, and transparency in sentencing.

3. What do you believe is the essential function of the U.S. Sentencing Commission?

Response: The Sentencing Commission's essential functions are to assist in the establishment of sentencing policies and practices for the federal criminal justice system in conjunction with Congress; to measure the degree to which sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing; and to serve as an information resource on federal crime and sentencing issues for Congress, the executive branch, the courts, and other stakeholders. 28 U.S.C. § 991.

4. How does the Separation of Powers inform your view of the Commission and your role as a potential Commissioner?

Response: Congress is responsible for developing national criminal policy. The Sentencing Commission's principal purposes are to assist in the establishment of sentencing policies and practices for the federal criminal justice system in conjunction with Congress; to measure the degree to which sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing; and to serve as an information resource on federal crime and sentencing issues for Congress, the executive branch, the courts, and other stakeholders. 28 U.S.C. § 991. If confirmed to the Sentencing Commission, my role would be to assist Congress and the Sentencing Commission to ensure the goals of the Sentencing Reform Act are met.

5. Is the criminal justice system systemically racist?

Response: No, based on my experience as a former federal prosecutor and federal judge in the Eastern District and Western District of Kentucky I do not believe the criminal justice system or its laws are systemically racist. As a judge, I took an oath to "administer justice without respect to persons, and to do equal right to the poor and to the rich." 28 U.S.C. § 453. That oath is at the forefront of every decision I make as a judge. One of the Commission's primary responsibilities under the Sentencing Reform Act is to

“avoid[] unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices.” 28 U.S.C. § 991(b)(1)(B). Accordingly, it is the Commission’s responsibility to address *any* unwarranted sentencing disparities that emerge within our criminal justice system.

6. What do you believe is the role of incapacitation in sentencing?

Response: The role of incapacitation is to protect the public by removing the offender from the community. 18 U.S.C. § 3553(a)(2)(C).

7. What do you believe is the role of general deterrence in sentencing?

Response: Under 18 U.S.C. § 3553(a)(2)(B), when imposing a sentence, a court must consider “the need to afford adequate deterrence to criminal conduct.” General deterrence aims to dissuade the public at large from committing future crimes.

8. Do you believe in specific deterrence?

Response: Yes.

9. Should a sentencing judge consider retributive concerns when fashioning a sentence?

Response: Yes. Pursuant to 18 U.S.C. § 3553(a)(2)(A), a judge must consider, among other purposes, the need for the sentence “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.”

10. How will your views of the Eighth Amendment’s prohibition on “cruel and unusual” punishment inform your work as a Sentencing Commissioner?

Response: As a judge and as a Commissioner, I would be bound by Supreme Court precedent on the Eighth Amendment.

11. What sentences do the U.S. Supreme Court’s current Eighth Amendment jurisprudence prohibit?

Response: The Supreme Court has found the following sentences cruel and unusual in violation of the Eighth Amendment:

- Application of the death penalty to defendants under the age of 18, *Roper v. Simmons*, 543 U.S. 551 (2005).
- Application of the death penalty to the intellectually disabled, *Atkins v.*

Virginia, 536 U.S. 304 (2002).

- Application of the death penalty to a defendant convicted of rape, *Coker v. Georgia*, 433 U.S. 584 (1977).
- Application of the death penalty to a defendant convicted of the rape of a child in cases where the victim did not die and death was not intended, *Kennedy v. Louisiana*, 128 S. Ct. 2641 (2008).
- Imposing a life sentence without parole on a juvenile convicted of a non-homicide crime, *Graham v. Florida*, 130 S. Ct. 2011 (2010).

12. Do you believe that the U.S. Supreme Court’s current Eighth Amendment jurisprudence is consistent with the original public meaning of that provision?

Response: As a district court judge, I am bound by Supreme Court and Sixth Circuit precedent on issues involving the Eight Amendment, as well as all other issues where binding precedent exists.

13. In light of the leak of the draft of the U.S. Supreme Court opinion in *Dobbs v. Jackson Women’s Health Organization*, how would you ensure the confidentiality of non-public Commission documents?

Response: If confirmed, I would work with Congress and the Sentencing Commission to ensure that a system is in place to designate and guard the confidentiality of any documents that are properly considered non-public.

14. In an appearance at Vanderbilt Law School earlier this year, you argued in favor of a “data-driven” approach to sentencing. How has that guided your approach as a Judge?

Response: The goals of the Sentencing Reform Act are aimed at ensuring “certainty and fairness in meeting the purposes of sentencing” and avoiding “unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors.” 18 U.S.C. § 991(b)(1)(B). A data-driven approach to sentencing serves the goals of certainty and fairness. Further, data collected by the Sentencing Commission relating to national sentencing practices assists judges in avoiding unwarranted sentencing disparities. As a judge, I consider the entire record in the particular case in making sentencing decisions and all the factors enumerated by Congress in 18 U.S.C. § 3553(a), to impose a sentence that is sufficient, but not greater than necessary, to comply with the purposes set forth in § 3553(a)(2).

a. How will this “data-driven” approach guide your role as a Sentencing Commissioner?

Response: One of the core responsibilities of the Sentencing Commission is to conduct research and gather data related to criminal justice issues to assist Congress in setting policy and to assist and inform the criminal justice community. If confirmed to the Sentencing Commission I will be eager to assist the Sentencing Commission in its important research and data-gathering functions and to make informed recommendations to Congress based on the research and data.

Senator Josh Hawley
Questions for the Record

Claria Boom
Nominee, U.S. Sentencing Commission

- 1. Federal law currently has a higher penalty for distribution or receipt of child pornography than for possession. It's 5-20 years for receipt or distribution. It's 0-10 years for possession. The Commission has recommended that Congress align those penalties, and I have a bill to do so.**

- a. Do you agree that the penalties should be aligned?**

Response: One of the Commission's primary responsibilities under the Sentencing Reform Act is to "avoid[] unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices." 28 U.S.C. § 991(b)(1)(B). The Sentencing Commission recently released a report, *Federal Sentencing of Child Pornography Non-Production Offenses*, detailing sentencing data related to non-production offenses. It recommended that Congress align the statutory penalty schemes for receipt offenses and possession offenses. If confirmed, I would be eager to study the data and information on this issue and, along with the Commission, make informed recommendations to Congress.

- b. If so, do you think the penalty for possession should be increased, receipt and distribution decreased, or a mix?**

Response: Congress is responsible for developing national criminal policy. Accordingly, whether the mandatory minimum penalty should apply to both possession and receipt crimes is a decision best left to Congress. As noted above, if confirmed, I would be eager to study the data and information on this issue and, along with the Commission, make informed recommendations to Congress.

- 2. In *Terry v. United States*, decided last year, the Supreme Court acknowledged the argument that *underenforcement* of the law can have a negative disparate impact based on race. Given that racial minorities are more likely to be victims of crimes, do you agree that underenforcing criminal laws—including by issuing**

sentences that are too low— disproportionately harms victims who are racial minorities?

Response: I have not studied this issue or the law in this area. If confirmed, I would be eager to study the data and information on this issue and, along with the Commission, make informed recommendations to Congress. As a judge, I do not make charging decisions. Rather, such decisions are within the discretion of the prosecutor. As a judge, I took an oath to “administer justice without respect to persons, and to do equal right to the poor and to the rich.” 28 U.S.C. § 453. My oath includes the duty to “faithfully and impartially” apply the law to the facts of each case. *Id.* This oath is at the forefront of every decision I make as a judge.

- 3. Current law requires judges to impose sentences on firearms offenders “consecutively,” not “concurrently.” That means that if a person was convicted of three counts of 18 U.S.C. §924(c), he would have to serve time for each count. The Commission previously advocated making these sentences run “concurrently” in certain circumstances. This would mean that a person with three sentences of 5 years would serve them all at the same time. In effect, this would be identical to 5 years in jail. Do you agree with the Commission’s recommendation?**

Response: Firearm offenses are serious offenses and must be met with equally serious consequences. A recent Sentencing Commission report, *Recidivism and Federal Sentencing Policy*, noted that firearms offenders recidivate at the highest rate of any other offense. Congress is responsible for developing national criminal policy. Accordingly, whether sentences for firearms offenders should receive “consecutive” or “concurrent” sentences is a decision best left to Congress. If confirmed, I would be eager to study the data and information on this issue and, along with the Commission, make informed recommendations to Congress.

- 4. Please rank these four aims of criminal law in order of general importance, recognizing that they may change from case to case: retribution, deterrence, incapacitation, and rehabilitation.**

Response: The purposes of sentencing include retribution, incapacitation, rehabilitation, and deterrence. All the purposes of sentencing and the relevant statutory factors under 18 U.S.C. § 3553(a) are important and should be considered in each case. Generally, the relative importance of each may be driven by the particular facts of the case. If there was an irreconcilable conflict between deterrence and the other factors, I would emphasize deterrence because it furthers the important goal of public protection.

- 5. During the Antifa riots of 2020, Montez Lee killed a man. He burned down a building with the man still inside. Rather than press for a tough sentence, the Biden administration argued that Lee deserved leniency because he had a political motive to commit the crime. The Department of Justice tried to excuse this horrific crime on the theory that “a riot is the language of the unheard” and that Lee—by burning down a building and killing a man—was just trying to give voice to his anger and frustration after the death of George Floyd. If a person commits a crime at a protest, do you believe that the person’s motivation to further the political aim of that protest can ever serve as a reason for a lower sentence?**

Response: I am not familiar with the facts and circumstances of the cited case. As a judge, I consider the entire record in the respective case in making sentencing decisions and the factors enumerated by Congress in 18 U.S.C. § 3553(a), to impose a sentence that is sufficient, but not greater than necessary, to comply with the purposes set forth in § 3553(a)(2). Those factors include: the nature and circumstances of the offense; the history and characteristics of the defendant; the need for the sentence “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment,” “to afford adequate deterrence,” and “to protect the public from further crimes of the defendant”; the sentencing range established by the Sentencing Guidelines; “any pertinent policy statement” of the Sentencing Commission; and “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.”

**Senator Mazie K. Hirono
Questions for the Record**

**Claria Horn Boom,
Nominee, Member of the United States Sentencing Commission**

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?

Response: No.

b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

Response: No.

Questions for the Record

Judge Claria Horn Boom

Senator John Kennedy

- 1. Do you believe prosecutors who decline to prosecute entire classes of crime improve the criminal justice system or public safety?**

Response: No. As a judge, I do not make charging decisions. Rather, such decisions are within the discretion of the prosecutor.

- 2. Have you ever been accused of or disciplined for maintaining an inappropriate workplace relationship?**

Response: No.

Senator Mike Lee
Questions for the Record
Claria Boom, Nominee to the United States Sentencing Commission

1. What factors or information will you consider before making sentencing recommendations?

Response: As a judge, I consider the entire record in the respective case in making sentencing decisions and the factors enumerated by Congress in 18 U.S.C. § 3553(a), to impose a sentence that is sufficient, but not greater than necessary, to comply with the purposes set forth in § 3553(a)(2). Those factors include: the nature and circumstances of the offense; the history and characteristics of the defendant; the need for the sentence “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment,” “to afford adequate deterrence,” and “to protect the public from further crimes of the defendant”; the sentencing range established by the Sentencing Guidelines; “any pertinent policy statement” of the Sentencing Commission; and “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” If confirmed as a Commissioner, I would review the relevant data and research, consult with experts on the particular issue, and solicit input from other relevant stakeholders and the Commission prior to making recommendations to Congress.

2. Please define the term “mens rea” and explain why it is important in criminal law.

Response: The United States Supreme Court has defined *mens rea* as a “guilty mind” or the requirement “that a defendant generally must know ‘the facts that make his conduct fit the definition of the offense[.]’” *Elonis v. United States*, 575 U.S. 723, 734–35 (2015) (quoting *Staples v. United States*, 511 U.S. 600, 608, n.3 (1994)). Stated another way, the “central thought is that a defendant must be blameworthy in mind” before he can be found guilty. *Id.* at 734 (internal quotation marks omitted). *Mens rea* is important in criminal law because it establishes the culpability sufficient to subject a person to criminal liability.

3. Would the severity of a statute’s mens rea standard factor into your sentencing recommendations?

Response: Although the sentencing factors under 18 U.S.C. § 3553(a) do not expressly include reference to a statute’s *mens rea* standard, they do include factors that bear on the level of culpability such as the nature and circumstances of the offense; the need for the sentence “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment,” “to afford adequate deterrence,” and “to protect the public from further crimes of the defendant.” All factors under 18 U.S.C. § 3553(a) must be considered to ensure the goals of sentencing are met.

4. **Do you think it is important for criminal law statutes to have an explicit mens rea requirement? Should statutes without a mens rea standard be treated differently than those with an explicit standard in terms of sentencing?**

Response: Congress is responsible for developing national criminal policy. Accordingly, whether a federal criminal law statute should contain an explicit *mens rea* requirement is a decision best left to Congress. If confirmed, I would be eager to study the data and information on this issue and, along with the Commission, make informed recommendations to Congress in this area.

5. **How would you describe your approach to reading statutes? Specifically, how much weight do you give to the plain meaning of the text?**

Response: When interpreting a statute, I first look to the text of the statute. If the text is unambiguous, that is determinative. I am also guided by any binding Supreme Court and Sixth Circuit precedent addressing the statute.

- a. **Does the “plain meaning” of a statute or constitutional provision refer to the public understanding of the relevant language at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: As held by the Supreme Court, a statutory provision or term is normally interpreted according to the “ordinary, contemporary, common meaning” at the time of its enactment. *Perrin v. United States*, 444 U.S. 37, 42 (1979). I am bound by Supreme Court precedent.

6. **The Biden Administration has defined “equity” as: “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” Do you agree with that definition? If not, how would you define equity?**

Response: As a judge, I took an oath to “administer justice without respect to persons, and to do equal right to the poor and to the rich.” 28 U.S.C. § 453. My oath includes the duty to “faithfully and impartially” apply the law to the facts of each case. *Id.* I would not substitute the above definition of “equity” (or any other definition or standard) in place of the law to be applied in a particular case. I am unfamiliar with the above quote or the context in which it is used. Black’s Law Dictionary defines “equity” as “[f]airness; impartiality; evenhanded dealing.” Black’s Law Dictionary (11th ed. 2019).

7. **Is there a difference between “equity” and “equality?” If so, what is it?**

Response: Equity is defined as stated in Question 6. “Equality” is defined as “[t]he quality, state, or condition of being equal; esp., likeness in power or political status.” Black’s Law Dictionary (11th ed. 2019). As mentioned in my Response to Question 6, I would not substitute the above definition of “equity” (or any other definition or standard) in place of the law to be applied in a particular case.

8. Does 18 U.S.C. § 3553(a) allow for the consideration of “equity” as defined by the Biden Administration (listed above in question 6)?

Response: When determining the appropriate sentence, a judge must consider the factors enumerated by Congress under 18 U.S.C. § 3553(a). The statutory factors include the nature and circumstances of the offense; the history and characteristics of the defendant; the need for the sentence “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment,” “to afford adequate deterrence,” and “to protect the public from further crimes of the defendant”; the sentencing range established by the Sentencing Guidelines; “any pertinent policy statement” of the Sentencing Commission; and “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” Further, in all cases a judge must honor her oath to “administer justice without respect to persons, and to do equal right to the poor and to the rich.” 28 U.S.C. § 453.

9. Should 18 U.S.C. § 3553(a)(6) – the need to avoid unwarranted sentence disparities – be weighed more strongly than other § 3553 factors?

Response: As required by Congress, courts must consider *all* the factors outlined in 18 U.S.C. § 3553(a). The weight a factor maintains will be driven by the particular facts of the case.

10. Should the desire to reduce the prison population across the United States be considered at any stage of sentencing, either by the Sentencing Commission or by federal judges?

Response: No. Please see my Response to Question 1, which lists the proper factors to consider in sentencing. Congress has directed that the Guidelines “shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission.” 28 U.S.C. § 994(g).

11. What role, if any, should an offender’s group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the consideration of an appropriate sentence?

Response: When sentencing an individual defendant, a judge must consider all the factors enumerated by Congress in 18 U.S.C. § 3553(a). Further, in 28 U.S.C. § 994(d) Congress directed that the Commission “shall assure that the guidelines and

policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders.” As a judge, I took an oath to “administer justice without respect to persons, and to do equal right to the poor and to the rich.” 28 U.S.C. § 453. That oath is at the forefront of every decision I make as a judge.

12. How much deference should judges give to the sentencing guidelines promulgated by the Sentencing Commission?

Response: The Sentencing Guidelines are to be “the sentencing court’s ‘starting point and ... initial benchmark.’” *Molina-Martinez v. United States*, 578 U.S. 189, 198 (2016) (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)). The Guidelines provide the “framework for sentencing” and “anchor ... the district court’s discretion.” *Id.* at 198–99 (citation omitted).

13. Is it ever appropriate for a judge to deviate from or disregard the sentencing guidelines? If so, under what circumstances is it appropriate?

Response: A judge may never disregard the sentencing Guidelines. Please see my Responses to Question 1 and Question 12. A judge must consider all the factors enumerated by Congress in 18 U.S.C. § 3553(a) to impose a sentence that is sufficient, but not greater than necessary, to comply with the purposes set forth in § 3553(a)(2). A judge may vary from the Guideline range in imposing a sentence when such variance is supported by the factors under § 3553(a) in that particular case.

14. Is it appropriate for judges to depart from the sentencing guidelines simply because they disagree with the underlying policy?

Response: The Supreme Court has held, “[O]ur post-*Booker* decisions make clear that a district court may in appropriate cases impose a non-Guidelines sentence based on a disagreement with the Commission’s views.” *Pepper v. United States*, 526 U.S. 476, 501 (2011) (citing *Kimbrough v. United States*, 552 U.S. 85, 109-10 (2007)). Although the Guidelines are advisory, they remain the “starting point” and “initial benchmark” in determining the appropriate sentence. *Molina-Martinez v. United States*, 578 U.S. 189, 198 (2016) (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)).

15. According to data from the Sentencing Commission, less than one-third of non-production child pornography offenders receive a sentence within the Commission’s guideline range. What do you think accounts for this trend? Are you concerned that the majority of judges appear to have disregarded the Sentencing Commission’s work in this area?

Response: The Sentencing Commission recently released a report, *Federal Sentencing of Child Pornography Non-Production Offenses*, detailing sentencing data related to non-production offenses. The Commission noted the Guidelines provisions are likely both overinclusive and underinclusive and need to be revised to keep pace

with technological advancements in the way these offenses are committed. High variance rates for any offense cause concern given the need for certainty in sentencing and the need to avoid unwarranted sentencing disparities. With any offense where the variance rate is high, Congress and the Commission should examine the relevant empirical data and research to determine whether the Guidelines provisions should be revised to ensure they accomplish the purposes of sentencing. In all cases, the Sentencing Guidelines are to be “the sentencing court’s ‘starting point and ... initial benchmark.’” *Molina-Martinez v. United States*, 578 U.S. 189, 198 (2016) (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)).

16. What will you do to encourage judges to follow the guidelines more closely in child pornography cases?

Response: The Sentencing Guidelines are “the sentencing court’s ‘starting point and ... initial benchmark.’” *Molina-Martinez v. United States*, 578 U.S. 189, 198 (2016) (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)). One of the core functions of the Commission is to serve as an information, data, and training resource for judges. The Commission could address high variance rates, regardless of the offense, with sentencing judges through training, outreach, and judicial conferences.

17. In offenses involving controlled substances what role, if any, should the quantity of a drug in the possession of an offender play in determining the appropriate sentence?

Response: Both the statutes related to drug offenses and the provisions of the Sentencing Guidelines take drug quantity (and the kind of drug involved) into consideration. Under the statutory factors, judges must consider the nature and circumstances of the offense, which would include the type and quantity of drug involved. 18 U.S.C. § 3553(a).

18. Criminal law is generally understood to have four main purposes: deterrence, reformation, retribution and prevention. Are mandatory minimums an effective way to accomplish these purposes? Why or why not?

Response: Yes. Mandatory minimums can further the purposes of sentencing by providing a deterrent effect and a level of public protection. All the purposes of sentencing are important and must be considered in each case.

19. Are there areas of law in which you think mandatory minimums are inappropriate?

Response: Congress is responsible for developing national criminal policy. Accordingly, whether mandatory minimums are appropriately imposed is a question reserved for Congress, not the sentencing judge.

Questions for the Honorable Claria Horn Boom from Sen. Ossoff:

The United States Sentencing Commission issued a series of reports that study demographics in sentencings. In the most recent report, from 2017, the Commission found that “sentences of Black male offenders were 19.1 percent longer than those of White male offenders.”¹ The Commission has documented that racial disparity is pervasive in federal sentencing. It has also recognized that some strategies, like changes to the crack/powder disparity, helped to reduce that racial disparity.²

(a) What responsibility does the Commission have to identify strategies to ameliorate the racial disparity in federal sentencing?

Response: One of the Commission’s primary responsibilities under the Sentencing Reform Act is to “avoid[] unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices.” 28 U.S.C. § 991(b)(1)(B). Accordingly, it is the Commission’s responsibility to address *any* unwarranted sentencing disparities. Further, in 28 U.S.C.S. § 994(d) Congress directed that the Commission “shall assure that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders.” As a judge, I took an oath to “administer justice without respect to persons, and to do equal right to the poor and to the rich.” 28 U.S.C. § 453. That oath is at the forefront of every decision I make as a judge. If confirmed to the Sentencing Commission, I would be eager to study the data and research on this issue and, along with the Commission, make informed recommendations to Congress.

(b) Beyond conducting studies and publishing reports, how would you – as a member of a collaborative commission - work to avoid racially disparate outcomes in federal sentencings across the country?

Response: If confirmed to the Sentencing Commission, I would look forward to studying the data and information related to sentencing disparities. One of the core responsibilities of the Commission, in addition to collecting and reporting sentencing data, is its training and outreach programs for judges, probation officers, and other stakeholders. The Commission could address disparities in sentencing with judges and other stakeholders through training, outreach, seminars, and judicial conferences.

¹ Demographic Differences in Sentencing: An Update to the 2012 Booker Report (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf at 2.

² *Id.* at 4.

(c) Will you commit to prioritizing the elimination of racial disparities in federal sentencing?

Response: Yes, I will commit to prioritizing the elimination of *any* unwarranted sentencing disparities. Please see my Response to Question (a).

**Questions from Senator Thom Tillis for Judge Claria Horn Boom
Nominee to be Commissioner of the U.S. Sentencing Commission**

1. Do you believe the crack and powder cocaine disparity should be addressed?

Response: Congress is responsible for developing national criminal policy. Accordingly, whether the crack and powder cocaine ratio should be equalized is a decision best left to Congress. If confirmed, I would be eager to study the data and information on this issue and, along with the Commission, make informed recommendations to Congress in this area.

2. How does the crack and powder cocaine disparity impact sentencing? Do you believe that the disparity leads to excessive incarceration?

Response: In the Fair Sentencing Act of 2010 Congress reduced the crack-to-powder drug quantity ratio to 18-to-1. This ratio factors into the calculation of the Guideline range for the particular offense, depending on whether the offense involves crack cocaine or powder cocaine. I have not studied whether the current ratio leads to excessive incarceration, and that question would necessarily be guided by the particular facts of the case. Ultimately, Congress is responsible for developing national criminal policy. As a judge, I consider the entire record in the respective case in making sentencing decisions and the factors enumerated by Congress in 18 U.S.C. §3553(a), to impose a sentence that is sufficient, but not greater than necessary, to comply with the purposes set forth in § 3553(a)(2).

3. Do you agree with the 1-to-1 ratio suggested in the EQUAL Act? Or, do you recommend another ratio?

Response: Congress is responsible for developing national criminal policy. Accordingly, whether the 1-to-1 ratio in the EQUAL Act is the appropriate policy outcome is a decision best left to Congress. If confirmed, I would be eager to study the data and information on this issue and, along with the Commission, make informed recommendations to Congress in this area.

4. What challenges would the sentencing commission face when trying to implement the EQUAL Act?

Response: If the Commission reduces the term of imprisonment recommended in the Guidelines applicable to a particular offense, it must take into account the nature and capacity of the penal, correctional, and other facilities and services available and make recommendations that might be necessary as a result of the change. 28 U.S.C. § 994(g). The Commission would need to ensure compliance with this statutory provision, and other relevant provisions, as directed by Congress and as informed by relevant data and research.

5. Do you believe that individuals that share Child Sexual Abuse Material (CSAM) should receive lenient or enhanced penalties?

Response: Offenses involving the sharing of CSAM materials are egregious crimes and must be met with equally significant consequences. If the facts of a particular offense trigger an enhancement, the judge should apply the enhancement. In every case, regardless of the offense, the judge must consider the record in the case and the factors enumerated by Congress in 18 U.S.C. § 3553(a), to impose a sentence that is sufficient, but not greater than necessary, to comply with the purposes set forth in § 3553(a)(2).

6. What factors would you look at when articulating sentencing guidelines for CSAM cases?

Response: Please see my Response to Question 5.

7. What is your view on the Protect Act of 2022? Do you believe individuals who possess child pornography should receive the same mandatory minimum for receiving?

Response: Congress is responsible for developing national criminal policy. Accordingly, whether the mandatory minimum penalty should apply to both possession and receipt crimes is a decision best left to Congress. The Sentencing Commission recently released a report, *Federal Sentencing of Child Pornography Non-Production Offenses*, detailing sentencing data related to non-production offenses. It recommended that Congress align the statutory penalty schemes for receipt offenses and possession offenses. If confirmed, I would be eager to study the data and information on this issue and, along with the Commission, make informed recommendations to Congress in this area.