



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?

I want to serve as your next Maricopa County Attorney because I have been personally impacted by our broken criminal justice system. I have since dedicated my entire career to improving it, and I'm uniquely positioned to deliver a win that will change millions of lives for the better. I'm running because we lost a powerful motivator when my elected predecessor vacated that office, and the interim appointee who replaced him is a dangerous political actor we must not underestimate. She has an aptitude for promoting justice reform but won't implement any of the changes we desperately need, and those empty promises have great capacity to make would-be allies feel safe, thereby jeopardizing our ability to seize this critically important election. The 2020 cycle is the best chance we've *ever* had to bring *real* justice reform to one of the most incarcerated communities in history, but to do so we need to engage our Black, Latinx, and Native communities.

If corruption is the use of official power for personal gain, then the history of the "tough on crime" era is a history of corruption, of pointing the finger at the marginalized and powerless to advance personal and political agendas. Yesterday's corruption is manifest in the cash bail and private prison industries that lobby to create new crimes and harsher sentences so they can turn a profit on human suffering. It is the injustice of weaponizing our system to advance partisan politics without regard for the impact on families, our community, or crime and recidivism. It is the story of careers built on selective enforcement and racial inequity.

Anyone can *say* that they will end cash bail or address police violence, but the hundreds of thousands of disenfranchised voters living in our 'million-dollar blocks' are wary of politicians *saying* they have our interests at heart. *That's why we need a candidate that the community **knows** is in this for them, not their career.* As an educator, an ethics scholar, and exceptionally qualified attorney with the most *relevant* professional experience of any candidate in this race; as a Latino immigrant in post-SB 1070 Arizona; as a community leader who has been personally impacted by the failed policies of "us vs. them," tough on crime prosecution, *I can and will mobilize the marginalized and deliver a victory for transformative justice in Maricopa County.*



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

We are spending nearly \$1.2 billion per year on our Department of Corrections budget, and 35% of the people we are caging are non-violent offenders charged with drug possession or minor poverty or mental health related offenses. The system incapacitates people so they can't rejoin society or contribute to the economy, and it is disproportionately bent against Black, Latinx, and Native communities. My primary goal is to dismantle this costly, inequitable "Big Government" machine so we can begin diverting those funds toward things that *improve* public safety: education, economic opportunity, substance use treatment, and mental health response systems. To that end, my immediate priorities are:

- **Stop Criminalizing Addiction:** This is about much more than marijuana. You can't punish people into treatment; the medical community and thought leaders on both sides of the aisle concur that our reliance on our criminal justice system to solve our public health crises is *contributing* to the growing death rate of the opioid epidemic. Accordingly, we will decline all simple possession cases and we will *save lives* by working with the board of supervisors and the state legislature to create substance use treatment and overdose prevention sites accessible to all.
- **Stop Criminalizing Poverty:** We will decline to prosecute all minor property offenses symptomatic of poverty. Shoplifting is a serious problem, to be sure, but the answer is not to felonize and further incapacitate the already destitute, and to pay \$25–30,000 in tax dollars per person per year for the privilege of doing so.
- **Stop Criminalizing Children:** There is broad scientific consensus now that young peoples' minds are not fully developed until their mid-20s. Young people lack the capacity to fully appreciate the consequences of their actions, and they have so much potential for rehabilitation. Where the law provides me with discretion, I will treat children like children and keep them out of adult court.
- **Stop Criminalizing Victims:** By criminalizing and stigmatizing sex workers we *increase* the risk of human trafficking and child prostitution, and we *facilitate* an environment where sexual violence is never reported, much less investigated and addressed. We will create a safe place for those who have resorted to sex work to make ends meet know they will be treated with dignity and fairness when they are the victims of serious crime.



- **Stop Requesting Money Bail:** We will advocate for release on unsecured bail, and I will appoint an attorney to serve as a bail supervisor to ensure that those on release are not being unnecessarily detained, work with pretrial services to create a more therapeutic approach to assist with continue appearances, and to ensure that line attorneys are observing the constitutional process when protective detention is the only option.
- **Disclose the Cost of Incarceration:** I will require my line attorneys to calculate and disclose the cost of incarceration whenever charging an offense with a mandatory prison sentence and whenever we ask the court to impose a specific prison sentence.
- **Consider Collateral Consequences:** We will consider all collateral consequences against the accused when determining what the appropriate charges and settlement posture should be.
- **Build an Empowered Community Oversight Board:** Our most marginalized and impacted communities deserve a say in how we police and prosecute. I will create an empowered Community Oversight Board with stakeholders from every impacted group, including professional stakeholders, like the indigent defense and mental health treatment communities.
- **Build an Empowered Conviction Integrity Unit:** In order to redress the injustices we perpetuated before my administration *and* to root out systemic problems that still exist, we will build a completely independent unit to investigate and advocate for relief in every case raising a credible allegation of wrongful conviction. This unit will be a direct report to me, and our strategic plan and allocation of resources will be determined with assistance from my Community Oversight Board.
- **Merge and Publish our No Call and *Brady* Lists:** MCAO keeps lists of officers whom it will not call as witnesses (the “No Call” list) and officers with disciplinary records that the U.S. Constitution requires it disclose to opposing counsel. MCAO currently moves for protective orders to keep this information secret, and the legislature is attempting to block public access to this information as we speak. Transparency on this front is a critical step toward changing the “us vs. them” culture that festers in our police agencies in addition to our prosecutors’ offices, and by “publish” I mean on the Internet, with regular updates.



- **Implement Structural Safeguards against Biases:** You can't simply train away racism, so I will build a walled off "intake division" to accept referrals, conduct background investigations, and redact suspects' names and other indicators of race and ethnicity in order to remove the possibility of implicit bias driving any charging or initial settlement posture determinations.
- **Enhance Discretion:** I will end "plead to the lead," empower my line attorneys to focus on the *harm* that occurred and what the just result should be rather than simply charging every *crime* they can identify and every prior they can allege. Just because we can doesn't mean we should.
- **Reorganize our Investigators:** We have an entire division of AZ Post certified officers working for MCAO as investigators. This division needs to be overhauled to maximize its utility. Specifically, we will use this division as an independent investigative agency to investigate credible allegations of law enforcement violence, and we will use this agency to petition for witness cooperation and crime victim visas, so our immigrant community knows that if someone hurts them or they see someone hurt another, they do not need to be afraid of court.
- **End Probation "Tails":** We have a "parole" equivalent. Requiring the Adult Probation Department, which is *not* equipped to handle the specialized needs of those reintegrating from a prison sentence, to monitor people *on top of* the Department of Corrections community supervision is a burdensome waste that creates unnecessary additional barriers to success.

Mass Incarceration

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.

Yes, I will expand diversion programs. The County Attorney has broad discretion in setting the parameters for suspension of prosecution, and therefore the terms of diversion programs. We will create broad new diversion programs that we can tailor to the underlying causes of each individual offender. For example, I am already in discussions with leaders from our local community colleges and labor



unions about creating education and jobs training programs partnerships to serve as diversion programs, and I will encourage my line attorneys to *use them* so men and women who make mistakes can have a second chance.

My decarceration platform will save the State of Arizona nearly \$400 million per year on our department of corrections budget, and my allocation of resources at the county level will save us tens of millions more on jail costs, decluttered court dockets, and cost of defense. I am looking forward to working with the board of supervisors and the legislature to divert some of these funds toward making diversion accessible to all. I will also reduce MCAO's budget according to these policies and absorb the costs of application and supervision myself.

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, and I'm not just talking about a 26% reduction to bring us “in line with the national average.” Being an average part of the problem still makes us the most incarcerated country in world history, and the people of Maricopa County and Arizona deserve better. *We should strive to be an exceptional part of the solution*, and that's why ***my goal is to reduce Maricopa County's contribution to the mass incarceration crisis by half.*** We will do even better in my second term.

Given Maricopa's size, my plan will reduce Arizona's prison population by more than thirty-one percent over the next four years, saving us nearly \$400 million *per year* on our statewide prison budget. Many of my specific policies are outlined in response to Question 2, above, but to summarize, we will achieve a 35% reduction when we stop criminalizing addiction and poverty.

We will achieve the remaining 15% reduction in several ways. First, we will reduce prison exposure by exercising discretion *not* to allege every historical prior. Second, I will encourage my line attorneys to seek more reasonable prison terms when that is the only option. We will accomplish this by using new reward metrics to identify and praise successful exercises of discretion and by humanizing the accused as we depart from the “us vs. them,” tough on crime mindset. I will implement a mandatory annual prison visitation policy, I will invite defense counsel



to our conferences and training programs and offer to send my prosecutors to theirs, and I will create a formal attorney exchange program with our indigent defense agencies for those brave prosecutors willing to go learn what it is like to represent the indigent accused and then bring those experiences and perspectives back to our office. Finally, we will implement specific policy changes to facilitate this cultural shift, like calculating, contemplating, and disclosing the cost of incarceration whenever we do seek a prison sanction.

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. It is beyond dispute that Black, Latinx, and Native defendants are disproportionately impacted by our broken, “us vs. them” justice system. The Black community in particular is disproportionately policed, more frequently overcharged, and receives the longest sentences on average.

I already mentioned my proposal to create a walled off “intake” department to structurally remove race and ethnicity indicators from charging decisions. My open data policy will hopefully invite additional structural policy proposals from the public and academic communities to mitigate the disproportionate impact of our justice system, because I don’t believe you can train away racism.

I also mentioned that I will create a Community Oversight Board that empowers leaders from our marginalized communities to hold my office accountable and to investigate and redress prior injustices.

But in order to bring about the culture shift that we need, it is most important that we empower and promote more black and brown voices in leadership. I commit to implementing “blind application” employment practices and aggressively seeking out diverse professionals to add their voices to my office, not just as line attorneys, but in leadership and administrative positions as well. I demonstrated my commitment to intersectional solidarity on the campaign trail by building a broadly diverse and representative campaign team, and once I’m in



office, my top priority will be to put the people closest to the pain of the tough on crime era closest to the power for rebuilding our system. Everything else—ending mass incarceration and money bail, repairing relationships between police and minority communities, etc.—flows from this crucial first step.

Legislation

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

The county attorney is an executive officer, not a law maker. Most of us were horrified at the way my elected predecessor used his bully pulpit to control the legislature and influence the governor, stymying even Republican efforts to reform our justice system, like with the *Hannah* priors bill last session.

I firmly believe that the pathway to reform also requires a return to our separation of powers. That's why I firmly believe that the County Attorney's role at the legislature should be limited to that of an expert witness, not a lobbyist. As an elected leader, I will speak out against bad policies and on behalf of meaningful reform, and as an agency head committed to implementing reform through executive discretion I will open the doors to *all* of the data, from before and after my policy changes, in order to empower the legislature to codify the reforms I can implement immediately but that will only last as long as I am in office.

What I will *not* do is lobby for new criminal laws or bully my colleagues at the legislature. Neither will I use my influence behind closed doors to pressure executive officers to veto bills I don't like.

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. I specifically support the current senate bill on this subject proposed by Senator Martín Quezada, who was among the first to endorse my campaign for Maricopa County Attorney. I will continue to support these efforts and I look forward to seeing more of them.



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. Money bail creates a two-tiered system where only the wealthy can go free and the poor are coerced into guilty pleas, even if they are innocent. After 72 hours pretrial detention is statistically proven to make us less safe, and cash bail has no measurable impact on a person’s flight risk. I strongly support a departure from our money bail system in its entirety.

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, unequivocally. Women’s rights are human rights. I will stand against any and all efforts to weaponize our criminal justice system for religious or political purposes.

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?

I thought long and hard about how to answer this question, and I talked to a lot of different people about my views. Many suggested that when I finally had to answer this question, I should just give the easy, politically palatable response; I should say something about “the worst of the worst,” that I would “take a hard look at each case,” and then move on. I wrestled with that advice because I am a reformer, not a politician. Then, when I finally sat down to answer this question, I learned that a dear friend and mentor of mine passed away mere moments before. He had dedicated his entire life to educating about and advocating against the systemic injustices in these cases. I will not disrespect his memory and legacy by shrinking away from this opportunity to speak truth. Here is my answer:

The death penalty is an irrevocable sanction, and there are few things more fundamentally un-American than executing an innocent person. Nonetheless, in the



thirty-year existence of the National Registry of Exonerations alone more than 165 men and women whom we wrongly convicted and sentenced to die have been exonerated. As a result, it takes us an average of 16 years, often *decades*, to exhaust the necessary postconviction relief, appeals, and *habeas* proceedings before carrying out a death sentence. Naturally, just a small handful of these cases will completely occupy the attention, *the careers*, of many talented professionals.

In short, I have serious concerns with capital punishment as it exists today.

First, *it is far too costly*. A single trial can cost millions, like the Jody Arias trial which cost the taxpayers \$3.2 million, and the decades of subsequent litigation cost us millions more.

Second, *it robs the surviving victims of finality and closure*. We absolutely *must* go through the complete review process, because we can't undo a death sentence if we learn afterward that we got it wrong, but what does that mean for the victim's loved ones? It means sitting in limbo for years, potentially decades, with no finality, constantly worrying whether the next appeal will force them to relive that awful trial, or much worse.

Third, *the massive resource cost leads to miscarriages of justice for the victims in other homicide cases that do not warrant capital attention*. Capital cases occupy so many of our most experienced attorneys and support professionals that the many, many less horrifying, but still incredibly important, murder cases are often handled by very inexperienced attorneys. I have watched in recent years as the Maricopa County Attorney's Office has repeatedly failed the victims in those cases by allocating them fewer resources in order to keep its capital prosecution cases well-staffed.

Fourth, *as the number of new death sentences in the U.S. decreases, the racial disparity increases*. According to the Death Penalty Information Center, fully one half of all the death verdicts in 2019 were issued against minority defendants, with Black defendants comprising a full 35%.

Fifth, *Arizona has struggled in very recent memory with legally and constitutionally imposing death sentences*. We've botched executions, inflicting



excruciating agony on the recipient *and* horrific trauma on observers, and government officials have attempted to illegally import lethal injection drugs when they've been difficult to timely procure.

There is clearly a *lot* of room for improvement in death penalty litigation. In fact, I've published articles on the subject. See Paul Charlton, Quintin Cushner, & William Knight, *Testing the Death Penalty*, 4 L.J. SOC. JUST. 1 (2013). Capital punishment also lacks any statistically verifiable deterrence value. But perhaps most importantly, *in Arizona, the only other available sentence is natural life without parole*, so any first-degree murder conviction has the same community protection value as the death penalty.

With all of that in mind, my answer is that the death penalty is only appropriate and I would only seek it if I were faced with the most horrific and blatantly premeditated, intentional crime, and I had the following assurances: (1) the resource cost is necessary to achieve justice in light of the availability of a natural life sentence; (2) we could determine within a reasonable time period and with absolute certainty that we got it right; (3) we had absolute certainty that the accused was not suffering from diminished capacity or other relevant mental illnesses; (4) we could impose the sentence without any implicit biases contributing to the charging decision or the verdict, and; (5) there is no doubt that it will be carried out in a legal, humane, and constitutional manner. I do not believe we can guarantee these things today, so my decision will reflect that reality.

My heart breaks for the victims of our worst tragedies. But the job of a county attorney is to do what is in the best interests of the entire community. When measuring the alternatives against all the incredible costs of capital punishment—on the taxpayers, the surviving victims, other cases and victims, and community relationships—seeking the death penalty as it exists today truly highlights the difference between vengeance and justice.

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, and this isn’t about charging people differently based on their immigration status, it is about achieving equitable results. If someone steals \$10,000 from their employer, that’s a serious crime, but even under the current tough on crime approach, the typical resolution would be a stipulated probation sentence to enable the offender to continue working, and hopefully, make the victim whole. When we ignore immigration consequences, this same resolution would result in deportation, leaving the victim without restitution, and quite often, leaving American children without a parent, with all the additional problems that entails.

Considering immigration consequences doesn’t mean being more lenient on immigrants. It means acknowledging the additional harm that our discretionary choices as prosecutors can inflict on the community, and it means being clever lawyers who use the law to achieve the desired result. With a little charging modification, we could achieve the same result in the example above for the citizen and for the immigrant, while making both victims whole and without needlessly decimating a family.

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. In addition to opening the door for the legislature and criminal justice scientists to study the data and creating structural barriers to prevent implicit biases, I plan on implementing a data transparency website similar to the Public Data Dashboard implemented by Philadelphia District Attorney Larry Krasner, available here: <https://data.philadao.com/index.html>

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, unequivocally. The secrecy with which MCAO has kept its charging policies and practices perpetuates inequitable results among similarly situated litigants, undermines our ability to measure successes and failures, and evades public accountability. I’m committed not only to eliminating most existing charging policies, but those that remain, and any new ones that we implement, will be made publicly available on the Internet.

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. I discussed my vision for an empowered Community Oversight Board and its role in guiding office policy and directing our Conviction Integrity Unit in response to Question 2, above.

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. It is fundamentally un-American to let the wrongly convicted remain in custody, no matter who they are. I commit to building a fully staffed Conviction Integrity Unit that is independent from the rest of the office and empowered with authority to investigate internally and externally. According to the Innocence Project, best practices for CIUs require cooperative information sharing with defense counsel and “open file” practices. Accordingly, my CIU will be headed by experienced postconviction relief, appellate, and *habeas* defense attorneys, we will enter into formal confidentiality and information sharing agreements with defense counsel, we will engage in transparent and regular public reporting, and we will learn from wrongful convictions and “near misses” to aggressively investigate



problem areas for additional, unreported constitutional violations resulting in wrongful convictions.

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. I outlined my commitment to reorganizing MCAO’s investigator division for this purpose exactly in response to Question 2, above. In addition, I believe law enforcement prosecutions should be handled by the chiefs of my office—myself included—in order to send a strong message to the public and the law enforcement community about how seriously we take crimes committed by those entrusted to protect and serve. My approach will also serve to insulate my line attorneys from public criticism and preserve their relationships with the law enforcement agencies they work with regularly to protect the community.

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. Not only do I believe in open file disclosure, but I plan on implementing a broader, more comprehensible rule than *Brady*, like the civil standard that calls for disclosure of *anything that might lead to the discovery of relevant evidence*.

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, but see Question 17, above. I also plan on implementing comprehensive, mandatory attorney training in third-party entity and client-agency investigation techniques to empower my prosecutors to effectively conduct affirmative record collection and marshal all available evidence physically in the possession of law enforcement but constructively in ours. I will also seriously minimize, if not eliminate, the practice of building cases on the informants, particularly jailhouse



informants and career, paid informants, because of the potential such tactics have for creating disclosure conflicts.

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, see Questions 17 and 18, above.

