



ACLU Rights for All
Candidate Questionnaire 2019

In the U.S., about 2.2 million people are locked behind bars on any given day and nearly 11 million people are incarcerated in an average year. The U.S. locks up more people, both in absolute numbers and per capita, than any other country. Since the 1970s, sentences have become ever longer, and our prisons and jails have become costly and outdated behemoths that cause more problems than they solve. Mass incarceration has deepened racial injustice, shattered neighborhoods, and separated families, all without evidence that it has improved public safety.

1. Will you commit to:

a) Reducing incarceration by 50% in the federal prison system within your Presidency

- Yes
 No

We've got to do this. Reducing the federal incarceration rate by 50%, and then pushing the states to do the same, is one of the key components of my Douglass Plan for racial justice. Experts agree that many people are locked up unnecessarily, with no benefit to public safety. As a result, the United States has the highest incarceration rate in the world. It is nearly five times the rate of incarceration in the United Kingdom, and over 10 times that of the Netherlands.

b) Putting forward a nationwide strategy to cut the prison and jail population in half, including at the state and local levels (the ACLU encourages you to release such a strategy as soon as possible during the course of your campaign.)

- Yes
 No

Reducing the incarceration rate at both the federal and state level is a key component of the Douglass Plan, which was one of the first policy proposals of my campaign.

The next president has broad authority to grant clemency to people in federal prisons who have suffered disproportionately from past tough-on-crime policies and whose release would pose little risk. 81,000 people are incarcerated in the federal system for drug-related charges. Approximately 164,400 people in state prisons are aged 55 or older, many suffering from serious illness. A bold federal clemency program, matched by federal incentives for similar efforts in the states, could result in the release of up to three hundred thousand people, returning them to their families and communities.

2. Will you pledge a swift use of the president's clemency power to release 25,000 people from the federal prison system during your first term, and to direct federal incentives to the states aimed at releasing 250,000 more?

- Yes

No

Explanation (no more than 500 words):

We have learned a lot from the obstacles the Obama administration faced in addressing mass incarceration through clemency. That is why we are following the recommendation of experts like Rachel Barkow in creating an independent clemency office outside the Department of Justice, and why we are committed to using the clemency power to reduce sentences for individuals who are categorically serving unnecessarily long sentences. The clemency commission will consist of experts from across the criminal justice system who are committed to reducing the number of people unnecessarily incarcerated and who will evaluate all eligible cases and make recommendations based on justice, fairness, and public safety. I intend to follow those recommendations. In addition, we intend to use the clemency commission to expand compassionate release by lowering the eligible age to 55.

This commission will conduct a preliminary assessment of the eligible individuals and determine the criteria for recommending release, based on what is an appropriate sentence for the crime for which they were convicted and what public safety requires. I hesitate to put a number on it without their expert input, and without yet knowing what the federal prison population will look like on January 20, 2021, but I pledge to assemble this commission in my first 100 days and to continue to work with them – as well as stakeholders and experts in the field of criminal justice reform, including the ACLU – to ensure that we are setting aggressive timelines and goals for using this tool to reduce the federal incarceration rate and so that we are on track to reduce the federal incarceration rate by half by the end of my first term.

We will similarly incorporate the use of the clemency power into our incentive packages for states to follow the federal government’s lead on this.

Many aspects of our criminal justice system were designed during the Jim Crow-era to protect white supremacy, and that legacy drives vast racial injustice. One of every three Black boys is incarcerated in his lifetime, as is one in every six Latino boys – compared with one of every 17 white boys. People of color make up 67% of the prison population, but only 37% of the U.S. population. These disparities grew especially pronounced during the War on Drugs. About 465,000 people are incarcerated for a drug-related charge. While whites outnumber blacks five-to-one and both groups use drugs at similar rates, blacks comprise 35% of those arrested for drug possession, 55% of those convicted for drug possession; and 74% of those imprisoned for drug possession. More recently, the opioid crisis has reaffirmed the failure of criminalization. Full decriminalization with appropriate treatment responses could address this stark racial injustice and reduce incarceration.

3. Since drug use is better addressed as a public health issue (through treatment and other programming), will you support the decriminalization at the federal level of all drug possession for personal use?

Yes
 No

Explanation (no more than 500 words):

I support legalizing marijuana on the federal level, and I support abolishing incarceration as punishment for other drug possession offenses. Despite equal rates of use, Black Americans are nearly four times as likely to be arrested for marijuana possession. Research shows that incarceration for drug offenses has no effect on drug misuse, drug arrests, or overdose deaths. In fact, studies show that incarceration actually *increases* the rate of overdose deaths. We cannot incarcerate ourselves out of this public health problem.

I plan to increase the use of drug courts, increase funding for diversion programs, and create solutions that are oriented toward treatment rather than punishment. My administration will take steps to pass legislation so that no one serves time in federal prison for drug possession only, and will work to incentivize the states to do the same.

Every year, hundreds of people, many of them unarmed, and many of them of color, are killed by police, warranting drastic changes to our approach to public safety.

4. Will you issue federal guidance advising police to use deadly force only after exhausting all alternatives and only when necessary to protect the life of another person or the officer's life? If yes, how will you incentivize state and local law enforcement to abide by this guidance (for example, federal funding or technical assistance)?

Yes

No

Explanation (no more than 500 words):

We know that stricter policies regarding use of force correlate with fewer deaths at the hands of police. Too many states and cities use a "reasonableness" standard for use of force and some do not even have laws that govern how it can be used. Other law enforcement agencies lack substantive guidance past the bare minimum constitutional standard. This is not acceptable. Issuing federal guidance on when officers can use deadly force and proclaiming that it must be used only after exhausting all alternatives is powerful; but it does not go far enough. When I am elected President, I will promote legislation that raises the standard under which officers are justified to use lethal force.

This can be accomplished by incentivizing states to do the right thing. Training and technical assistance is a critical component of this equation. First and foremost, I will reinstitute the COPS Office Collaborative Reform Initiative that provides police departments with hands-on, in-depth training and technical assistance and expand its usage to help jurisdictions rethink the "reasonableness" standard. I will also expand training programs that focus on de-escalation, building stronger relationships with the community, and non-lethal crisis intervention. We will increase funding for body-worn cameras and building on the DOJ's Justice Resource Initiative model, we will provide new grant monies for departments that want to implement legislation that changes their use of force practices. Lastly, we will issue a directive that in order to receive

a federal grant, local law enforcement agencies must publish documents, policies and manuals online related to use of force, investigations, surveillance and intelligence.

We will also work to make sure that when a use of force incident occurs, it is investigated with transparency. Within the first 100 days of my administration, I will reinvigorate the Department of Justice’s Civil Rights Division and direct it to investigate law enforcement agencies that have a pattern or practice of violating civil rights and the Constitution. Further, we will establish a comprehensive federal database and encourage local police departments to make use of force and other policing activity data available to the public.

Approximately 11 million people who live in the United States are undocumented. Two-thirds of undocumented adults have been here for at least 10 years. They are our neighbors, our colleagues, our friends, our family members: About 5 million U.S.-citizen children live with at least one parent who is undocumented, and undocumented adults make up about 4.8% of the workforce. As long as we prevent these individuals from becoming citizens, we are institutionalizing a permanent underclass, primarily Latino, Asian, and Black, living and working in the U.S. but often unable or afraid to assert their civil and constitutional rights.

5. Will you commit to champion legislation to provide fair and achievable paths to citizenship for 11 million undocumented immigrants?

- Yes
- No

Explanation (no more than 500 words):

Absolutely. It’s the right thing to do and it has bi-partisan support.

Currently, millions of immigrants live with the constant fear that they or their family members could be detained and deported at any time. The federal government has taken aggressive steps to coerce state and local police into identifying immigrants for deportation and turning them over to Immigration and Customs Enforcement (ICE). An ICE detainer is a request from ICE to a state or local law enforcement agency to jail someone until the person can be taken into federal immigration custody – for up to 48 hours beyond the time that the person would otherwise be released. Detainers are the linchpin in ICE’s reliance on local police as “force multipliers” to carry out its mass deportation agenda; they also incentivize racial profiling by police.

6. Will you commit to ending the use of ICE detainers?

- Yes
- No

Explanation (no more than 500 words):

ICE detainers have been used to hold people without a warrant and without probable cause, in clear violation of the Constitution. It is no surprise that so many communities are opting out of

abiding by these requests, and no surprise that legal challenges to ICE detainers have been successful. Worse, they erode trust with local jurisdictions and communities. My Administration would seek to rebuild that trust. We would ensure that all requests for cooperation between local law enforcement and immigration authorities are focused on real threats to public safety.

If local law enforcement is being deputized to do federal immigration enforcement for them, that makes it a lot harder for local law enforcement to do their job. Their only job ought to be to keep their communities safe.

ICE is responsible for the largest immigration detention system in the world – a sprawling network of ICE-run facilities, private prisons, and local jails operating with little to no meaningful oversight, costing more than \$8 million per day in federal taxpayer dollars. Non-citizens in detention include asylum seekers, long-time U.S. residents, and green card holders; in many cases, they are jailed because of categorical rules that deny them release even if their detention is demonstrably pointless. In 1997, the average daily detention population was about 12,000. Today it's 50,000 – which is 60% higher than it was just two years ago.

7. Will you commit to reduce the size of the immigration detention system by at least 75%, including by: 1) cutting ICE's detention budget; 2) ending the detention of families, asylum seekers, and other vulnerable populations; 3) ending prolonged detention without bond hearings; and 4) ending requirements that immigrants post bonds they cannot afford?

- Yes
- No

Explanation (no more than 500 words):

This is the right thing to do. We need to do this as quickly as we can. This is not just a security question, it's a moral question. People are fleeing violence and terrorism and we are locking them up. People are living in our communities and pose no threat to anyone and we are locking them up, tearing them away from their families and destroying communities along the way. It's expensive, it's inefficient, and it's immoral. There are better and more humane ways to enforce immigration laws than large-scale and prolonged detention. I intend to focus on changing the way we approach immigration detention, such as by narrowing who is detained and why, and reforming bond practices to be meaningful and attainable. And, more fundamentally, we must fix our broken immigration system, including by adjudicating asylum claims and other immigration cases much more quickly.

At the founding of our nation, women, African-Americans, those who were unable to read or write, poor people, and individuals with felony convictions were excluded from the ballot box. Over time, the right to vote has been extended to many of those citizens. Additionally, poll taxes and literacy tests have been banned. But restrictions remain. Over 5 million people are unable to vote because they are incarcerated, completing probation or parole, or are precluded from voting for having a felony conviction in their past.

8. Will you pledge to advocate for the right to vote for all citizens over the age of 18, including people who are currently incarcerated? (There are a number of ways to do this, e.g., by

providing federal incentives for states who push forward reforms in this area, or by pushing Congress to restore the vote to people in federal prisons.)

- Yes
- No

Explanation (no more than 500 words):

My priority is to build on the great work of people like Desmond Meade in Florida and restore the right to vote for all people who are no longer incarcerated, without having to pay any fines or fees, and subject to no conditions. I also want to protect the right to vote for people who are incarcerated pretrial. I believe in what I'm calling a maximum pre- and post-incarceration standard. That means before conviction and immediately after incarceration, you should be entitled to full voting rights, with the state obligated and incentivized to make that happen.

Over 700,000 residents of Washington, D.C. are denied the full rights to citizenship, without voting representation in Congress or local autonomy over the laws, budgets, and policy choices that govern their communities. This has real consequences for the residents of D.C., who voted for Statehood by a margin of 85% in 2016. District citizens bear the burdens of American citizenship without possessing the same rights as residents of other states.

9. Will you commit to supporting D.C. statehood? If so, please describe your plan to achieve D.C. statehood.

- Yes
- No

Explanation (no more than 500 words):

The roughly 700,000 residents of Washington, D.C. – who pay more in federal taxes than the residents of any other state – deserve full representation: one congressperson, two Senators, and three Electoral Votes. We need Congress to redefine the District of Columbia to include only government buildings in the city center and create a new state, “New Columbia,” from the remaining territory. The newly redefined District of Columbia would still be entitled to three electoral votes by the 23rd Amendment, which we propose awarding to the winner of the National Popular Vote. This would eliminate the possibility of an Electoral College tie, which at present would allow Congress to decide the winner of a presidential election regardless of the popular vote.

10. Will you work to stop states from shutting down abortion providers by urging Congress to pass and signing into law the Women’s Health Protection Act? If yes, how will you take a leadership role in advancing this legislation at the national level?

- Yes
- No

Explanation (no more than 500 words):

Yes, states should not be able to deny what is a legally protected right in our country. State legislators claim these restrictions are in the name of women’s health, yet we know many of these policies ignore medical evidence and standards in favor of politically driven ideology, and have nothing to do with what the majority of women in this country want. I will support federal action, including the Women’s Health Protection Act, that prevents states from passing laws that limit or ban access to safe, legal abortion.

11. Will you commit to introducing a clean budget with no abortion coverage restrictions, and guarantee that you will work to keep such restrictions out of final appropriations bills? How will you take a leadership role in advancing this issue in Congress?

- Yes
- No

Explanation (no more than 500 words):

Yes. In my administration, restrictions on abortion coverage will not be considered during the budgeting process. Medicaid, Title X and other federal programs related to sexual and reproductive health will be funded without gag rules, conscience rules or limitations on payment.

I will also work closely with legislators in Congress and the Congressional Pro-Choice Caucus to draft and usher bills on reproductive rights. From day one, I will also focus on the long game. This means supporting pro-choice Democrats in Congressional and Senate races, increasing the proportion of women candidates running for Congress, and appointing judges who believe in a woman’s right to choose.

12. Will you urge Congress to pass and commit to signing the EACH Woman Act, which would lift abortion coverage restrictions including the Hyde amendment and stop political interference in private insurance coverage of abortion? How will you ensure that this is a top legislative priority in Congress?

- Yes
- No

Explanation (no more than 500 words):

Yes. Access to abortion is a constitutionally protected right that should be available to all women, not just those with the right insurance plan or the resources to receive care. The government’s responsibility should be to facilitate the provision of health services, and not to restrict them or interfere with the patient-provider relationship. The Hyde Amendment goes against this responsibility, as it bans Medicaid coverage for abortion, and creates a barrier to service that primarily affects low income women and women of color. We must ensure that women have the resources they need to be agents of their own future, which is why I support the EACH Woman Act and as President, will urge Congress to pass it.

We have witnessed an unprecedented demand for accountability for workplace harassment, particularly sexual harassment and assault, but also harassment based on sex, race, color, religion, national origin, age, and disability. However, Congress has not yet passed legislation to help solve this problem in workplaces across the country, and employers should be doing more. The BE HEARD in the Workplace Act, introduced in April 2019, would strengthen and expand the reach of our nation’s antidiscrimination laws, remove barriers that prevent individuals from accessing justice, and help employers create harassment-free workplaces—while also holding them accountable when they fall short.

13. Will you actively push Congress to pass the BE HEARD Act?

Yes

No

Explanation (no more than 500 words):

Discrimination and harassment on the job not only denies the agency of those subject to it, it also robs them of their right to a safe and stable workplace, limiting their ability to perform their work and to advance in their careers. Survivors of harassment and discrimination have been right to demand accountability and justice from employers - and now it's time for Congress to face the fact that Federal law can do more to ensure that no worker, regardless of pay grade or type of employment, faces harassment or discrimination on the job. That's why I am proud to stand with survivors and workers in supporting the BE HEARD Act, and why, as President, I would strongly push Congress to pass it.

14. As President will you use your executive authority to ensure that transgender and non-binary people who rely on the state for medical care – including those in prison and immigration detention – will have access to comprehensive treatment associated with gender transition, including all necessary surgical care? If yes, how will you do so?

Yes

No

Explanation (no more than 500 words):

I would immediately withdraw the June 2019 proposed Department of Health and Human Services (HHS) regulation weakening the non-discrimination provisions of the Affordable Care Act governing all federally-funded health care and support the immediate enactment of the federal Equality Act prohibiting discrimination based on gender identity. I would direct my HHS Office of Civil Rights and Department of Justice to vigorously enforce all federal laws against discrimination based on gender identity, including ensuring the provision of all medically necessary care for transgender Americans. This includes medical care for transgender individuals incarcerated in federal prisons and under immigration detention, and elimination of the Medicaid inmate exception. Equally important, my administration would work to end mass

incarceration and would take executive action to end federal prison and immigration detention contracts with private, for-profit prison companies.

Recent presidents have used the CIA to conduct lethal strikes far from any battlefield abroad. Given that the CIA's actions are shrouded in secrecy, accountability has suffered. The U.S. armed forces should be used to fight wars, and the CIA should be focused upon intelligence gathering and analysis.

15. Will you prohibit the CIA through Executive Order from ordering or carrying out drone strikes and other uses of force, and instead ensure that such actions reside with the Secretary of Defense and the military, which are more accountable to Congress and the public?

Yes

No

Explanation (no more than 500 words):

In the aftermath of 9/11, we too often resorted to expediency at the expense of our core principles and dearest values. The development and consolidation of the CIA's lethal drone program over three successive administrations provides a case in point, and one that I would address head-on as President. I would take three initial steps to that end.

First, I would immediately bar the CIA from expanding lethal drone operations into any new theaters. Second, I would order a thorough review of all theaters in which the Agency is presently conducting such strikes, with an eye toward winding down those operations responsibly but steadily over the course of one year. Third, upon completing that review, and after any existing CIA drone operations were wound down, I would direct the Department of Defense to assume responsibility for undertaking any operations abroad involving the use of lethal force, except in rare and extraordinary circumstances. I would authorize the CIA to undertake a lethal strike only if, after close consultations with my national security staff, I determined that a vital national interest was immediately at stake and that the operation would comply with domestic and international law.

I believe it is imprudent to be unflinchingly categorical when it comes to dynamic national security challenges. Nevertheless, I make these commitments because, as I indicated in my remarks at Indiana University in June, I agree that we have lost our way by waging forever wars after 9/11. We must bring them to a responsible close. To do so will require a president who sets a high bar for using force, articulates clear guidelines for doing so, and provides the American people and their elected representatives in Congress with the information they need to be informed citizens and overseers. I would be that president.

More broadly, I would ensure that Congress fulfills a responsibility it has too long abdicated: ensuring a robust debate on any and all national security operations involving the use of lethal force. That promise would be part of a farther-reaching commitment to the American people, who deserve to know where we are using force, to what end, on what legal basis, and at what human and financial costs. While we must reserve the right to use force lawfully in our nation's

defense, we must also commit to deploying it as a last resort, and with the highest degree of transparency and accountability.

There have been repeated attempts at the federal and state level to introduce legislation that would restrict the right to boycott, and punish those who participate in political boycotts against Israel, such as the Boycott, Divestment and Sanctions movement. Regardless of where you stand on the issue of BDS, political boycotts are a constitutional right and a fundamental part of free speech and expression under the First Amendment, which includes the right to protest.

16. Do you oppose legislation that impedes or prohibits political boycotts, including with regard to BDS?

- Yes
 No

Explanation (no more than 500 words):

I strongly support Israel and personally oppose BDS as a strategy for pressuring the Israeli government toward a two-state solution. But an American's right to political expression, including in the form of boycotts, is a constitutionally protected right.

One of the primary goals of the disability rights movement is to ensure that every person with a disability can live in the community rather than be segregated into an institution, where their basic liberties would be restricted. Mass institutionalization is a legacy of the early twentieth century eugenics movement, rooted in a prejudiced assumption that people with disabilities represented a threat to society and could not safely live in the broader community. Unfortunately, hundreds of thousands of people with disabilities still languish in institutions and nursing homes, while hundreds of thousands more sit on waiting lists to access community-based supports.

17. Will you commit to significantly expand the total number of persons with a disability who can access home and community-based services, including by making such a commitment a part of whatever health care proposal you put forward? How will you prioritize this issue?

- Yes
 No

Explanation (no more than 500 words):

I support Medicare for anyone who wants it, including for those with pre-existing conditions. Health care is a right and until we treat it as such, we'll be ensuring that a great many people with disabilities never reach their full potential. This has a terrible impact on the overall work force, and on American prosperity more broadly.

I am proud to support the Disability Integration Act (S.910/H.R.2472) and will work with Congress to pass this important legislation within his first 100 days in office. The legislation clarifies and strengthens the ADA's integration mandate and accelerates state compliance with

the Supreme Court decision in *Olmstead v. L.C.* The *Olmstead* decision affirmed a fundamental principle of equality for Americans with disabilities, that they have the right to live in the most integrated setting appropriate to their needs. Nonetheless, people with disabilities in need of long-term services and supports often face long waiting lists, restrictive eligibility criteria, service gaps, cost caps, and inadequate reimbursement rates. The Disability Integration Act requires that states and insurers remove the obstacles that stand in the way of community integration. The legislation enshrines in federal statute the right to live in the community with regard to the provision of long-term services and supports for individuals with disabilities including children and seniors.

18. The Supreme Court ruled in *Carpenter* that police must get a warrant when demanding location information about individuals from a third party, like a phone company. Will you commit to directing the Justice Department to apply the *Carpenter* ruling requiring a warrant whenever domestic law enforcement officials request sensitive information about individuals from third parties, like Facebook and Google?

Yes

No

Explanation (no more than 500 words):

As President, I will expect my administration to appraise the facts of new cases with the *Carpenter* ruling in mind, and when appropriate, to responsibly apply the ruling in similar situations.

In the digital age, it is important to recognize that we do not lose all expectations of privacy just because our private information is accessible by a third party. Today, opening our computers, driving our cars, communicating over email, and even purchasing toothpaste involve sharing information with others. The *Carpenter* ruling not only makes sense but is essential to protecting autonomy and dignity in our justice system.

There are a few steps I would take consistent with the Court's opinion in *Carpenter*. First, my administration will work with law enforcement, other practitioners, scholars, and civil society groups to identify areas where we can responsibly apply *Carpenter* to similar situations, cognizant of law enforcement needs and privacy rights in the digital age. Second, and more broadly, I will work with Congress to define and codify the parameters for accessing a broad range of sensitive information in ways that both protect privacy and also provide law enforcement clear rules that enable it to responsibly access the evidence it needs.

Privacy and effective law enforcement are not mutually exclusive. In a democracy, they are complementary. Adopting clear rules for responsibly applying *Carpenter* beyond the circumstances of the case will help the law keep pace with powerful and intrusive technologies. I believe it will also help build public trust in law enforcement while ensuring that law enforcement has timely access to the tools it needs to keep us safe.