

**Senator Chuck Grassley, Ranking Member
Questions for the Record**

**Carlton W. Reeves
Nominee, Commissioner and Chair of the United States 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: One of the primary purposes of the Sentencing Commission is to reduce sentencing disparities in all of the above categories. It is important that similarly situated defendants are not treated differently, period—regardless of what judge sentences the defendant, whether that judge is in same (or different) courthouse, the same (or different) district, or the same (or different) circuit.

- 2. What role should empathy play in sentencing defendants?**

Response: In sentencing defendants, judges should apply the law and the factors delineated in 18 U.S.C. § 3553(a) and in doing so should always be cognizant of the human being before them. However, empathy should play no role in the judge’s consideration of the particular sentence to be imposed.

- 3. Should sentences take into consideration principles of social “equity”?**

Response: Principles of social equity should play no role in a judge’s consideration of a particular sentence to be imposed. In sentencing a defendant a judge should apply the factors set forth in 18 U.S.C. § 3553(a).

- 4. What, if anything, do you think is the relationship between morality and the law when it comes to punishing criminals?**

Response: The moral response to punishing criminals is best expressed by Congress through the laws that Congress enacts and the penalties imposed for violating those laws.

- 5. Some have argued that 18 U.S.C. § 3553(a)(6) permits a district judge to consider racial disparities in crafting a sentence. Do you agree? Please explain with citations to case law.**

Response: When imposing a sentence, 18 U.S.C. § 3553(a)(6) provides that judges shall consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” This mandate authorizes the court to consider all information before it based on the facts of the specific case and relevant legal precedents.

- 6. Do you think law firms should allow paying clients to influence which pro bono clients they take?**

Response: The Canons of Ethics and the Rules of Professional Conduct apply to relationships that law firms have with their clients. I cannot offer further comments without litigants believing I have pre-judged cases that may come before me.

- 7. Do you think law-firm clients should use their financial position to influence which pro bono clients their attorneys take?**

Response: The Canons of Ethics and the Rules of Professional Conduct apply to relationships that law firms have with their clients. I cannot offer further comments without litigants believing I have pre-judged cases that may come before me.

- 8. Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?**

Response: The Canons of Ethics and the Rules of Professional Conduct apply to relationships that law firms have with their clients. I cannot offer further comments without litigants believing I have pre-judged cases that may come before me.

- 9. 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.

- 10. You have stated that a member of the Federalist Society would have a difficult time being hired as a clerk in your Chambers. Could you please explain why?**

Response: As a judge, I have hired law clerks from a wide array of demographic backgrounds— identifying diversity in race, sex, gender, sexual orientation, religion, education, and socioeconomic background. There is no litmus test or membership

requirement to be hired in my chambers. And, in fact I have hired a law clerk who was a member of the Federalist Society.

11. What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun re-offenders to the community?

Response: Congress addressed the impact that the COVID-19 pandemic has had on our society, including those who are incarcerated, by passing the First Step Act, 18 U.S.C. § 3582(c)(1)(A). The law allows incarcerated individuals to demonstrate extraordinary and compelling reasons for sentence reductions. In determining whether relief is warranted, the court still must apply the factors under 18 U.S.C. § 3553(a). When presented with these motions, I have applied the law as Congress has dictated.

12. Should the fact that a defendant threatened to brandish a firearm during a bank robbery alter the sentencing range for the defendant?

Response: Congress has determined that the crime described above merits an enhanced penalty. That is a policy decision that is the prerogative of Congress. Consistent with the Code of Conduct for United States Judges, it would be inappropriate to further opine because the matter may come before me.

13. Do you believe mandatory minimums should be abolished? Why or why not?

Response: Congress is the policymaking branch of government which prescribes the penalties for infractions of the laws it has enacted. As a sitting judge who has presided over (and will continue to be assigned cases) where mandatory minimum penalties apply, it would be inappropriate for me to comment on the propriety of the penalties.

14. Should law firms undertake the pro bono prosecution of crimes?

Response: Within the framework of their ethical obligations and their bar rules, law firms are able to undertake the pro bono representation to give back to their communities.

15. Should judicial decisions take into consideration principles of social “equity”?

Response: Judicial decisions should be based on the facts, the law, and the arguments presented by the parties in ruling on the dispute resulting in the judicial decision.

16. Is threatening Supreme Court Justices right or wrong? Please explain your answer.

Response: Threatening Supreme Court Justices is wrong. There is no place for it in our democracy and it violates the law. Congress has adopted statutes criminalizing such conduct. *See, e.g.*, 18 U.S.C. § 111(a); 18 U.S.C. § 1114; 18 U.S.C. § 115.

- 17. In 1983, I supported the Protection of Children Against Sexual Exploitation Act. In 2012, I sent a letter to the Sentencing Commission urging the Commission not to recommend lower sentences for the possession of child pornography. I wrote that “it would be a disservice to the American people to have the Commission issue a report that advocates for the reduction in sentencing for a class of criminals who cause profound and lasting damage to their victims.” But some have argued that the sentencing enhancements for child pornography offenses are too severe. Do you believe the sentencing enhancement based on the number of images is flawed?**

Response: Child pornography offenses are very serious crimes. Congress has enacted the enhancement. In carrying out my duties in sentencing defendants, I have applied those enhancements where appropriate. As a sitting judge, as I have had and currently have pending cases before me regarding these and other enhancements, it would be inappropriate for me to comment further on the propriety of the penalties, including enhancements, that Congress has set forth for any crimes.

- 18. For non-production child pornography offenses, an application note in the guidelines defines each video as the equivalent to 75 images. *See* USSG §2G2.2, comment. (n.6 (B)(ii)). Do you believe this note is flawed or have a policy objection to it?**

Response: Child pornography offenses are very serious crimes. Congress has enacted the enhancement. In carrying out my duties in sentencing defendants, I have applied those enhancements where appropriate. As a sitting judge, as I have had and currently have pending cases before me regarding these and other enhancements, it would be inappropriate for me to comment further on the propriety of the penalties, including enhancements, that Congress has set forth for any crimes.

- 19. Do you believe mandatory minimums are inappropriate for offenses involving non-production of child pornography?**

Response: Congress is the policymaking branch of government which prescribes the penalties for infractions of the laws it has enacted. As a sitting judge who has presided over (and will continue to be assigned cases) where mandatory minimum penalties apply, it would be inappropriate for me to comment on the propriety of the penalties.

- 20. Do you believe mandatory minimums are inappropriate for offenses involving production of child pornography?**

Response: Congress is the policymaking branch of government which prescribes the penalties for infractions of the laws it has enacted. As a sitting judge who has presided over (and will continue to be assigned cases) where mandatory minimum penalties apply, it would be inappropriate for me to comment on the propriety of the penalties.

- 21. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

- 22. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

- 23. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors, or did anyone do so on your behalf? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, the Hopewell Fund, the Windward Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

- 24. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation, or did anyone do so on your behalf? If so, what was the nature of those discussions?**

Response: No.

- 25. Demand Justice is a progressive organization dedicated to “restor[ing] ideological balance and legitimacy to our nation’s courts.”**

- a. Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O’Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: No.

- c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, Jen Dansereau, Faiz Shakir, and/or Stasha Rhodes?**

Response: I have been in contact with Christopher Kang on at least one occasion. I was invited to moderate a Panel Discussion on the 2020-2021 Annual Washington and Lee Law Review's Lara D. Gass Symposium: A Celebration of Chief Judge Roger L. Gregory's Twenty Years on the Federal Fourth Circuit. I was the moderator on a panel discussion on Judge Gregory's Legacy & the Future of the Federal Bench. Kang was a panelist.

- 26. The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."**

- a. Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

- c. Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

- 27. Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."**

- a. Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**

Response: N/A

- c. Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

- d. Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

- 28. The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."**

- a. Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

- c. Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

- 29. Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."**

- a. Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

- c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

30. The Raben Group is “a national public affairs and strategic communications firm committed to making connections, solving problems, and inspiring change across the corporate, nonprofit, foundation, and government sectors.” It manages the Committee for a Fair Judiciary.

- a. **Has anyone associated with The Raben Group or the Committee for a Fair Judiciary requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

- b. **Are you currently in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

Response: No.

- c. **Have you ever been in contact with anyone associated with the Raben Group or the Committee for a Fair Judiciary, including but not limited to: Robert Raben, Jeremy Paris, Erika West, Elliot Williams, Nancy Zirkin, Rachel Motley, Steve Sereno, Dylan Tureff, or Joe Onek?**

Response: Yes. I have a personal friendship with Robert Raben whom I have known since my clerkship at the Mississippi Supreme Court. I have also met Elliot Williams at a National Convention of the American Constitution Society.

31. Please describe the selection process that led to your nomination to be a commissioner on the United States Sentencing Commission, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

Response: On November 8, 2021, I was contacted by attorneys with the White House Counsel’s Office. Subsequently, I was interviewed by that Office and later informed that the President would move forward with my name, and the background investigation process began. That required that I have additional interviews and prepare my Senate Judiciary Questionnaire. I received official word on May 10, 2022 that the President would nominate me the following day.

32. Please explain, with particularity, the process whereby you answered these questions.

Response: I received these questions on the evening of June 15, 2022, and began drafting responses. My law clerks assisted with research and formatting. The U.S. Department of Justice Office of Legal Policy offered feedback before finalizing my responses. My answers are my own.

Senator Tom Cotton
Questions for the Record

Carlton W. Reeves
Nominee, Commissioner and Chair of the United States Sentencing Commission

- 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: Sentencing must be done in an individualized manner consistent with Congress's mandate as set forth in 18 U.S.C. § 3553(a). Because sentencing is such an individualized matter, I cannot in good faith assign the general importance of one factor over the other.

- 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: Sentencing is such an individualized matter that the resultant deterrent factor may be the product of both things identified by this question. Deterrence, whether specific or general, may also be the product of a variety of other factors as well.

- 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 I am confirmed as member of the Sentencing Commission, success of the Commission would be demonstrated by the implementation of Guidelines and policies which have erased unwarranted sentencing disparities, increased sentencing consistency, and provided Guidelines amendments which have resulted in more proportionate penalties. A successful Commission will also (1) embrace its statutory duty to formulate Guidelines which minimize the likelihood that the Federal prison population will exceed the capacity of Federal prisons; (2) seek to ensure that the Guidelines reflect the general appropriateness of sentences other than imprisonment; (3) seek to clarify the Guidelines which have resulted in circuit splits; and (4) offer to aid judges in implementing Compassionate Release. Finally, the Commission should be the primary source for data, research, and evidence for criminal sentences issues and made available to the stakeholders in our criminal justice system and

the public.

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

Response: Congress established the United States Sentencing Commission under 28 U.S.C. § 991 directing it to establish sentencing policies and practices for the Federal criminal justice system that assures the meeting of the purpose of sentencing as set forth in 18 U.S.C. § 3553(a)(2), among other things and the Commission's duties as directed by Congress are set forth at 28 U.S.C. § 994. The Commission, among other things, shall promulgate guidelines for use of sentencing courts in determining the sentence to be imposed in a criminal case and issue general policy statements regarding the application of the Guidelines or any other aspect of sentencing or sentence implementation that would further the purpose set forth in 18 U.S.C. § 3553(a)(2). Congress has directed the Commission to assure certain categories of criminal defendants receive sentence "at or near the maximum term authorized for categories of defendants." 28 U.S.C. § 994(h).

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: Sentencing is such an individualized matter, and not only does one consider the nature of the crime and offense, a judge must also take into account the history of the offender as well as a myriad of other factors. *See* 18 U.S.C. § 3553(a). Congress makes the decisions as to what penalties are to be applied for criminal offenses. As a judge I am guided by those policies when imposing sentences.

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: *Apprendi v. New Jersey* held that "[o]ther than the fact of a prior conviction any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." 530 U.S. 466, 490 (2000).

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

Response: *Blakely v. Washington* held that a jury, not a judge, must make all factual findings that form the basis of punishment imposed on a defendant. In other words, "every defendant has the right to insist that the prosecutor prove to a jury all the facts legally essential to punishment." 124 S. Ct. 2531, 2543 (2004).

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

Response: *United States v. Booker*, 543 U.S. 220 (2005), held that the Guidelines are not mandatory, but advisory.

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

Response: To arrive at an appropriate sentence, I consider all the factors that Congress has directed judges to consider under 18 U.S.C. § 3553(a).

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: Through 18 U.S.C. § 3582(c)(2), Congress has given the Sentencing Commission the authority to apply Guidelines amendments retroactively. The limitations imposed upon the Commission and courts are set forth in U.S.S.G. §§ 1B1.10(b)(2) and 1B1.10(d).

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: Many criminal defendants who appear before judges awaiting sentencing bring with them a constellation of things that impact whether they recidivate. If confirmed to serve on the Commission, I would work with my fellow Commissioners to undertake the task given to it by Congress to collect, analyze, and conduct research on this issue.

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 received these questions on the evening of June 15, 2022, and began drafting responses. My law clerks assisted with research and formatting. The U.S. Department of Justice Office of Legal Policy offered feedback before finalizing my responses. My answers are my own.

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
Questions for the Record

Carlton W. Reeves
Nominee, Commissioner and Chair of the United States Sentencing Commission

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, I plan to engage with my fellow Commissioners to learn if there are priorities we might share. As it stands now, however, my top priorities are to restore a quorum to the Commission, work with my fellow Commissioners in establishing sentencing policies and practices for the federal courts, and collect and analyze data and research to advise and inform Congress so that it may develop and adopt policies affecting our criminal justice system. The Commission will also serve as an information source for the executive branch, the courts, and all stakeholders in our criminal justice system including the U.S. Probation Office, criminal justice practitioners, the academic community, and the public at large.

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

Response: The essential function of the Sentencing Commission is to promulgate the Sentencing Guidelines that provide certainty and fairness while eliminating unwarranted sentencing disparities as set forth in 28 U.S.C. § 991 and comply with its Congressional mandated duties under 28 U.S.C. § 994.

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

Response: The role of the Sentencing Commission is limited and defined by statute. *See* 28 U.S.C. § 991(b). The role of an individual Commissioner is further limited by being one voice among seven, so seeking consensus among the Commissioners wherever possible is critical. It is for Congress to enact statutes that establish criminal sentences among other things.

5. Is the criminal justice system systemically racist?

Response: Based on my experience as a member of the criminal justice system for the last decade, I am confident that the system is not populated by persons seeking to engage in unconstitutional and immoral racial discrimination. I credit the good faith of the men and women engaged in the criminal justice system, from prosecutors to probation

officers. At the same time, it is impossible to overlook the Sentencing Commission's own research showing, in relevant part, that "Black male offenders continue[] to receive longer sentences than similarly situated White male offenders."¹ That means there are disparate racial effects in our criminal justice system that merit sustained attention. Congress established the United States Sentencing Commission for the express purpose of establishing sentencing policies and practices which provided certainty and fairness in sentencing which avoided unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct. *See* 28 U.S.C. § 991(b).

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

Response: One of the primary functions of a sentencing judge is to determine whether incapacitation of the individual defendant before him or her satisfies the § 3553(a) factors. Incapacitation is contemplated in the statute at § 3553(a)(2)(C).

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

Response: It is important. I generally believe that members of the public pay attention to the criminal justice system and are deterred from committing crime when they know there are consequences for criminal behavior. Congress has directed that judges consider this factor among others delineated under 18 U.S.C. § 3553(a).

8. Do you believe in specific deterrence?

Response: Yes.

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

Response: A judge must consider all the factors that Congress instructed the courts to consider under 18 U.S.C. § 3553(a).

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

Response: Whether a punishment is cruel and unusual is a determination reserved for a court adjudicating a specific situation. The role of the Sentencing Commission is to evaluate and publish data that will be used by individual sentencing judges and Congress in their respective spheres of authority.

11. What sentences do you understand the U.S. Supreme Court's current Eighth Amendment jurisprudence as prohibiting?

¹ U.S. SEN'G COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER REPORT 2* (2017).

Response: The Constitution has long prohibited punishments that “involve torture or a lingering death.” *In re Kemmler*, 136 U.S. 436, 447 (1890). But “an exhaustive definition” of the cruel and unusual punishment clause is difficult to come by. *Weems v. United States*, 217 U.S. 349, 369 (1910). At present, the Supreme Court prohibits sentences that are not proportional to the offense and the offender, “according to the evolving standards of decency that mark the progress of a maturing society.” *Miller v. Alabama*, 567 U.S. 460, 469 (2012) (cleaned up). In *Miller*, for example, the Court banned mandatory life-without-parole sentences for offenders who were under 18 years old at the time the crime was committed. In other cases, the Court has held that sentences “that impos[e] the death penalty for nonhomicide crimes against individuals, or impos[e] it on [intellectually disabled] defendants, violate[] the Eighth Amendment.” *Id.* at 470 (citations omitted).

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: In *Trop v. Dulles*, 356 U.S. 86, 101 (1958), the Supreme Court explained that the Eighth Amendment “draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society.” As a sitting judge, I faithfully apply Supreme Court precedent.

13. Do you believe that capital punishment is constitutional?

Response: As a sitting federal judge, I am bound by United States Supreme Court precedent, which has held that capital punishment is appropriate in certain circumstances.

14. In light of the leak of the draft of the U.S. Supreme Court opinion in *Dobbs v. Jackson Women’s Health Organization*, will you commit to maintaining the confidentiality of non-public Commission documents and instruct all staff and individuals with access to such documents to do the same?

Response: Yes.

15. In a 2007 letter in your capacity as President of the Magnolia Bar Association, you opposed the nomination of Judge Leslie Southwick to the U.S. Court of Appeals Fifth Circuit on the basis of Judge Southwick’s race. You doubled down on that view in comments to the *Clarion Ledger* following Mr. Southwick’s confirmation. Do you continue to endorse race- based tests for judicial and other public appointments?

Response: In my 2007 letter, I opposed “a stark pattern of racial discrimination and racial exclusion in appointments by President Bush to the Fifth Circuit and to the federal judiciary from Mississippi,” because I believe that the composition of the nation’s courts should broadly correspond to the composition of its people. The legitimacy of the courts requires as much. In Judge Southwick’s case, there was a significant mismatch between

the Mississippi members of the Fifth Circuit and the population of Mississippi. But as I have stated before, I have great respect for Judge Southwick.

16. **In an October 2016 interview, you said, “There are sometimes cases that demand public attention . . . That gives a judge an opportunity to use his or her voice.” As Chair of the Sentencing Commission, do you intend to use that position to “use [your] voice” to publicly advocate for reduced sentences for particular offenses or particular categories of convicts?**

Response: If confirmed, I would use my voice as Chair of the Sentencing Commission to advocate the views and priorities of the Commission as a whole.

17. **In *Jackson Women’s Health Org v. Currier*, 349 F. Supp. 3d 536, 543 (S.D. Miss. 2018), you attacked the Mississippi law banning abortions after fifteen weeks of pregnancy except in cases of medical emergency or severe fetal abnormality as a “disingenuous calculation.” And yet that law was supported by a plurality of Americans according to recent polling. Would you characterize your opinion as one where you “used [your] voice”?**

Response: In the opinion, I followed the law, applying Supreme Court precedent as dictated by *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

18. **In a 2019 speech at the University of Virginia Law School, you stated that you were the victim of hate mail related to your work as a judge. Since the leak of the *Dobbs* draft opinion, multiple U.S. Supreme Court Justices have been the victims of harassment and intimidation, experiencing pickets outside their homes, the failed assassination plot against Justice Kavanaugh, and picketing outside the school attended by Justice Barrett’s children. Do you unequivocally condemn this activity by leftwing and pro-abortion groups, including *Ruth Sent Us*?**

Response: I condemn unlawful conduct, including the harassment, intimidation, and targeting of children of judges, and otherwise violating criminal law, no matter the ideology of the group or person.

19. **In a 2019 speech at the University of Virginia Law School, you stated that the Trump administration’s attack on the courts were designed to “distort and twist that search [for truth] towards falsehood.” Can you please identify any decisions written by judges nominated by President Trump that you believe are “twist[ed] . . . toward falsehood?”**

Response: As a sitting judge, it is my duty to be concerned with the cases over which I preside and faithfully apply the law consistent with Supreme Court and Fifth Circuit precedent.

- a. **In the speech quoted above, you insinuated that judges nominated by President**

Trump would “distort and twist that search [for truth] towards falsehood” because most of them were white males. Do you believe that your colleagues’ conceptions of “truth” are determined by their race and gender?

Response: No.

- 20. In a 2019 speech at the University of Virginia Law School, you stated your belief that the federal judiciary must be “democratize[d].” Please elaborate on what you meant by this statement.**

Response: I meant that the judiciary should reflect the richness of American life, defined broadly, be it on the basis of immutable characteristics, the professions from which judges are drawn, and many other factors.

- 21. Do you believe a “democratize[d]” judiciary is consistent with a politically independent judiciary?**

Response: Yes.

- 22. Do you believe that a “democratize[d]” judiciary is consistent with the values of Article III, which stipulate life tenure, rather than election or fixed-terms, for judges out of fear that the judiciary would be politicized?**

Response: Yes.

- 23. In a 2019 speech at the University of Virginia Law School, you stated your view that “[d]efending the judiciary requires judges to demand, not diminish, the resources they need to find truth. We must expand the reach and power of our courts.” What do you believe are the appropriate limits of judicial power?**

Response: The appropriate limits of judicial power are those outlined by the Constitution itself (*i.e.*, to cases and controversies, among other limitations) and by federal statute (*i.e.*, AEDPA, among many others).

- a. What “resources” do you think judges should “demand”?**

Response: Judges should request the funding necessary to hear the cases brought before them, in both the civil and criminal realms. Many state and federal courts are under-resourced, as demonstrated by heavy caseloads in many jurisdictions.

- b. What “resources” will you personally “demand” as Chair of the Sentencing Commission?**

Response: I am not aware that the Sentencing Commission has any resource constraints that inhibit it from performing its mission.

c. Does “expanding the reach and power of our courts,” mean overriding statutory text designed to limit judicial discretion?

Response: No.

d. Do you believe in “expand[ing] the reach and power” of the Sentencing Commission as well?

Response: No.

24. Given your history of inflammatory public statements on the most sensitive of public issues, including race relations and abortion, prior to and since taking the bench, do you believe you have the appropriate temperament to lead the Sentencing Commission?

Response: Respectfully, I disagree with your premise. However, I do believe I have the appropriate temperament to lead the Sentencing Commission.

**Senator Josh Hawley
Questions for the Record**

**Carlton W. Reeves
Nominee, Commissioner and Chair of the United States Sentencing Commission**

- 1. In an address at UVA in 2019, you stated, “When politicians attack the courts as dangerous, political, and guilty of egregious overreach, you can hear the Klan’s lawyers assailing officers of the court across the South.”**

- a. Nancy Pelosi has said the Supreme Court is “dangerous to families, to freedoms in our country.” Do you condemn her description of the Supreme Court as “dangerous”?**

Response: I am not familiar with this statement. I, however, condemn the statements of those who criticize judges based on their immutable characteristics (such as their race, sex, gender, sexual orientation, and national origin) and raise questions concerning the judge’s legitimacy to adjudicate matters that are before her simply because of that judge’s immutable characteristics.

- b. Elizabeth Warren called the Supreme Court an “extremist court” that “has threatened, or outright dismantled, fundamental rights in this country” and “has issued decision after decision that veers away from both basic principles of law and widely held public opinion.” She further said, “rather than trying to restore Americans’ confidence in an independent judiciary, this court leans into extremism and partisanship.” And she has said, “This court’s lawlessness is a powerful threat to our democracy and our country.” Do you condemn these statements?**

Response: See Response to 1a.

- c. Senator Schumer has said, “I want to tell you, Gorsuch; I want to tell you, Kavanaugh: You have released the whirlwind, and you will pay the price. You won’t know what hit you if you go forward with these awful decisions.” Do you condemn this statement**

Response: See Response to 1a.

- 2. If you do not condemn any of the statements above—even though they “attack the courts as dangerous, political, and guilty of egregious overreach,” why not?**

Response: I am not familiar with the statements above.

- 3. 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: If I am fortunate to be confirmed, I will work with my fellow Commissioners and the Commission staff to collect data and research that would be relevant to this issue and evaluate and promulgate recommendations that should be presented to Congress. Congress, in turn, may take that data, research, and recommendations together with all other information it obtains from its various sources, and decide what, if any, changes should be made to the penalties it has mandated for those who distribute, receive, or possess child pornography.

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

Response: See Response to 3a.

4. 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: Enforcement of the criminal laws is a primary function of executive branch officials and myriad factors are involved in determining how their resources are used. I believe that even-handed, neutral enforcement of criminal law free from bias of any kind should be the goal of our criminal justice system.

5. 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: I am not familiar with the Commission’s recommendation on this specific issue. I would want to review the relevant data and discuss with the other Commissioners before providing a recommendation on this issue.

6. 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: Sentencing must be done in an individualized manner consistent with Congress’s mandate as set forth in 18 U.S.C. § 3553(a). Because sentencing is such

an individualized matter, I cannot in good faith assign the general importance of one factor over the other.

- 7. 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 Montez Lee case or the language attributed to the Department of Justice. Sentencing must be done in an individualized manner consistent with 18 U.S.C. § 3553(a). I cannot recall a time when I ever sentenced an individual related to a crime committed at a protest based on a person’s motivation regarding the aims of that protest.

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

**Carlton W. Reeves
Nominee, Commissioner and Chair 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.

**Senator John Kennedy
Questions for the Record**

**Carlton W. Reeves
Nominee, Commissioner and Chair of the United States Sentencing Commission**

- 1. You made comments in a speech in 2014 indicating that males with certain immutable characteristics would have a difficult time securing a clerkship in your judicial chambers. If confirmed, would you seek to apply a similar standard to the hiring process for staff of the U.S. Sentencing Commission?**

Response: As a judge, I have hired law clerks from a wide array of backgrounds including race, sex, gender, sexual orientation, education, religion and socio-economic backgrounds. I would continue that practice, should I be confirmed.

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

Response: Prosecutors are given the discretion to pursue criminal charges against those who violate the law. I have no opinion on whether the exercise of that discretion improves the criminal system or public safety. As a judge I am sensitive to the fact that my role as a judge is to consider the case that comes before me and to render decision based on the facts and evidence that comes to me in the specific case.

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

Response: No.

**Senator Mike Lee
Questions for the Record**

**Carlton W. Reeves
Nominee, Commissioner and Chair of the United States Sentencing Commission**

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

Response: If confirmed, I will work with my colleagues on the Sentencing Commission, whose varied experiences and keen intellects will allow us to make fair, effective, and just sentencing recommendations for Guidelines amendments. I will look to other relevant statutes passed by Congress and embrace the duties of the Commission as directed by Congress in 28 U.S.C. § 994. As a Commission we will consider the data, research, and information that the staff of the Commission has collected to aid us in making the appropriate sentencing recommendations. The staff will not be our sole source of information, as the many stakeholders in our criminal justice system and the public will be invited and expected to provide information to us and offer comments about the work that we are doing.

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

Response: “Mens rea” is a Latin phrase meaning “guilty mind.” It refers to the state of mind required to find a defendant guilty of a particular crime. Congress establishes the mens rea, or scienter requirement, of a statute through drafting and passing criminal laws. During sentencing, judges assess a criminal defendant’s mens rea by ascertaining whether he knew right from wrong at the time he committed the alleged crime; whether he intended to commit the alleged criminal act; and if he committed the alleged criminal act, why he so did. Assessing the state of mind of a defendant allows a judge or jury to determine whether he is guilty of the crime for which he has been charged. It also allows a judge to craft a sentence that realizes the goals of the criminal justice system—namely, deterrence; retribution; fairness and proportionality; restitution; and rehabilitation.

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

Response: Yes.

- 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: Without knowing the particular statute to which this question refers, as a general proposition Congress establishes the *mens rea* that must be met for criminal offenses and upon conviction the court applies the factors Congress has set forth in 18 U.S.C. § 3553(a) when imposing an appropriate sentence.

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 reading a statute or other authority, I begin with the text. As a judge, I focus on the meaning of statutes under the established rules of interpretation and construction. I am also guided by the applicable precedent of the circuit in which I sit, the Fifth Circuit, and the precedent of the United States Supreme Court. That precedent establishes that courts should give substantial weight to the plain meaning of an authoritative text.

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: When interpreting an authoritative text, “plain meaning” refers to the ordinary meaning of the words. Determining the “plain meaning” of a statutory provision in a case can be a context-specific inquiry. *E.g., Atl. Mut. Ins. Co. v. Comm’r*, 523 U.S. 382, 387-88 (1998). In the context of constitutional provisions, the Constitution is a document that is circumscribed by its text and deference must be accorded to its text. The Constitution can only be changed through the amendment process.

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: I am not familiar with this definition of equity. *Black’s Law Dictionary* defines equity as “Justice administered according to fairness as contrasted with the strictly formulated rules of common law.”

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

Response: “Equity,” as defined by *Black’s Law Dictionary*, is “Justice administered according to fairness as contrasted with the strictly formulated rules of common law.” “Equality” is defined as “[t]he condition of possessing substantially the same rights, privileges, and immunities, and being liable to substantially the same duties.”

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: 18 U.S.C. § 3553(a) does not list “equity” as a consideration.

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: 18 U.S.C. § 3553(a) does not distinguish among the factors Congress has mandated judges to consider when imposing sentence.

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: Congress established the United States Sentencing Commission under 28 U.S.C. § 991 directing it to establish sentencing policies and practices for the Federal criminal justice system that assures the meeting of the purpose of sentencing as set forth in 18 U.S.C. § 3553(a)(2), among other things and the Commission’s duties as directed by Congress are set forth at 28 U.S.C. § 994.

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 imposing an appropriate sentence, a judge must weigh the factors enumerated in 18 U.S.C. § 3553(a). Section 3553(a)(1) requires the sentencing judge to consider “the history and characteristics of the defendant.” Congress has mandated 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.” 28 U.S.C. § 994(d).

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

Response: Under binding precedent of the United States Supreme Court, a sentencing judge must consider, but need not follow, the Guidelines promulgated by the Sentencing Commission. *See United States v. Booker*, 543 U.S. 220 (2005).

- 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: Yes, it can be appropriate for a judge to deviate from the Sentencing Guidelines if, after considering the applicable Guidelines range and the factors enumerated in 18 U.S.C. § 3553(a), the particular facts and circumstances of the case warrant a downward or upward variance.

- 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 explained that “district courts are entitled to reject and vary categorically from the crack cocaine Guidelines based on a policy disagreement with those Guidelines.” *Spears v. United States*, 555 U.S. 261, 265-66 (2009) (per curiam); *see also Kimbrough v. United States*, 552 U.S. 85 (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: I am not in a position to speculate as to why judges have imposed sentences beneath the Guideline ranges or what may account for this trend. I would be concerned about and want to look further into any circumstances where the majority of sentencing judges disregard the Sentencing Commission’s guidance.

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

Response: If confirmed, I will work with my colleagues on the Commission to collect, analyze, and distribute information on sentencing in child pornography cases. In so doing, I will encourage judges to closely consult the Guidelines when they apply the 18 U.S.C. § 3553(a) factors to the specific facts and circumstances of a child pornography case.

- 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: During sentencing, a judge can and should consider the quantity of a drug in the possession of an offender. The quantity of a drug in the possession of an offender can bear on 18 U.S.C. § 3553(a)(1), by speaking to “the nature and circumstances of the offense;” § 3553(a)(3), by dictating “the kinds of sentences

available” under the statute; § 3553(a)(4), by determining “the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant” under the sentencing guidelines; § 3553(a)(5), by invoking “any pertinent policy statement” issued by the Sentencing Commission in relation to this kind of offense; and § 3553(a)(6), by placing the offender in a particular class of offenders, such that the sentencing judge can compare him to “defendants with similar records who have been found guilty of similar conduct.” The quantity of a drug is thus highly relevant information for sentencing purposes.

- 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: If confirmed as Chair of the Sentencing Commission, I would look forward to performing additional research on the efficacy of mandatory minimums in furthering the main purposes of criminal law.

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

Response: As a sitting judge, I evaluate the facts and circumstances of each case prior to imposing a sentence. As a sitting federal judge, it would not be appropriate for me to comment on or opine on policy questions. I respect the legislative and executive branches’ authority to impose and implement mandatory minimum sentences.

Senator Jon Ossoff
Questions for the Record

Carlton W. Reeves
Nominee, Commissioner and Chair of the United States Sentencing Commission

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: The Commission has a primary responsibility to eliminate unwarranted sentencing disparities in our criminal justice system. All unwarranted disparities in sentencing should be confronted and ameliorated.

(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: After commissioning specific research to uncover this type of disparity, I expect our Commissioners to amplify the findings of the reports, studies, and research and make sure that members of Congress, the criminal justice system’s stakeholders, and the public at large are aware of the findings and conclusions.

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

Response: Yes.

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.

Senator Thom Tillis
Questions for the Record

Carlton W. Reeves
Nominee, Commissioner and Chair of the United States Sentencing Commission

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

Response: I believe it was important for Congress to address the crack and powder cocaine disparity which it did with the enactment of the Fair Sentencing Act of 2010. Whether Congress decides to further reduce the disparity is something for Congress to consider. To the extent the United States Sentencing Commission can provide information and advice to Congress to aid it in its consideration of the decision, I would strive to aid in that goal if confirmed as a Commissioner.

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

Response: The crack and powder cocaine disparity has generally led to harsher sentences for low level offenders and mere users of crack as opposed cocaine offenses. As recognized by Congress through the Fair Sentencing Act of 2010, this disparity has led to excessive incarceration.

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

Response: I have not studied the EQUAL Act in complete detail. I would want to review the relevant data and discuss with my fellow Commissioners before providing an opinion on this issue.

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

Response: A major challenge the Commission will face when trying to implement the EQUAL Act is determining how to update the Guidelines consistent with the mandate of the statute.

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

Response: Offenses involving the production, distribution, and possession of CSAM are serious crimes. Sentencing is an individualized matter that requires carefully considering the Guidelines, any statutory minimum requirements, and the factors delineated in 18 U.S.C. 3553(a).

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

Response: To arrive at an appropriate sentence, I consider those factors that Congress has directed the judges to consider, which are identified in 18 U.S.C. § 3553(a). I consider the “nature and circumstance of the offense and the history and characteristics of the defendant.”

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: I have not studied the Protect Act in any detail. I would want to review the relevant data and information with the other Commissioners before providing a recommendation on this issue.

8. In a recent order, you called qualified immunity a manufactured doctrine that should be eliminated. How did you come to that conclusion?

Response: The Supreme Court has stated that qualified immunity is the proper jurisprudence to apply in certain circumstances. I have consistently applied the doctrine based on the law and facts of each case. In doing so I have granted qualified immunity to government officials and denied qualified immunity based on the law, facts and arguments of the parties in those cases.

9. Why do you think that qualified immunity jurisprudence provides too much protection for law enforcement officers who must make split second decisions when protecting public safety?

Response: I do not believe that qualified immunity jurisprudence provides too much protection for law enforcement officers who must make split second decisions when protecting public safety. I have consistently applied the doctrine based on the law and facts of each case. In doing so, I have granted government officials qualified immunity and denied qualified immunity to other government officials based on the facts, the law, and arguments presented by the parties in the case at hand.

10. If not qualified immunity jurisprudence, what do you believe should be the proper scope of protections for law enforcement?

Response: The Supreme Court has stated that qualified immunity is the proper jurisprudence to be applied for the scope of protections for law enforcement. I will continue to apply it until the Supreme Court or Congress mandates another policy.