

**Nomination of Thomas Farr to the
United States District Court for the Eastern District of North Carolina
Questions for the Record
Submitted January 12, 2018**

Questions from Senator Kamala D. Harris

1. In response to a Question for the Record from Senator Whitehouse (3b) about photo ID laws, you responded that “If a photo ID law was adopted to intentionally disenfranchise persons because of their color then it should be enjoined.”

To further clarify your position, should a photo ID law be enjoined if the effect of the law results in disenfranchising persons of color – even if there is no finding of intentional discrimination?

Any photo ID law found to have a discriminatory effect as defined by Section 2 of the Voting Rights Act would violate federal law without regard to intent.

2. District court judges have great discretion when it comes to sentencing defendants. It is important that we understand your views on sentencing, with the appreciation that each case would be evaluated on its specific facts and circumstances.

a. What is the process you would follow before you sentenced a defendant?

I will follow the process required by law.

b. As a new judge, how do you plan to determine what constitutes a fair and proportional sentence?

I will consider the guidelines, the report by the Probation Office, and input from counsel and any witnesses.

c. When is it appropriate to depart from the Sentencing Guidelines?

Federal statutes and case law provide guidance on the circumstances in which it may be appropriate to depart from the Sentencing Guidelines. I will faithfully follow that guidance, taking into account the facts of each case.

d. Judge Danny Reeves of the Eastern District of Kentucky – who also serves on the U.S. Sentencing Commission – has stated that he believes mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing.¹

i. Do you agree with Judge Reeves?

¹ <https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf>

I have never studied this issue and do not have an opinion.

- ii. Do you believe that mandatory minimum sentences have provided for a more equitable criminal justice system?**

I have never studied this issue and do not have an opinion.

- iii. Please identify instances where you thought a mandatory minimum sentence was unjustly applied to a defendant.**

I have never studied this issue and do not have an opinion.

- iv. Former-Judge John Gleeson has previously criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.² If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

If confirmed as a federal district court judge and confronted with the circumstances you pose, I would consider all proactive efforts available to me under law.

1. Describing the injustice in your opinions?

See my response to Question 2(d)(iv) above.

2. Reaching out to the U.S. Attorney and other federal prosecutors to discuss their charging policies?

See my response to Question 2(d)(iv) above.

3. Reaching out to the U.S. Attorney and other federal prosecutors to discuss considerations of clemency?

See my response to Question 2(d)(iv) above.

- e. 28 U.S.C. Section 994(j) directs that alternatives to incarceration are “generally appropriate for first offenders not convicted of a violent or otherwise serious offense.” If confirmed as a judge, would you commit to taking into account alternatives to incarceration?**

² See, e.g., “Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose,” NY Times, July 28, 2014, <https://www.nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose.html>

Depending upon the facts and circumstances and as permitted by law, alternatives to incarceration for first time offenders should be given serious consideration.

3. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to deciding whether individuals receive fairness, justice, and due process.

- a. **Does a judge have a role in ensuring that our justice system is a fair and just one?**

Yes.

- b. **Do you believe that there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.**

I do not know, but I do know that a district court judge is responsible for making sure all defendants receive a fair trial, regardless of race. If fortunate enough to be confirmed as a district court judge, I will faithfully discharge that responsibility.

4. If confirmed as a federal judge, you will be in a position to hire staff and law clerks.

- a. **Do you believe that it is important to have a diverse staff and law clerks?**

Yes.

- b. **Would you commit to executing a plan to ensure that qualified minorities and women are given serious consideration for positions of power and/or supervisory positions?**

Yes.