



Maricopa County Attorney Candidate Questionnaire

For 60 years, the American Civil Liberties Union of Arizona has worked in the courts, the legislature, and in the community to protect the civil rights and liberties of all Arizonans, including those incarcerated. The ACLU's Campaign for Smart Justice is a nationwide effort to cut the nation's prison population in half while challenging racism in the criminal legal system. As part of this mission, the ACLU of Arizona is educating voters about the role county attorneys play in mass incarceration. Our campaign will also work to provide voters with information about where candidates for county attorney stand on critical criminal legal reform issues, such as prosecutorial transparency, policies that reduce incarceration, eliminating racial disparities in the criminal justice system, and ending unjust policies such as the death penalty and money bail. All candidates for Maricopa County Attorney will receive this questionnaire, and answers will be posted online. Through this campaign, the ACLU of Arizona hopes to make voters more aware of the power of this elected position and hold candidates accountable to their communities' fundamental need for justice, safety, and respect.

Please write your answers in this document and email your responses to Analise Ortiz at aortiz@acluaz.org on or before March 6, 2020.



Contact Information

Please provide constituents with your campaign contact information.

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Mission and Vision

1. Why do you want to be the next Maricopa County Attorney?

For the last 20 years the Maricopa County Attorney's office has engaged in practices that remind me of the injustices I saw in El Salvador when I worked there in justice reform. Minority communities have borne the brunt of the Office's push for mass incarceration to score political points. The Office has also been a source reprehensible fiscal and personnel mismanagement. Worse yet, Maricopa County Attorneys have unconstitutionally used the office to impose their personal religious values.

As your next County Attorney, I will wake up every day with the goal of making our neighborhoods safer, protecting victims' rights, and ensuring our legal system applies equally.

One of my top priorities is to end the mass-incarceration cycle because it does nothing to curb criminal behavior, does not make our communities safer, and is taxpayer abuse.



2. If elected, what would you immediately change about Arizona's current criminal legal system through the power of your position as county attorney?

In a County Attorney Office rife with mismanagement, there must be a top down review of every department.

Moreover, I would seek to immediately implement the following:

- An immediate review of all 40-50 death cases (at any given time) in Maricopa County.
 - Review and change all charging and plea policies to limit the use of mandatory minimum sentence charging and the misuse of *Hannah* priors.
 - Dramatically increase diversion programs to ease the pressure on our prison system, decrease the recidivism rate, and save the taxpayer.
3. Contact with the criminal legal system – however brief – can have negative and long-lasting psychological and employment consequences, while often failing to address the underlying causes of crime. Will you work to expand diversionary programs? If so, please explain in what circumstances you would offer diversion or deferred prosecution. Explain how you would fund such programs for indigent defendants.

As mentioned, I will expand diversion programs. We will fund this program by reducing the capital cases while other funds will come from the legislature that the data on taxpayer savings will justify. Also, we will implement a mental health court and veterans court to expand and monitor diversion programs.



4. Do you have a specific decarceration goal? Please give a definitive “Yes” or “No” and a clear explanation of the goal and what specific policies you will enact to help you achieve it.

Yes. Arizona has the fifth (or fourth) highest incarceration rates in America and we are only the 14th largest state in population. Maricopa County contributes 62% of that number. The key to reducing incarceration is altering charging and plea policies while expanding pretrial diversion.

Racism in the criminal legal system

5. Do you believe the current criminal legal system targets Black and Brown people more than White people? If so, how do you plan to combat racism within the criminal legal system? Please give a definitive “Yes” or “No” and a clear explanation.

Yes. Communities of color are unjustly and disproportionately targeted in the legal system the County Attorney has so badly managed. As I said, I will completely review all charging policies to confront the massive systemic inequities. This includes setting policy to decline cases with racial bias.

The current Interim County Attorney currently seeks to stop legislation that would require data collection. I commit to keep clear statistics on all aspects of criminal justice including racial and economic composition of the people we charge. The office needs to keep clear statistics, made available to the public, of who we charge and why. We must identify and track the problem as we treat it.

Regarding racial bias and officer behavior, including police shootings, I will create a special unit that includes members of the communities most affected to review these cases and report to me.

Legislation



6. If you are elected, what role do you see yourself playing at the state Legislature as it relates to criminal legal reform?

I will support several initiatives in the legislature for criminal justice reform:

First, present the legislature with the statistics on the death penalty's unfair application and ask for its repeal.

Second, work to end the use of mandatory minimums for sentencing. Judges need to be allowed to be judges.

Third, ask for legislative fixes regarding the unfair use of *Hannah* priors.

Fourth, propose reform to the current bail system that unfairly impacts the poor.

7. Do you support legislative efforts to increase the amount of time people can earn off their prison sentence? Please give a definitive "Yes" or "No" and a clear explanation.

Yes. When people in prison participate in their own treatment to become productive members of society, we must reward it. We should not be spending taxpayer money to incarcerate people when it neither serves the best interests of justice nor protects us from crime.

Prosecutorial Practices

8. Will you limit requests for money bail and pledge to recommend, for all legally permissible cases, presumptive release of defendants without financial conditions? Please give a definitive "Yes" or "No" and a clear explanation.



Yes. The Federal Bail Reform Act of 1984 is a model that works well, protects the public, and assures defendants go to court.

9. Will you commit to not prosecuting either a doctor performing or a patient seeking an abortion should either or both ever become illegal in Arizona? Please give a definitive “Yes” or “No” and a clear explanation.

Yes. Such prosecutions waste County resources that need to be spent on prosecuting actual criminal behavior.

10. Please clearly articulate your stance on the death penalty. Do you believe it is ever appropriate to seek the death penalty? If so, when?

First, I personally oppose the death penalty. Moreover, unlike anyone else in this race, I am the only attorney to have successfully fought against the death penalty in court and have been first-chair qualified by the Arizona Supreme Court to do so.

But I am not running for state legislature, rather Maricopa County Attorney. The death penalty is the law and the Maricopa County Attorney is, unfortunately, bound. Neither Bill Montgomery, Andrew Thomas, nor Interim County Attorney Allister Adell followed the law in their absurd application of the death penalty. Montgomery sought the death penalty 285 times in less than 10 years with only a 12% success rate (even if you call getting a death sentence a “success”); this does not follow the law. It puts Maricopa County and the top and 99.5% of jurisdiction seeking the death penalty. This is a victim abuse and taxpayer abuse. At any time, there are more than 40 death cases in Maricopa County. This is absurd.

My first act as County Attorney will be a complete and total review of all death cases and reallocate all misapplied resources. This study will also entail a complete review of economic and racial disparity in decisions to



seek the death penalty in Maricopa County. Indeed, all of Justice Breyer's wonderful analysis in his dissent in *Glossip v. Gross* will be the subject.

I will go to the Legislature and fight for repeal of the death penalty. As County Attorney with numbers and statistics of actual practice in the office and racial and economic disparities, I would be best positioned to ensure that the death penalty is never used again in Arizona.

This is my promise to the people of Maricopa County as your next County Attorney.

Immigration

11. Will you pledge to adopt a written policy and institute adequate training for your Office that encourages prosecutors to consider the immigration-related consequences of prosecutorial decisions at all stages of a case and to use their discretion to achieve dispositions that do not negatively affect noncitizens? Please give a definitive “Yes” or “No” and a clear explanation.

Yes. In fact, I have written two books on the interplay between criminal law and immigration law: *THE CRIMINAL LAWYER’S GUIDE TO IMMIGRATION LAW: QUESTIONS AND ANSWERS* (ABA press 2007) and *THE CITIZENSHIP FLOW CHART* (ABA press 2012).

Just because a person has broken the law does not mean they should necessarily receive exile. Specifically, I will conduct office trainings regarding the immigration consequences of criminal conviction. These consequences should be accounted for in plea and charging policies.

Transparency and Accountability

12. Will you pledge to gather and post online quarterly statistical information disaggregated by race and gender on felony and misdemeanor charging decisions, convictions, declinations, and diversion program placements? Please give a definitive “Yes” or “No” and a clear explanation.



Yes. We cannot treat racial injustice without knowing the problem. We also must discern which programs make people safer. Without correct information it's impossible to accurately track our progress or identify what needs attention.

13. Will you pledge to publish on the Office website all policies, protocols, and MOUs regarding prosecution guidelines, police-involved incidents, bail recommendations, fines and fees, diversion programs, plea bargains, civil asset forfeiture proceedings, immigration considerations, and indigency determinations? Please give a definitive "Yes" or "No" and a clear explanation.

Yes. The County Attorney is the attorney for the people of Maricopa County. The people have a right to know the policies conducted in their name and how their money is spent.

14. Will you pledge to develop and implement a plan to personally, regularly and meaningfully engage and communicate with the community in the county you represent, including communities of color, the immigrant community, community-based organizations, and criminal justice reform advocates, and involve them in the project of determining the priorities of your office within the first 100 days of your term? Please give a definitive "Yes" or "No" and a clear explanation.

Yes. We can achieve a lot in the first 100 days and set the tone for what will follow. Maricopa County desperately needs community involvement in policy definition and implementation. I will reach out to all the groups listed in the question to get smart policies in place. I will also regularly communicate with these communities and have meetings regarding any event that arises.

15. Will you pledge to create an independent Conviction Integrity Unit? Please give a definitive "Yes" or "No" and a clear explanation of how you would establish such a unit.



Yes, an unjust justice system is a contradiction. I will establish an independent unit with members of the public to review all cases and claims of prosecutorial misconduct, bias, or mistake.

16. Will you pledge to assign special prosecutors to investigate and prosecute police killings of civilians, use-of-force cases, sexual assault by law enforcement officers and other cases of police misconduct? Please give a definitive “Yes” or “No” and a clear explanation.

Yes. As I stated above, this should be an independent part of the office not beholden to any police agenda. Any misconduct of law enforcement should have special review including involvement from members of the community and well-regarded former police officers.

Discovery

17. Will you commit to implementing a policy of open file discovery through which defendants or their attorneys have access to the prosecutor’s entire file? Please give a definitive “Yes” or” No” and a clear explanation.

Yes. The Arizona rules of criminal procedure already contemplate this. Rule 17 must be fully implemented. The system is more just when all parties know all the information. This also includes information related to prior conduct of police officers and detectives.

18. Regardless of your answer above, will you implement and require *Brady* training for your prosecutors which specifically addresses evidence considered exculpatory, or that otherwise qualifies as *Brady* materials? Please give a clear “Yes” or “No” and any explanation.

Yes. There also should be written policies and a manual defining an expansive view of *Brady* material.

19. Will you commit to implementing a policy that mandates the disclosure of any and all evidence in your Office’s possession that could potentially be used for



impeachment purposes by a defendant? Please give a clear “Yes” or “No” and any explanation.

Yes. As County Attorney I will order full disclosure of all material as the Arizona Rules of Criminal Procedure already dictate.

