

**Questions for the Record from Senator Kamala D. Harris
Submitted January 12, 2018**

For the Nominations of:

Annemarie Carney Axon, to be United States District Judge for the Northern District of Alabama

R. Stan Baker, to be United States District Judge for the Southern District of Georgia

Jeffrey Uhlman Beaverstock, to be United States District Judge for the Southern District of Alabama

Liles Clifton Burke, to be United States District Judge for the Northern District of Alabama

Thomas Alvin Farr, to be United States District Judge for the Eastern District of North Carolina

Charles Barnes Goodwin, to be United States District Judge for the Western District of Oklahoma

Michael Joseph Juneau, to be United States District Judge for the Western District of Louisiana

Matthew J. Kacsmaryk, to be United States District Judge for the Northern District of Texas

Emily Coody Marks, to be United States District Judge for the Middle District of Alabama

Terry Fitzgerald Moorer, to be United States District Judge for the Southern District of Alabama

Mark Saalfield Norris, Sr., to be United States District Judge for the Western District of Tennessee

William M. Ray II, to be United States District Judge for the Northern District of Georgia

Eli Jeremy Richardson, to be United States District Judge for the Middle District of Tennessee

Holly Lou Teeter, to be United States District Judge for the District of Kansas

1. 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?

As a federal magistrate judge, I have found the sentencing of criminal defendants to be among the most difficult and important decisions that I make. The process I have followed is that set forth in Chapter 227 (“Sentences”) of Title 18 of the United States Code and summarized in *Gall v. United States*, 552 U.S. 38 (2007). In general, I thoroughly review the Presentence Investigation Report submitted by the United States Probation Office and any additional facts shown by the parties. I calculate the range of punishment applicable under the relevant federal statutes and the United States Sentencing Guidelines. I hear argument from the parties as well as a statement by the defendant and, as appropriate, by any victims. I consider whether an upward or downward departure from the Guideline range is appropriate in view of policy statements of the United States Sentencing Commission. I then consider the factors set forth in 18 U.S.C. § 3553 and make an individualized assessment, based on all the facts before me, as to what sentence would be reasonable. If that sentence would be in variance with the range applicable under the Sentencing Guidelines, I consider whether the facts justify the variance. If I were to be confirmed as a district judge, I would follow that same process.

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

Please see my response to Question 1(a).

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

“Departures” from the standard Guideline range are authorized under the Sentencing Guidelines and generally are based on grounds recognized in the policy statements promulgated by the Sentencing Commission. See 18 U.S.C. §§ 3553(a)(5), 3553(b). Recognized grounds for departure include, for example, a defendant’s provision of substantial assistance to authorities, the death, significant physical injury, or extreme psychological injury of a victim, the diminished capacity of the defendant, and the defendant’s voluntary disclosure of the offense. “Variances” from the Guideline range also may be appropriate. The Supreme Court has recognized that the Sentencing Guidelines are advisory and that a sentencing court must make an individualized assessment of what would be a reasonable sentence in light of the factors set forth in 18 U.S.C. § 3553. See *United States v. Booker*, 543 U.S. 220 (2005); *Gall v. United States*, 552 U.S. 38 (2007).

- 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?

I have not had occasion to study and reach an opinion on whether a mandatory minimum sentence has a greater or lesser deterrence effect than other types of sentences.

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

Respectfully, I believe that this question is best left to those charged with making decisions of sentencing policy. If fortunate enough to be confirmed, I will apply the law governing federal sentencing fairly and impartially.

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

I am not personally aware of any case in which a mandatory minimum sentence was unjustly applied to a specific, individual defendant. The Supreme Court and other federal courts have recognized that certain mandatory minimum sentences violate the Eighth Amendment's prohibition on cruel and unusual punishments. *See, e.g., Miller v. Alabama*, 567 U.S. 460 (2012) (holding statute requiring minimum sentence of life without parole is unconstitutional as applied to juvenile offenders). Whether other mandatory minimum sentences would similarly be unconstitutional is a question that could come before me as a judge. Therefore, as a sitting federal magistrate judge and a nominee to be a federal district judge, I am obligated by the Code of Conduct to not comment. *See* Canon 3(A)(6), Code of Conduct for United States Judges (requiring that judges and judicial nominees refrain from "public comment on the merits of a matter pending or impending in any court").

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

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

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>

proactive efforts to address the injustice, including:

- 1. Describing the injustice in your opinions?**
- 2. Reaching out to the U.S. Attorney and other federal prosecutors to discuss their charging policies?**
- 3. Reaching out to the U.S. Attorney and other federal prosecutors to discuss considerations of clemency?**

If confirmed and confronted with the hypothetical situation you pose, I would consider proactive efforts available to me under the law and consistent with my ethical obligations. In all events, however, I would follow the law.

- 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?**

In making sentencing decisions as a federal magistrate judge, I have considered alternatives to imprisonment to the extent allowed by law. I would continue to do so as a district judge if I were to be confirmed.

- 2. 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?**
- 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.**

Yes.

I do not know enough to speak to the criminal justice system as a whole. In my work as a federal magistrate judge, I continually scrutinize my own thinking to try to identify and eliminate any possible biases. In my experience, federal judges are extremely conscientious about treating all persons fairly no matter their race, gender, or religious background.

- 3. 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. In every role I have had that required me to make hiring decisions, I have given serious consideration to qualified minorities and women, across all levels of employment. I will continue to do so.