

Nomination of Jeremy Kernodle to the U.S. District Court for the Eastern District of Texas
Questions for the Record
May 16, 2018

QUESTIONS FROM SENATOR FEINSTEIN

1. Please respond with your views on the proper application of precedent by judges.

a. When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?

It is never appropriate for a lower court to depart from Supreme Court precedent.

b. Do you believe it is proper for a circuit court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?

A circuit judge should faithfully follow and apply all binding Supreme Court precedent, even if he or she personally disagrees with it. There may be rare instances in which a circuit judge may appropriately question a precedent, but even in those cases, the judge should still follow and apply it.

c. When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?

As a district court nominee, I would not presume to opine on when the Supreme Court should overturn its own precedent. In fact, the Court has stated that lower court judges should leave to “this Court the prerogative of overruling its own decisions.” *Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477, 484 (1989).

d. When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?

Please see my response to Question 1.c. above.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as “super-stare decisis.” A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a “super-precedent” because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that “superprecedent” is “precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation.” (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

a. Do you agree that *Roe v. Wade* is “super-stare decisis”? Do you agree it is “superprecedent”?

From the perspective of a lower court judge, all Supreme Court precedent is “super-stare decisis” or “superprecedent” because they are binding on all lower courts. If confirmed, I would faithfully follow and apply *Roe v. Wade* and its progeny.

b. Is it settled law?

Roe v. Wade is a binding Supreme Court precedent, and if confirmed, I would faithfully follow and apply it.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

Obergefell v. Hodges is a binding Supreme Court precedent, and if confirmed, I would faithfully follow and apply it.

4. In Justice Stevens’s dissent in *District of Columbia v. Heller* he wrote: “The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature’s authority to regulate private civilian uses of firearms.”

a. Do you agree with Justice Stevens? Why or why not?

As a district court nominee, it would be inappropriate for me to express my personal views on the merits of any Supreme Court opinion, including Justice Stevens’ dissent in *District of Columbia v. Heller*. See Code of Conduct for United States Judges, Canons 2 & 3. If confirmed, I would faithfully follow and apply *Heller*, as well as all Supreme Court and Fifth Circuit precedent.

b. Did *Heller* leave room for common-sense gun regulation?

As a district court nominee, it would be inappropriate for me to express my personal views on an issue that could come before me if I am confirmed. See Code of Conduct for United States Judges, Canons 2 & 3. I would note that *Heller* stated that “[n]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *District of Columbia v. Heller*, 554 U.S. 540, 626-27 (2008). If confirmed, I would faithfully follow and apply *Heller*, as well as all Supreme Court and Fifth Circuit precedent.

c. Did *Heller*, in finding an individual right to bear arms, depart from decades of

Supreme Court precedent?

As a district court nominee, it would be inappropriate for me to express my personal views on the merits of any Supreme Court precedent. *See* Code of Conduct for United States Judges, Canons 2 & 3. If confirmed, I would faithfully follow and apply *Heller*, as well as all Supreme Court and Fifth Circuit precedent.

5. In your Senate Judiciary Questionnaire, you note that you worked on a brief before the U.S. Supreme Court in a case called *City of Bloomfield v. Felix*. You noted that you worked on the case “as an allied attorney with Alliance Defending Freedom.” SPLC has stated that “the Alliance Defending Freedom is a legal advocacy and training group that has supported the recriminalization of homosexuality in the U.S. and criminalization abroad; has defended state-sanctioned sterilization of trans people abroad; has linked homosexuality to pedophilia and claims that a ‘homosexual agenda’ will destroy Christianity and society.” (Southern Poverty Law Center, *Alliance Defending Freedom*, <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>)

Please detail whether there are specific ADF positions or views with which you either agree or disagree.

I am not sufficiently familiar with ADF’s positions or views to comment on those with which I agree or disagree. The only case involving ADF in which I was also involved was *City of Bloomfield v. Felix*, 138 S. Ct. 357 (2017). My firm filed a brief on behalf of an amicus curiae in that case, and ADF (along with Wilmer Cutler Pickering Hale & Dorr) represented the City of Bloomfield as Petitioner.

6. According to the Alliance Defending Freedom’s website, allied attorneys must either affirm or agree with ADF’s “Statement of Faith.” (Online Allied Attorney Application, <https://nla.alliancedefendingfreedom.org/NLAAPP/User/Register.aspx?ReturnUrl=../Application/BeginApplication.aspx&type=AA>) Among other principles, the Statement of Faith includes the following: “We believe God immutably creates each person as male or female. These two distinct, complementary genders together reflect the image and nature of god, and rejecting one’s biological sex rejects the created image of God”; “We believe God designed marriage as a unique conjugal relationship joining one man and one woman in a single, exclusive, life-long union. God intends sexual intimacy to only occur between a man and a woman joined in marriage”; and “We believe God endows all human life with inherent dignity at every stage of development and it must be respected and protected from conception to natural death. Thus, the unjustified, intentional taking of human life before or after birth is sinful and offensive to God.” (<https://www.adflegal.org/about-us/careers/statement-of-faith>)

On your Senate Questionnaire, you note you were an “allied attorney with Alliance Defending Freedom” in the *City of Bloomfield v. Felix* case.

- a. **What dates did you serve as an allied attorney with the Alliance Defending Freedom?**

I did not apply or request to be an “allied attorney” with ADF. While preparing answers to the Senate Judiciary Committee Questionnaire, I discovered that ADF had listed me as an “allied attorney,” but I am not certain when that first occurred. As stated above, the only case involving ADF in which I was also involved was *City of Bloomfield v. Felix*, and my involvement in that case was from approximately June 2017 to August 2017.

- b. Other than the *City of Bloomfield v. Felix* case, did you work on any other cases as an allied attorney with the Alliance Defending Freedom? If so, please identify the cases and your role.**

No.

- c. Did you review ADF’s Statement of Faith before agreeing to it or affirming it as part of the process to become an allied attorney?**

No. Please also see my response to Question 6.a. above.

- d. What assurances or evidence can you give the Committee and future litigants who come before you that you will be fair and impartial to everyone who appears before you, if confirmed?**

If confirmed, I will apply the law fairly and impartially for all litigants in all cases. Throughout my career, I have been fortunate to represent a wide variety of litigants in a number of different matters, including a refugee seeking asylum, religious minorities harassed for meeting in a private home, and two exonerated individuals filing claims under 28 U.S.C. § 1983, among others. In all these cases, I have learned the importance of the rule of law and a federal judiciary committed to applying the law fairly and impartially for all people in all cases.

- e. Specifically, what assurances or evidence can you give to future LGBT litigants who come before you that you will treat them fairly and impartially?**

Please see my response to Question 6.d. above.

- f. Lastly, what assurances or evidence can you give to future litigants in cases that may involve reproductive rights, access to contraception, or physician-assisted suicide that you will treat those issues fairly and impartially?**

Please see my response to Question 6.d. above.

7. In 2016, you represented a Texas company, Dresser-Rand, in a dispute with the company’s unionized employees. In a brief filed in the Fifth Circuit, you sought to defend the company’s use of a lockout (i.e., withholding work from company employees during negotiations over a collective bargaining agreement) until the company and its employees had reached such an agreement. You argued that the lockout was a “perfectly legal way to

pressure the Union to accept an employer's demands," and that it showed "no evidence of anti-union animus." (Brief for the Dresser-Rand Company, *Dresser-Rand Co. v. Nat'l Labor Relations Bd.*, 838 F.3d 512 (5th Cir. 2016), 2015 WL 6607753)

The "Findings and declaration of policy" of the National Labor Relations Act, 29 U.S.C. § 151, recognizes the "inequality of bargaining power" between employers and employees.

How do you define "anti-union animus"? Can depriving employees of work leave them no option but to "accept an employer's demands" ever be evidence of "anti-union animus"?

The Supreme Court has held that antiunion animus includes "intent to discourage union membership" and may in some cases also include "employer[] conduct [that] carries with it an inference of unlawful intention so compelling that it is justifiable to disbelieve the employer's protestations of innocent purpose." *See Am. Ship Bldg. Co. v. NLRB*, 380 U.S. 300, 311-12 (1965). It is difficult to answer in the abstract whether certain conduct is evidence of antiunion animus, as such analysis is inherently fact-intensive. *See id.* In addition, as a district court nominee, it would be inappropriate for me to express my personal views on an issue that could come before me if I am confirmed. *See Code of Conduct for United States Judges*, Canons 2 & 3. If confirmed, I would faithfully follow and apply *American Ship Building*, as well as all Supreme Court and Fifth Circuit precedent.

8. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), White House Counsel Don McGahn told the audience about the Administration's interview process for judicial nominees. He said: "On the judicial piece ... one of the things we interview on is their views on administrative law. And what you're seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years..."

- a. **Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?**

No.

- b. **Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?**

No.

- c. **What are your "views on administrative law"?**

As a district court nominee, it would be inappropriate for me to express my personal views on an issue that could come before me if I am confirmed. *See* Code of Conduct for United States Judges, Canons 2 & 3. If confirmed, I would faithfully follow and apply all Supreme Court and Fifth Circuit precedent governing issues of administrative law.

9. At any point during the process that led to your nomination, did you have any discussions with anyone — including, but not limited to, individuals at the White House, at the Justice Department, or any outside groups — about loyalty to President Trump? If so, please elaborate.

No.

10. Please describe with particularity the process by which you answered these questions.

I received the questions on Wednesday, May 16, 2018. I personally drafted the responses after consulting my Questionnaire and conducting limited research. After sharing those draft responses with the Department of Justice, Office of Legal Policy, which offered suggestions and comments, I revised my responses as I deemed appropriate in light of those comments.

**Nomination of Jeremy Daniel Kernodle
United States District Court
For the Eastern District of
Texas Questions for the Record
Submitted May 16, 2018**

QUESTIONS FROM SENATOR WHITEHOUSE

1. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”
 - a. Do you agree with Justice Roberts’ metaphor? Why or why not?

Yes. Although no metaphor is perfect, I agree that a judge should make every effort to apply the law fairly and impartially in all cases without regard to the particular outcome the judge may personally prefer.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

In many cases, a judge should render a decision based only upon the law, even if it results in practical consequences that were unforeseen by the legislature or lawmaking body. In some instances, however, the law expressly requires a judge to consider the practical consequences in rendering a decision. For example, many claims for equitable relief require a judge to consider the prejudice or harm that would follow from a particular award of relief.

2. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it’s like to be poor or African-American or gay or disabled or old.”
 - a. What role, if any, should empathy play in a judge’s decision-making process?

Empathy may assist a judge in listening to and understanding the parties and their arguments. Generally, however, a judge should apply the law to the facts of the case without regard to any empathy the judge may feel toward a particular party.

- b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?

As with empathy, a judge’s personal life experience may assist the judge in listening to the parties and understanding their arguments. But a judge should not permit personal life experience to affect how the law is applied to the facts of a particular case.

3. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

No.

4. What assurance can you provide this committee and the American people that you would, as a federal judge, equally uphold the interests of the “little guy,” specifically litigants who do not have the same kind of resources to spend on their legal representation as large corporations?

If confirmed, I will apply the law fairly and impartially in all cases without regard to the financial status of the litigants. Throughout my career, I have been fortunate to represent a wide variety of litigants in a number of different matters, including a refugee seeking asylum, religious minorities harassed for meeting in a private home, and two exonerated individuals filing claims under 28 U.S.C. § 1983, among others. In all these cases, I have learned the importance of the rule of law and a federal judiciary committed to applying the law fairly and impartially for all people in all cases.

- a. In civil litigation, well-resourced parties commonly employ “paper blizzard” tactics to overwhelm their adversaries or force settlements through burdensome discovery demands, pretrial motions, and the like. Do you believe these tactics are acceptable? Or are they problematic? If they are problematic, what can and should a judge do to prevent them?

No, such tactics are not acceptable. I have witnessed firsthand the attempt by litigants to use discovery as a weapon to force unfair and improper settlement, among other things. I have also seen the important role a district judge can play in curbing such abuse and assisting the parties in managing their cases. For example, a judge can get involved in a case early to narrow the issues and help frame the case for expeditious resolution, thereby potentially circumventing much of the discovery process altogether.

5. To the extent permissible by law, provide details on particular matters you worked on during your time as an Attorney-Advisor at the Department of Justice’s Office of Legal Counsel under President George W. Bush.

I have been advised that my work at OLC remains privileged. I can report, however, that I worked on a variety of domestic matters during my tenure at OLC, including commenting on the constitutionality of pending legislation, researching and providing advice on legal issues for Executive Branch officials, and reviewing and providing comments on Executive Orders.

6. Do you still believe (as you expressed in a publication in the *Vanderbilt Law Review* in 2001) that plaintiffs in §1983 civil rights cases should face a greater burden in proving their claims? Do you believe that §1983 claims unnecessarily flood the judiciary? If so, please identify any data, reports, or analyses on which you base that conclusion.

My law review Note was not meant to suggest that plaintiffs in § 1983 cases should face a greater burden in proving their claims, or that such claims unnecessarily flood the judiciary. The Note’s purpose was to synthesize various Supreme Court decisions touching on the “state-created danger theory” and propose a test that was both workable and consistent with that precedent. If confirmed, I will faithfully follow and apply those decisions, as well as any other Supreme Court or Fifth Circuit authority governing § 1983 cases.

7. Did you endorse Dan Branch for Texas Attorney General? If yes, did you have a reason for not disclosing this endorsement in your Senate Judiciary Committee Questionnaire?

I recall only one informal conversation with Mr. Branch in which I stated that I supported his candidacy for Texas Attorney General. I held no position and played no role in Mr. Branch's campaign, and thus I did not understand my conversation with him to be responsive to any of the questions in the Senate Judiciary Committee Questionnaire.

**Questions for the Record for Jeremy D. Kernodle
Senator Mazie K. Hirono
May 16, 2018**

**Questions for Jeremy D. Kernodle, nominee for the Eastern District of Texas
Sexual Harassment Questions for all Nominees**

1. Chief Justice John Roberts has recognized that “the judicial branch is not immune” from the widespread problem of sexual harassment and assault and has taken steps to address this issue. As part of my responsibility as a member of this committee to ensure the fitness of nominees for a lifetime appointment to the federal bench, I would like each nominee to answer two questions.

- a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

Response: No.

- b. **Have you ever faced discipline or entered into a settlement related to this kind of conduct?**

Response: No.

2. You have been President and Vice President of the Dallas Chapter of the Federalist Society and given numerous presentations for the chapter. You have introduced speakers for such programs as “The Legacy of Justice Antonin Scalia” and “When Can the Executive Decide Not to Enforce the Law.”

The President has essentially outsourced the judicial selection process to two organizations with strong, ideologically-driven agendas – the Federalist Society and Heritage Foundation. The Federalist Society, for example, describes itself as “a group of libertarians and conservatives dedicated to reforming the legal order.”

Do you think it is proper for the President to outsource the judicial selection process to outside organizations?

Response: As a district court nominee, it would be inappropriate for me to express my personal views on the President’s judicial selection process. *See* Code of Conduct for United States Judges, Canons 2 & 5.

3. You were Counsel of Record for an *amicus brief* filed on behalf of the International Conference of Evangelical Chaplain Endorsers (ICECE) in a case defending the installation of a Ten Commandments monument on the City Hall Lawn in Bloomfield Indiana. You took this case as an “Allied Attorney” for the Alliance Defending Freedom (ADF), a conservative, Christian nonprofit organization, an organization of

attorneys that accept and agree with ADF's ideology. That includes a commitment to advocate for "religious freedom," the "sanctity of life" and "marriage and family" issues. ADF's positions include:

"Our culture doesn't recognize all human life is sacred. This has led to abortion on demand..." and "[Marriage is] about joining the two equally important and diverse halves of humanity represented in men and women."

- a. **Why would you want to become a federal judge where you are duty-bound to follow the law and Supreme Court precedent as it is, not as you wish it would be?**

Response: One of the greatest features of our constitutional system is the rule of law and the commitment of an independent judiciary to follow and apply the law impartially and fairly. It would be a tremendous professional honor and privilege for me, if confirmed, to continue that tradition as a district judge.

- b. **Are you seeking this position as a district court judge so that in interpreting the law and the constitution you might move how the courts apply precedent and even change precedent so that it comes closer to your conservative position on legal issues in cases that come before you?**

Response: No.

**Nomination of Jeremy D. Kernodle to the
United States District Court for the Eastern District of Texas
Questions for the Record
Submitted May 16, 2018**

QUESTIONS FROM SENATOR BOOKER

1. According to a Brookings Institute study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.¹ Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.² These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.³ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴

a. Do you believe there is implicit racial bias in our criminal justice system?

Sadly, racial bias still affects our country in many ways. In a nation committed to the equality of all people without regard to race, it should play no role in our justice system, especially our criminal justice system. If confirmed, I will make every effort to ensure that all parties in my courtroom are treated fairly and impartially without regard to race.

b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

Yes, that is my understanding based on statistics like those mentioned above.

c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

No, I have not had occasion to study the topic of implicit racial bias in the criminal justice system, although I have read about the issue in various publications from time to time.

¹ JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), available at <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>.

² *Id.*

³ ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), available at <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

⁴ *Id.* at 8.

2. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.⁵ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.⁶
 - a. Do you believe there is a direct link between increases of a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I have not studied this issue carefully enough to form an opinion. If confirmed, I will fully and faithfully apply federal sentencing laws as required by Congress, the Supreme Court, and the Fifth Circuit in each of the cases before me.

- b. Do you believe there is a direct link between decreases of a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

Please see my response to Question 2.a. above.

3. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

Yes.

4. Since *Shelby County, Alabama v. Holder*, states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate someone voter at the polls.⁷ One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.⁸ Despite this, President Trump, citing no information, alleged that widespread voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.

⁵ THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), available at http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf.

⁶ *Id.*

⁷ JUSTIN LEVITT, THE TRUTH ABOUT VOTER FRAUD, BRENNAN CENTER FOR JUSTICE 6 (2007), available at <http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>.

⁸ Justin Levitt, *A comprehensive investigation of voter impersonation finds 31 credible incidents out of one billion ballots cast*, THE WASHINGTON POST, Aug. 6, 2014, available at https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.4da3c22d7dca.

- a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion?

I have not studied this issue carefully enough to form an opinion. If confirmed, I will fully and faithfully apply all voting laws, as well as any binding Supreme Court and Fifth Circuit precedent interpreting such laws.

- b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?

Please see my response to Question 4.a. above.

- c. Do you believe that restrictive voter ID laws suppress the vote in poor and minority communities?

Please see my response to Question 4.a. above

**Questions for the Record from Senator Kamala D. Harris
Submitted May 16, 2018
For the Nominations of**

- **Jeremy Kernodle** to be U.S. District Judge on the Eastern District of Texas
 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?

In sentencing defendants, I would be bound by the mandate in 18 U.S.C. § 3553 to impose a sentence “sufficient but not greater than necessary” to achieve the sentencing purposes set forth by Congress in that provision. In terms of process, I would review the statute establishing the range for the offense for which the defendant was convicted; consult the Pre-Sentence Report, including any objections from the parties; conduct a hearing in open court; determine the appropriate range under the Sentencing Guidelines; and decide whether a departure or variance is appropriate based on the factors identified in the Sentencing Guidelines policy statements and commentary, as well as the factors identified by § 3553 and any Supreme Court or Fifth Circuit authority. Throughout this process, I would faithfully follow Supreme Court and Fifth Circuit authority, as well as the Federal Rules of Criminal Procedure and other guidance.

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. above.

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

The Sentencing Guidelines policy statements and commentary identify factors that may justify a departure. In addition, the factors set forth by Congress in 18 U.S.C. § 3553 may justify a variance. If confirmed, I would in all cases carefully review those factors, any Supreme Court and Fifth Circuit precedent governing departures, and the arguments and evidence of counsel.

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 not studied this issue carefully enough to form an opinion. If confirmed, I will fully and faithfully apply federal sentencing laws as required by Congress, the Supreme Court, and the Fifth Circuit.

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

Please see my response to Question 1.d.i. above.

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

Please see my response to Question 1.d.i. above.

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:

1. Describing the injustice in your opinions?

Yes, if confirmed, I would consider addressing such injustice as appropriate and consistent with my duty to apply the law pursuant to the U.S. Constitution, as well as Supreme Court and Fifth Circuit precedent.

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

Please see my response to Question 1.d.iv.1. above.

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

Please see my response to Question 1.d.iv.1. 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>

Yes.

2. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide 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 equitable one?

Yes. Judges are duty bound to apply the law fairly and equitably in all cases.

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.

Please see my responses to Question 1 of Senator Booker.

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?

If confirmed, I would encourage qualified candidates from all backgrounds to apply for a position as a law clerk in my chambers, and I would give serious and fair consideration to each individual.