

**Nomination of Charles J. Williams to the
United States District Court for the Northern District of Iowa
Questions for the Record
March 28, 2018**

QUESTIONS FROM SENATOR FEINSTEIN

1. At your nominations hearing, Senator Durbin asked you a number of questions about your role as the co-lead prosecutor from the U.S. Attorney's Office for the Northern District of Iowa on the case, *United States v. Rubashkin*, and the related prosecution of hundreds of undocumented immigrant workers in the slaughterhouse owned by Mr. Rubashkin's company, Agriprocessors.

According to an internal Immigration and Customs Enforcement (ICE) document from October 17, 2007 — produced to news outlets in response to a FOIA request — your office “brief[ed] Chief United States District Judge Linda Reade regarding the ongoing investigation” into the Agriprocessors plant, and “Judge Reade indicated full support for the initiative.” (<https://www.documentcloud.org/documents/3935197-ICE-Memoranda-and-Emails.html>)

In addition, several news outlets reported that officials from you're the U.S. Attorney's Office for the Northern District of Iowa met with ICE officials and with Chief Judge Reade to discuss “an overview of charging strategies.” (Samantha Michaels, *A Federal Judge Put Hundreds of Immigrants Behind Bars While Her Husband Invested in Private Prisons*, MOTHER JONES (Aug. 24, 2017))

- a. **As an Assistant United States Attorney (AUSA) in the Northern District of Iowa, did you attend any meetings with Chief Judge Reade or any other employee or official from the U.S. District Court for the Northern District of Iowa in advance of ICE's immigration enforcement action at Agriprocessors?**

If so, what did you discuss and what was your role at the meeting?

Did you ever discuss “an overview of charging strategies,” including what charges the U.S. Attorney's Office could or should bring?

Yes. I largely observed in these meetings. We alerted the court that ICE was conducting an enforcement operation that could result in the arrest of hundreds of undocumented workers; that the arrests could result in a number of criminal charges; and that the government intended to adopt a “fast-track” approach to process any undocumented workers charged with criminal offenses. This “fast-track” approach is commonly used in the Southwest United States. We also alerted the court to the range of possible criminal charges we were considering and the probable date and general geographic location of the operation; the court was never advised of the identity of the facility.

b. What role, if any, did you play in the preparation of the prosecuting attorneys and/or ICE officials or agents in the immigration enforcement action at the Agriprocessors plant?

I did not have any role in preparing attorneys. During the operation, I was kept informed of what those in the field were learning about criminal conduct by plant management. At each shift change during the first 72 hours of the operation, I helped to brief agents regarding this information in order to aid them in conducting further interviews.

c. When is it appropriate for executive branch officials, including federal prosecutors and immigration agents, to discuss criminal charging strategy with the federal judge who will preside over the case(s)?

It may be appropriate to alert federal judges of potential charges that could arise from a large law enforcement operation when that operation could tax the limited resources of the judiciary. Doing so allows the judicial branch to prepare for the impact of the operation on court operations.

2. Also with regard to the Agriprocessors enforcement action detailed in the question above, federal prosecutors provided defense attorneys at an initial meeting with “scripts” related to the court hearings their clients would face after arrest. The American Civil Liberties Union claimed that these scripts “suggested guilty pleas for the arrested workers and specific[d] how [the workers] should waive their legal rights.” (Nicole Gaouette, *Immigration raid case scrutinized*, L.A. TIMES (Aug. 1, 2008)) Now Third Circuit Judge Stephanos Bibas said the scripts “gave an appearance that ‘raises eyebrows. It does make it look like the prosecutor and the judge have worked it out ahead of time and made it a fait accompli.’” (Julia Preston, *Immigrants’ Speedy Trials After Raid Become Issue*, N.Y. TIMES (Aug. 8, 2008), <http://www.nytimes.com/2008/08/09/us/09immig.html>.)

a. Did you play any role in preparing these scripts? If so, please describe your role.

No.

b. Do you have any knowledge of how the scripts were vetted for legality or propriety? If so, please explain that process and any role you played.

The only “script” that I am aware was provided was a list of standard plea colloquy questions used and prepared by the court. This was provided to defense attorneys so they could prepare their clients in advance of the hearings with the questions the judge was going to ask during the hearing. These questions are posted on the court’s website and were publicly available before this enforcement action. I am not aware of any “scripts” that ever provided answers for any criminal defendant.

In addition, the court compiled handbooks for defense counsel in order to

assist counsel and interpreters. The handbooks contained the elements and statutory maximum sentences of the various possible charges and copies of forms routinely used in the Northern District of Iowa, along with citations to immigration rights and law pertaining to judicial removal.

3. 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"?**

I have no particular views on administrative law. If I am so fortunate as to be confirmed, I will apply the relevant administrative law precedents of the Supreme Court, just as I have done as a magistrate judge.

4. 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 lower courts, particularly a United States District Court judge, to depart from binding Supreme Court precedent. Only the Supreme Court has the "prerogative . . . to overrule one of its precedents." *Bosse v. Oklahoma*, 137 S. Ct. 1, 2 (2016).

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

dissent?

Because district court judges are bound to follow Supreme Court precedent regardless of the district court judge's personal beliefs, it would be appropriate for a district court judge to comment about a Supreme Court's decision in an opinion only to point out where a developing legal issue may need clarity or resolution. A district court judge should not, however, criticize a Supreme Court's decision and always make it clear that the judge is bound to follow Supreme Court precedent regardless of the judge's views of the merits of the precedent.

c. When, in your view, is it appropriate for a district court to overturn its own precedent?

A district court judge may issue a ruling that is inconsistent with a prior decision when the judge determines that the prior decision was in error because it was contrary to the United States Constitution, a federal statute, or binding precedent.

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

As a nominee to a lower federal court, it would be inappropriate for me to comment on what circumstances might justify the Supreme Court in overturning its own precedent.

5. 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"?

A district court judge must treat all decisions by the Supreme Court, including *Roe v. Wade*, as equally binding precedent.

b. Is it settled law?

Please see my answers to question 5(a) above.

6. 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 at outside groups — about loyalty to President Trump? If so, please elaborate.

No.

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

I received the questions from the Department of Justice on the evening of Wednesday, March 28, 2018. I reviewed the questions, performed limited research, personally drafted answers to all of the questions, solicited comments from the Department of Justice attorneys working on my nomination, and revised my draft answers as I deemed appropriate in light of their comments.

Questions for the Record for Charles J. Williams
From Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following 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?**

No.

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

No.

2. You prosecuted the *Rubashkin* case that began in 2008, and ultimately resulted in a 27-year sentence in prison for the company's CEO. The defendant's supporters characterized the sentence as unduly harsh, especially given that Rubashkin was a first-time offender with no history of violence; had a long record of charitable giving; and, was the father of ten children.

- a. What role do you think those factors should have played in determining that sentence?**

Title 18, United States Code, Section 3553(a) lists the factors that a district court judge must consider in determining a defendant's sentence. Among those factors are the "history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1).

- b. What sorts of factors will you take into account when sentencing defendants as a district court judge?**

I will consider all of the factors set for at Title 18, United States Code, Section 3553(a) when sentencing defendants as a district court judge. In doing so, I would consider any evidence presented at the sentencing hearing, the arguments of counsel (whether written or oral), statements of any victims, statements of defendant's family or other supporters, and the defendant's own allocution.

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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?

I have not researched the issue of implicit racial bias in the criminal justice system and therefore have not formed any beliefs on the matter. I am generally aware of the concept of implicit racial bias and appreciate the need for the criminal justice system to treat all persons the same regardless of race. If I am fortunate enough to be confirmed as a district court judge, I will be duty bound to treat all persons in the same manner, regardless of race.

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

I have not researched whether people of color are disproportionately represented in our nation's jails and prisons and therefore have not formed any beliefs on the matter. I am generally aware of studies regarding the proportion of incarcerated people of color and appreciate the need for the criminal justice system to treat all persons the same regardless of race. If I am confirmed as a district court judge, I will be duty bound to treat all persons in the same manner, regardless of race.

- 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.

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.

Please see my answer to Question 1(a) above.

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 researched the linkage between incarceration rates and crime rates, so I have not formed any views as to this issue.

- 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 answer 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, I believe demographic diversity is important in all branches of government.

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.*

Questions for the Record from Senator Kamala D. Harris
Submitted March 28, 2018
For the Nomination of

Charles J. Williams, to be United States District Judge for the Northern District of Iowa

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?

If confirmed as a district court judge, I would approach sentencing decisions after significant preparation, research where appropriate, and careful thought. I would follow all of the rules, statutes, and binding precedent. I would carefully review the Presentence Investigation Report, the Advisory Sentencing Guidelines, and all of the factors set forth in Title 18, United States Code, Section 3553(a). I would consider any evidence presented at the sentencing hearing, the arguments of counsel (whether written or oral), statements of any victims, statements of defendant's family or other supporters, and the defendant's own allocution. After that, I would endeavor to impose a sentence that is "sufficient, but not greater than necessary," to achieve the sentencing purposes Congress enumerated at Title 18, United States Code, Section 3553(a)(2).

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?

Part K of the United States Sentencing Guidelines enumerates circumstances where it would be appropriate to "depart" above or below the advisory guideline range. A district judge must provide the parties with reasonable advance notice when the judge is contemplating such a departure. FED. R. CRIM. P. 32(h). A judge may also "vary" above or below an advisory guideline sentence based on the factors set forth at Title 18, United States Code, Section 3553(a).

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>

The inclusion of mandatory minimum sentences in criminal statutes falls within the purview of Congress under Article I of the United States Constitution. As a nominee for a district court judge position, it would be inappropriate for me to publicly comment on matters of legislative policy or to address a political question. Additionally, cases may come before me in the future involving such statutes. Canon 3(A)(6) of the Code of Conduct for United States Judges preclude me from publicly commenting on statutes that would be implicated in such future cases because it would compromise the appearance of my integrity. If confirmed as a district court judge, I will faithfully apply all federal statutory and guideline sentencing provisions, as interpreted by the United States Supreme Court and the Eighth Circuit Court of Appeals.

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?

The inclusion of mandatory minimum sentences in criminal statutes falls within the purview of Congress under Article I of the United States Constitution. Although judges have on occasion criticized statutes that lead to unjust results in extreme cases, generally it would be inappropriate for a district court judge to publicly comment on matters of legislative policy or to address a political question. See also my response to Question 1(d)(i) above.

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

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>

Pursuant to Article II of the United States Constitution, it is within the authority of the executive branch, through the United States Department of Justice, to make charging decisions. Judges must respect the balance of powers enshrined in the structure of the United States Constitution and be careful not to encroach upon the authority vested by the Constitution in another branch of government. For those reasons, a district court judge should not discuss or attempt to influence the executive branch's charging decisions.

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

Whether to grant clemency is a matter reserved to the executive branch. *See Harbison v. Bell*, 556 U.S. 180, 187 (2009) (“Federal clemency is exclusively executive.”). For the reasons stated in response to Question 1(d)(2), it would be inappropriate for a district court judge to encroach upon the authority of the executive branch.

- 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?**

If confirmed as a district court judge, I will consider all sentencing options permitted by statute including, where permitted, alternatives to incarceration.

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. A judge takes an oath to administer justice faithfully and impartially, without respect to persons, and do equal right to the poor and the rich. 28 U.S.C. § 453. If confirmed as a district court judge, I will uphold that oath.

- 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 am aware of studies showing evidence of racial disparities in the America criminal justice system. I have not conducted sufficient research or investigation of this issue, however, to formulate an opinion regarding the extent or prevalence of such disparities. If I am confirmed as a district court judge, I will be duty bound to treat all persons in the same manner, regardless of race.

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, I believe it is important to have a diverse staff and law clerks. If confirmed as a district court judge, I will continue to endeavor to make all hiring decisions based on the quality of the applicant, regardless of age, gender, race, color, national origin and religion.

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, I will continue to endeavor to make all hiring decisions based on the quality of the applicant, regardless of age, gender, race, color, national origin and religion.