

**Responses of Carlton W. Reeves
Nominee to be United States District Judge for the Southern District of Mississippi
to the Written Questions of Senator Jeff Sessions**

1. According to your questionnaire, you have been a board member of the Mississippi Workers' Center for Human Rights since 2006, and its treasurer since 2008. On December 18, 2001, that organization signed on to a "Statement of Solidarity With Migrants." The entirety of that statement is reproduced below:

**Statement of Solidarity With Migrants
on the United Nations' International Day of Solidarity
with Migrants, December 18, 2001
prepared by the National Network for Immigrant and
Refugee Rights**

Today, to observe the second United Nations International Day of Solidarity with Migrants, we stand together to call upon the U.S. government to uphold the rights of all immigrants and refugees. In the wake of heightened attacks against immigrant communities since September 11, 2001, we call for an immigration policy built on the principles of dignity, justice, and equality that uphold the civil and human rights of all people, regardless of their race, religion, ethnicity, national origin, gender, sexual orientation, disability, immigration or citizenship status.

During the past three months, we have witnessed the devastating effects of fear, racism, and xenophobia on our communities. Immigrants have become the specific targets of law enforcement and public scapegoating in the name of national security. Law enforcement uses immigration procedure as a criminal punishment, targeting immigrant communities in the name of anti-terrorism, denying the most basic of civil and human rights protections to non-citizens. Legislation passed hastily with little to no public dialogue, scrutiny, and participation continues to have disastrous effects for our communities, targeting immigrant workers, students, and families.

The use of military tribunals and secret evidence, the conditions under which over 1200 individuals have been detained and the additional "voluntary" questioning of over 5,000 individuals of Middle Eastern descent violates the most basic due process and equal protection rights. Hate violence and racial profiling against immigrant communities, including people of Middle Eastern and South Asian descent, Latinos

and others who are alleged to be Arab, have resulted in fear, serious injuries, violence and even the death of at least three individuals. Increased militarization along the U.S.-Mexico border has exacerbated harassment, abuse, and racial discrimination in the region. Intensified employer discrimination, combined with an economic downturn for the service economy, has forced our communities into economic hardship. In the midst of humanitarian crises around the world, refugees to the United States and other wealthy nations now face increased barriers to their entry. We also emphasize the U.S. government's accountability for the displacement and the creation of new migrant and refugee communities through its military actions in Afghanistan.

The U.S. must fulfill its commitment to uphold the human rights of all members of our country and globe. Security for all means ending the policies, laws, and practices of racial profiling and illegal detentions targeting immigrants, especially people of or alleged to be of Middle Eastern descent. We urge for the safety and protection of all communities to live free of fear, racism, and xenophobia.

In light of new legislative and executive policies, we call upon the U.S. government to:

- End the secrecy of the identity and location of those held in “anti-terror” sweeps, and stop the racial profiling and the illegal detentions of Arabs, Muslims, and other people of Middle Eastern and South Asian descent.**
- Respect the due process and equal protection rights of all non-citizens and immigrants in detention, and refrain from holding individuals in indefinite detention.**
- Uphold the civil liberties and human rights of all individuals, regardless of their immigration status, nationality, ethnicity, religion, political beliefs, gender, social class, or color of their skin.**
- Recognize the contribution of immigrant workers, students, and families, and end discriminatory policies passed on the basis of legal status in the wake of September 11.**
- Guarantee and provide relief to the loved ones of the victims and those unemployed in the World Trade Center attacks, regardless of immigration status, without intimidation or threat of deportation.**

- **End harassment of immigrant communities fueled by the collaboration between local law enforcement and INS, FBI, and CIA in border and non-border areas.**
- **Enact strong federal and state hate crime laws as a public policy statement that does not tolerate discrimination based on race, religion, ethnicity, national origin, gender, sexual orientation, disability, migration or citizenship status.**
- **Enact a broad legalization program to help ensure civil liberties and other fundamental protections for all immigrants.**
- **Reaffirm the commitment to and comply with the 1951 United Nations Convention on the Protection of Refugees.**
- **Ratify the International Convention for the Protection of the Rights of All Migrants and Members of Their Families and adopt the Plan of Action from the 2001 UN World Conference Against Racism, Xenophobia, and Related Intolerance. The Convention, adopted on December 18, 1990, establishes a comprehensive framework to uphold the rights of migrants. The Plan of Action includes over 45 paragraphs specifically addressing the rights of migrants, refugees, asylum-seekers, and internally displaced persons.**

- a. **Do you agree that “law enforcement uses immigration procedure as a criminal punishment” and “to deny the most basic of civil and human rights protections to non-citizens”?**

Response: No.

- b. **Do you agree that the United States government engages or has engaged in “racial profiling and the illegal detention of Arabs, Muslims and other people of Middle Eastern and South Asian descent” during the War on Terror?**

Response: No.

- c. **The statement called for the U.S. Government to “uphold the civil liberties and human rights of all individuals, regardless of their immigration status, nationality, ethnicity, religion, political beliefs, gender, social class, or color of their skin.” What civil liberties and human rights do you believe are not upheld by the U.S. Immigration laws and the agencies that enforce them?**

Response: I believe that current U.S. Immigration laws uphold civil liberties and human rights of individuals and that the federal agencies enforce those basic rights.

2. **In an August 1, 2006 letter you sent to Senators Specter and Leahy regarding the nomination of Michael B. Wallace to the Fifth Circuit Court of Appeals on behalf of the Magnolia Bar Association, of which you were then President-Elect, you said that “Wallace’s views on the Voting Rights Act clearly are at odds with those of the forward-thinking advocates and members of the judiciary who paved the way for enormous progress Mississippi has made since 1965.”**

- a. **Do you still agree with that statement?**

Response: Yes.

- b. **Was it your contention that Mr. Wallace’s views of the Voting Rights Act were, on the whole legally inaccurate, or were you simply arguing that his views of the law would yield what you considered to be sub-optimal results?**

Response: It was the contention of the Magnolia Bar Association that Mr. Wallace’s views on the Voting Rights Act were legally inaccurate and were not supported by the text of the statute.

- c. **Do you believe it is proper for members of the judiciary to be ‘forward thinking,’ or should they merely focus on the meaning of legal texts under the established rules of interpretation and construction?**

Response: The judiciary should focus on the meaning of the legal texts under the established rules of interpretation and construction together with the law and facts before them and be guided by the applicable precedent in their circuit and the precedent of the United States Supreme Court.

3. **In a news article discussing voter-fraud precautions in the Presidential election of 2008, you were quoted as saying “we know there will be unprecedented steps to suppress the vote. I’ve been involved in elections in Mississippi in over 30 years and I do know the issues may change, but the methods and the methods to suppress the vote also change, but were [sic] ready.” David Kenney, *Various Agencies Poised for Possible Election Problems*, WLBT3, Oct. 20, 2008, <http://www.wlbt.com/Global/story.asp?S=9275104>. What evidence was there that there would be “unprecedented steps to suppress the vote” in the 2008 Presidential Election?**

Response: Organizations with whom I had been working on voter protection initiatives had received a variety of complaints leading up to the election including: individuals had not received curbside assistance during the relevant absentee voting period as authorized under the laws; voters were receiving calls questioning their ability to vote because they had voted in the primary election; voters were receiving calls questioning their criminal history and challenging their right to vote based on their criminal history even though the criminal history was not for crimes for which they could be disenfranchised.

4. Your May 30, 2007 letter to Senator Leahy regarding the nomination of Leslie Southwick to the Fifth Circuit, you stressed that Fifth Circuit nominees should have a “sensitivity to the need to enforce fully the Civil Rights laws.” I agree with you that federal judges should understand the need to fully enforce all federal laws.

a. Do you agree that the Voting Rights Act is a civil rights law?

Response: Yes.

b. Do you agree that officials at the Department of Justice should have “sensitivity to the need to enforce fully the Civil Rights laws?”

Response: Yes.

c. Following the Presidential election in November of 2008, video footage surfaced showing members of the New Black Panther Party, at least one of whom was wielding a knight stick, intimidating voters outside a polling place in Philadelphia. On Tuesday, July 6, 2010, J. Christian Adams, the lead attorney who prosecuted the individuals in the video, testified before the U.S. Civil Rights Commission. Mr. Adams testified that Associate Attorney General Thomas Perrelli overruled the unanimous recommendation of six career Department of Justice attorneys that the prosecutions continue. Assistant Attorney General Thomas Perez has testified that the facts and law did not support the case, but Mr. Adams’ testimony revealed that career attorneys “made it very clear [to Mr. Perez] that continuing to say that the facts and the law don’t support this case would not be consistent with the truth.” Adams also testified that Deputy Assistant Attorney General Fernandes instructed Civil Rights Division attorneys to not pursue voter intimidation cases involving black defendants and white victims. Assuming Mr. Adams’ testimony was accurate, do you think these actions show a “sensitivity to the need to enforce fully the Civil Rights laws?”

Response: I am not familiar with the case and would be hesitant to offer an opinion without all the facts and law before me.

5. **On the swearing in of Jim Kitchens after Governor Haley Barbour appointed him to the Mississippi Supreme Court, Judge Kitchens apparently became emotional. You apparently commented on that fact to the press, saying that “I agree. . . . that we have a new judge who has a heart.” Adam Lynch, *First Black Judge Sworn In Under Barbour*, JACKSON FREE PRESS, Oct. 20, 2009.**

- a. **What did you mean by that statement?**

Response: I believe the statement and article about which you are referring concerns the swearing-in of Malcolm Harrison as Hinds County Circuit Court Judge. Supreme Court Justice Jim Kitchens was not appointed by Governor Haley Barbour. Judge Malcolm Harrison was the first African-American appointed to a judicial vacancy in nearly six years. During his swearing-in Judge Harrison, apparently in reflecting on the significance of his achievement and the advocacy of the Magnolia Bar, cried. The quote attributed to me referred to Mr. Harrison showing that raw emotion.

- b. **On July 17, 2007, President Obama made the following comment:**

“You look at the case law, and most of the time the law is pretty clear -- 95% of the time. Justice Ginsburg, Justice Thomas, Justice Scalia – they’re all gonna agree on the outcome. But it's those 5% of the cases that really count. And in those 5% of the cases what you got to look at it is: What is in the justice’s heart? What’s their broader vision of what America should be? You know, Justice Roberts said he saw himself just as an umpire. But the issues that come before the court are not sport. They’re life and death. And we need somebody who’s got . . . the empathy to recognize what it’s like to be a young, teenaged mom; the empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”

Considering your statement concerning Judge Kitchens, do you believe it is important that a judge have “the empathy to recognize what it’s like to be a young, teenaged mom” or “the empathy to understand what it’s like to be poor, or African American, or gay, or old?”

Response: I believe it is important for the judge to make sure that every person who participates in the judicial system is treated with respect and dignity. Judges must understand that their decisions impact persons. A judge in deciding cases, however, should always be bound by the facts and

the controlling law and render decisions consistent with the facts and the law.

6. In a news release from the NAACP Legal Defense and Education Fund on May 27, 2008, you discussed the results of a study on juvenile offenders being given sentences of life imprisonment without the possibility of parole in Mississippi. You commented that “[p]rosecutors, law enforcement officials, lawyers, lawmakers and concerned citizens alike must pause and ask themselves how and why blacks can represent 80% of the kids sentenced to life without parole in a state whose total population is less than 40% African-American.”

a. Do you contend that juries and judges in Mississippi give harsher sentences to African-American offenders than they do to offenders of other races?

Response: In Mississippi, judges determine what sentence should be imposed. In certain circumstances, they have no discretion as they must impose mandatory sentences enacted by the state legislature. In all cases, however, there are discretionary decisions made by law enforcement authorities in the investigation and prosecution of crimes, and judges sometimes make discretionary calls throughout the criminal process. The legislature even engages in discretionary calls when enacting the legislation. The above quote refers to what I believed is Mississippi’s obligation to figure out why African-American children are sentenced to life without the possibility of parole at a rate much higher than white children who may be eligible for such a sentence.

b. Is it your contention that the statistics cited above show there is racial discrimination in criminal sentencing?

Response: No. I was wondering whether reasons should be sought for this statistical disparity.

7. Please describe with particularity the process by which these questions were answered.

Response: After the Department of Justice forwarded the questions to me, I reviewed them, conducted research, and prepared draft responses. I had discussions with the Department of Justice. I then conducted additional research before finalizing my responses.

8. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Carlton W. Reeves
Nominee to be United States District Judge for the Southern District of Mississippi
to the Written Questions of Senator Tom Coburn, M.D.

- 1. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No. 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.

- 2. Justice William Brennan once said: “Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.” Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

Response: No.

- 3. Do you believe judicial doctrine rightly incorporates the “evolving understandings of the Constitution forged through social movements, legislation, and historical practice”?**

Response: No. I believe that judicial doctrine is governed *stare decisis*.

- 4. Do you believe empathy is “an essential ingredient for arriving at just decisions and outcomes” and should play a role in a judge’s consideration of a case?**

Response: No. Empathy should play no role in a judge’s consideration of a case.

- 5. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: In *Gonzalez v. Raich*, 545 U.S. 1, 23 (2005), the Supreme Court held that *Lopez* and *Morrison* preserved the “larger context of modern-era Commerce Clause jurisprudence.”

- 6. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: Justice Kennedy’s concurring opinion provides the controlling precedent in this case. My personal views do not matter as all district judges are bound by the decisions of the United States Supreme Court, and if confirmed, I will follow Supreme Court precedent.

- a. Do you agree that the Constitution’s prohibition on cruel and unusual punishment “embodies a principle whose application is appropriately informed by our society’s understanding of cruelty and by what punishments have become unusual?”**

Response: My understanding of Supreme Court precedent is that *Roper v. Simmons*, 543 U.S. 551, 560 (2005) states that “[t]he prohibition against ‘cruel and unusual punishments,’ like other expansive language in the Constitution must be interpreted according to its text, by considering history, tradition and precedent, and with due regard for the its purpose and function in the constitutional design.”

- b. How would you determine what the evolving standards of decency are?**

Response: As a district judge, if confirmed, I would be bound by the law and the facts presented before me as well as the precedent of the United States Supreme Court and the Fifth Circuit Court of Appeals.

- c. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: No. The United States Supreme Court has declared that capital punishment is a constitutionally sanctioned punishment in many circumstances.

- d. What factors do you believe would be relevant to the judge’s analysis?**

Response: The only factors that must be relevant to a district judge’s analysis are those dictated by the United States Supreme Court and the Fifth Circuit Court of Appeals.

7. **In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: No.

- a. **Is it appropriate for judges to look for foreign countries for “wise solutions” and “good ideas” to legal and constitutional problems?**

Response: As a district judge, it is only appropriate if required under the precedent of the United States Supreme Court and the Fifth Circuit Court of Appeals.

- b. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: The only instance in which I would consider foreign law when interpreting the Constitution is if United States Supreme Court precedent or precedent of the Fifth Circuit Court of Appeals dictates that I must consider foreign law when interpreting the Constitution.

- c. **Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: No, unless United States Supreme Court precedent or precedent of the Fifth Circuit Court of Appeals dictates otherwise.

- d. **Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?**

Response: No, unless United States Supreme Court precedent or precedent of the Fifth Circuit Court of Appeals dictates otherwise.

8. **As you noted in your testimony, the Magnolia Bar Association has a storied history and the noble goal of striving for justice for all Mississippians. In 2007, in your capacity as President of the Magnolia Bar Association, you wrote a letter of opposition to President Bush’s nomination of Leslie Southwick to the Court of Appeals for the Fifth Circuit. In that letter, you stated that your reason for opposing him was that his nomination continued “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 ... [and] Judge Southwick’s record as a state court of appeals judge in Mississippi suggests that he is not the right person for the Fifth Circuit Court of Appeals at this time in our history, and that his presence there could lead to an improperly narrow interpretation of the constitution and the civil rights laws.”**

You also said you “question whether Judge Southwick will properly enforce the law when it comes to the rights of those who are unpopular and who are marginalized by the political process.” You continued that you hoped President Bush would “reconsider and perhaps nominate someone who [would] add to the Fifth Circuit’s stature, diversity, and sensitivity to the need to enforce fully the civil rights laws.”

- a. Judge Southwick was confirmed to the Fifth Circuit by a bipartisan vote of 59-38. Do you believe his presence on the Fifth Circuit has lead to an “improperly narrow interpretation of the constitution and the civil rights laws?”**

Response: No.

- b. Do you believe Judge Southwick has “properly enforce[d] the law when it comes to the rights of those who are unpopular and who are marginalized by the political process?”**

Response: Yes.

- c. Do you believe Judge Southwick has added to the “stature” of the Fifth Circuit during his almost three years on the court?**

Response: Yes.

- d. Do you believe he should have been confirmed to the Fifth Circuit?**

Response: No.

- e. Do you stand by your earlier statements?**

Response: Yes.

- f. If you are confirmed to the District Court for the Southern District of Mississippi and a case you decide is appealed, Judge Southwick could sit on the three-judge panel that reviews your decision. Given your strong criticism of his nomination, what assurances can you give the Senate that you will accept the legitimacy of a ruling that he authors or with which he concurs if a majority the panel comes to a different conclusion in a case than you did?**

Response: I have great respect for Judge Southwick. I will follow and respect the precedent of the Fifth Circuit Court of Appeals, no matter the authors or members of the panel.

9. In the 2007 letter, you claimed “the Senate and its judiciary committee must ensure that the nominations do not form a pattern that is racially discriminatory in purpose or effect.”

a. Do you believe this committee could properly reject a nominee because it believes that nominee was chosen because of his or her race?

Response: The United States Senate has the Constitutional role and duty of providing advice and consent to the President on his judicial nominations, and I believe the Senate can reject a nominee for any reason.

b. Is it your contention that the United State Senate could properly vote to reject an otherwise qualified judicial nominee, if that nominee’s race would create or continue a perceived racial imbalance on a court?

Response: Yes. The advice and consent clause of the Constitution does not restrict the Senate’s reasoning in performing this function.

i. If not, then why did your letter state “we ask that you not approve this nomination [of Mr. Southwick], but instead allow President Bush to reconsider and perhaps nominate someone who will add to the Fifth Circuit’s statute, diversity, and sensitivity to the need to enforce fully the Civil Rights Laws”? Please explain your statement.

Response: Not applicable.

10. In that same letter, you said the Fifth Circuit has applied a “narrow and overly technical interpretation of the constitution and the civil rights law.” Please list all the cases issued by the Fifth Circuit, either *en banc* or by a three-judge panel, that you believe applied a “narrow and overly technical interpretation of the constitution and the civil rights law” and explain why you believe they were “narrow and overly technical.”

Response: As a candidate for a district judgeship in the Fifth Circuit, I believe it would be disrespectful and inappropriate for me to criticize that court’s recent decisions. If confirmed, my personal views will not play a role in my jurisprudence. I will follow Fifth Circuit precedent and the precedent of the United States Supreme Court.

11. At your hearing, when asked about the importance of racial diversity on the federal bench, you said it is “extraordinarily important that the judiciary reflects the population in the states,” that “[p]eople need to see that they have a chance,” and “people need to believe ... that [judges] can administer justice and that they will obey and respect the rule of law.”

- a. **Do you believe the courts should contain a percentage of minority judges that are proportionate to the percentage of minorities in the community?**

Response: No.

- b. **Do you believe presidents should employ affirmative action principles in the selection of federal judges?**

Response: I believe that the President, as the holder of the Constitutional authority to nominate federal judges may employ whatever criteria he or she desires in selecting persons whose nominations are then forwarded to the United States Senate for its consideration.

- c. **Do you believe there is a relationship between a judge's race and the legitimacy of his rulings?**

Response: No.

- d. **Do you believe there is a relationship between a judge's race and the *perceived* legitimacy of his rulings?**

Response: No.

- e. **If justice is blind, why do you think people doubt that they "have a chance" in court if a non-minority judge is deciding their case?**

Response: I do not think that people doubt that they "have a chance" if a non-minority judge is deciding their case.

- f. **Do you personally believe people do not "have a chance" in court if a non-minority judge is deciding their case?**

Response: No.

- g. **Why do you think people doubt that a non-minority judge would "obey and respect the rule of law" to the same extent that a minority judge would?**

Response: I do not think that people doubt that a non-minority judge would "obey and respect the rule of law" to the same extent that a minority judge would.

- h. **Do you believe non-minority judges will not "obey and respect the rule of law" to the same extent that a minority judge will?**

Response: No.

- i. If confirmed, would your race, the race of the parties or the lawyers before you, or any racially sensitive evidence or arguments play a role in your judicial decision-making? If so, how?**

Response: No.

- j. What exactly did you mean by these statements?**

Response: My statement was intended to mean that I believe that minority judges can serve as role models to the public at-large and particularly members of the minority community who share the same race or sex, and have the opportunity to inspire minority members of the community to believe that they too could “have the chance” to sit on the federal bench.