

Responses of Kathleen Williams
Nominee to be United States District Judge for the Southern District of Florida
to the Written Questions of Senator Jeff Sessions

- 1. During your 2003 ACLU award acceptance speech, you stated that the United States is unfairly prosecuting “[p]oor, black, and politically persecuted Haitians” seeking asylum in the U.S. out of concerns that “Haiti may be a secret staging area for possible terrorists.”**

- a. Do you stand by those statements?**

Response: As an advocate for indigent defendants, I made remarks in my 2003 acceptance speech highlighting what attorneys in my office and others had observed; that is, an increased prosecution of Haitians attempting to enter our country after 9/11 as compared to what had appeared to be the previous practice to deport or exclude them without prosecution.

- b. Can you provide the Committee with examples of the specific prosecutions of Haitian asylum seekers that you believe were motivated, not by the criminal conduct of the defendant, but by the prosecution’s purported view of Haiti as “a secret staging area for possible terrorists”?**

Response: The reference to Haiti as a staging area was meant to convey irony within the context of the speech. As best I can recall, the genesis of that comment was a newspaper article where a correlation was made between increased immigration prosecutions taking place in 2002 and 2003 and terrorist interdiction. I made this observation to bring attention to the plight of many Haitians endeavoring to enter this country and gain asylum. I do not know of any prosecution premised on Haiti being a staging area for terrorists.

- 2. At your hearing, Senator Grassley asked about your December 2005 remarks before the Federal Bar Association, in which you stated:**

“Interestingly, while we don’t seem to have a problem using foreign nations to park people, there are those who do have a problem using foreign law to inform debates here, especially with regard to the death penalty.”

- a. Your remarks appear to criticize those who take issue with American judges using foreign law to inform legal debates in this country, especially regarding the death penalty. I have a problem with the citation and reliance on foreign law by U.S. courts. Please explain what, in your view, is wrong with my viewpoint?**

Response: The Senator’s viewpoint is entirely sound. My remarks were not intended to indicate support for the notion that foreign law is applicable to American judicial decision making. My intention in that speech was to juxtapose two different situations and to provoke discussion regarding reliance on foreign

institutions in those different contexts. However, I was not commenting on judicial decision making and, as I testified in the hearing before the Committee on February 2, 2011, I do not believe that foreign law has a place in that process. Only the legislature and the executive can look to such sources to inform their decisions.

b. You single out the death penalty as a legal area that is more appropriate for the use of foreign law.

i. Do you believe the use or citation of foreign law is more appropriate in certain legal contexts, such as in Eighth Amendment analysis? If so, please list examples of those legal contexts.

Response: I do not believe the citation of foreign law is appropriate in judicial decision making in any context unless expressly authorized by the Constitution or statute.

ii. Do you believe the laws of foreign countries should inform U.S. courts' view on the evolving standards of decency in death penalty cases?

Response: The only standards that are appropriate for consideration in a capital matter are those set forth by the Supreme Court and the 11th Circuit.

3. Have you ever expressed an opinion regarding the constitutionality of the death penalty? If so, what was that opinion? If not, do you have such an opinion?

Response: To my knowledge, I have never expressed an opinion regarding the constitutionality of the death penalty. The Supreme Court has found the death penalty to be constitutional and I would adhere to the law regarding the death penalty as set forth by the Supreme Court.

4. If confirmed, will you have any reservation in applying the death penalty?

Response: No.