

**Nomination of James Wesley Hendrix to the United States District Court for
the Northern District of Texas
Questions for the
Record March 12,
2019**

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 lower courts to depart from Supreme Court precedent because they lack authority to do so.

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?

A district court judge should faithfully apply Supreme Court and circuit court precedent regardless of whether the judge disagrees with it. Although there may be rare occasions where a judge may question precedent, the judge must still apply it and recognize it as binding.

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

“A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.” *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (quoting 18 J. Moore et al., *Moore’s Federal Practice* § 134.02[1][d] (3d ed. 2011)). Thus, if a district court incorrectly applied a statute, regulation, or constitutional provision, another district court may disagree with it and reach a different conclusion.

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

If confirmed as a district court judge, I would be bound by all Supreme Court precedent, and I would not presume to tell the Court when it should overturn its own precedent. The Supreme Court has instructed that lower courts should “leav[e] to this Court the prerogative of overruling its own decisions.” *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989).

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”?

District courts must treat all Supreme Court precedent as fully controlling and binding, including *Roe v. Wade*. If confirmed to serve as a district court judge, I would faithfully apply all Supreme Court precedent.

b. Is it settled law?

Yes, *Roe v. Wade* is binding Supreme Court precedent. 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?

Yes, *Obergefell* is binding Supreme Court precedent. If confirmed as a district court judge, 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, I should not express my personal views on the merits of any Supreme Court opinion, including Justice Stevens’s 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 all Supreme Court and Fifth Circuit precedent, including *Heller*.

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

In *Heller*, the Supreme Court explained, “We are aware of the problem of handgun violence in this country The Constitution leaves the District of

Columbia a variety of tools for combating that problem, including some measures regulating handguns.” *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008).

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

Please see my response to Question 4(a).

5. In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations’ independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

a. Do you believe that corporations have First Amendment rights that are equal to individuals’ First Amendment rights?

The Supreme Court has held that “First Amendment protection extends to corporations.” *Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 342 (2010). As a district court nominee, I should not express my personal views on the merits of any Supreme Court opinion and its ramifications, including *Citizens United*. 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 regarding the First Amendment, including *Citizens United*.

b. Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?

In *Citizens United*, the Supreme Court rejected what it called “the antidistortion rationale.” 558 U.S. at 348-56. If confirmed, I would be bound by *Citizens United* and all of the Supreme Court’s precedents, and I would follow them faithfully. The scope of corporations’ First Amendment rights is the subject of pending or impending litigation, therefore Canon 3(a)(6) of the Code of Conduct for United States Judges makes it inappropriate for me to comment further.

c. Do you believe corporations also have a right to freedom of religion under the First Amendment?

As a district court nominee, it would be inappropriate for me to express my personal views on issues that could come before me if confirmed. See Code of Conduct for United States Judges, Canons 2 & 3. If confirmed, I would faithfully apply Supreme Court and Fifth Circuit precedent governing the freedom of religion. See, e.g., *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) (explaining that “[a]t a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates

or prohibits conduct because it is undertaken for religious reasons”); *see also Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (explaining that private citizens and businesses shall not be substantially burdened in their exercise of sincerely held religious beliefs under the Religious Freedom Restoration Act).

6. In a seminar on appellate advocacy, you provided advice on how attorneys should dress and style their hair. According to the notes that you provided to the Judiciary Committee, you stated, “The judges have been complaining. . . . The #1 beef is with ‘suggestive’ clothing – i.e., low-cut blouses, mini-skirts, and sexy high heels. Don’t dress for a cocktail party. The judges seem to assume that if you dress this way, it’s because you are *trying* to distract the panel from your terrible, loser case. . . . For men, the judges complain about silly ties (Bugs Bunny – really?), and shoes (Birkenstocks with socks – I kid you not).” You continued, “My pet peeve: the sheep dog look. Judges want to see your eyes, and this is really difficult, if they are covered by bangs. It detracts from your credibility.” (Criminal Appellate Advocacy Seminar, National Advocacy Center, Columbia, South Carolina (Aug. 8, 2012 and Aug. 7, 2013))

Is it appropriate for federal judges to make assumptions about the strength of a lawyer’s case – or about the lawyer’s credibility – based on whether the judge approves of the lawyer’s hair style or fashion choices?

I gave this presentation regarding oral argument with a co-presenter, and she drafted this portion of the outline. Based on feedback from the bench, the lesson of this segment was that, as advocates for the government, the lawyers should try to do nothing that distracts from the oral argument. Nevertheless, it would not be appropriate for a judge to make assumptions about the merits of a case or a lawyer’s credibility based on style or fashion.

7. On your Senate Judiciary Committee Questionnaire, you wrote, “Since 2017, I have worked extensively as a member of the Attorney General’s Advisory Committee (AGAC) and as the Chair of the Appellate Chiefs Working Group (ACWG).” You stated that in this capacity, you “travel to Washington every six weeks for AGAC meetings and to interact with Department of Justice leadership.” You also explained that “the AGAC helps implement the Attorney General’s policy initiatives” and “the ACWG advises the AGAC and provides feedback on potential litigation and policy positions.”
 - a. **Please describe what policy positions or policy initiatives you helped implement or provided feedback on. Please provide details on the nature and substance of your contributions.**

The Attorney General’s Advisory Committee (“AGAC”) is comprised of 16 U.S. Attorneys and, as *ex officio* members, the Chairs of the Criminal, Civil, and Appellate Chiefs Working Groups. The Appellate Chiefs Working Group (“ACWG”) is one of the AGAC’s working groups, and it provides feedback to the AGAC and the Department on various legal issues. I was selected as a

member of the ACWG in 2015, and I became Chair in 2017.

The AGAC provides feedback to Department leadership about issues affecting the U.S. Attorney Office community. It also receives feedback from Department leadership and helps implement the Department's priorities through the U.S. Attorney offices. While I have served as an *ex officio* member on the AGAC, the Department's priorities have included reducing violent crime, combatting the opioid crisis, reducing overdose deaths, combatting elder fraud, protecting national security, and reducing public corruption. As Chair of the ACWG, I have provided feedback to the AGAC on various legal issues, including new legislation and Supreme Court case law.

b. Did you help implement – or offer any advice or feedback – on any of following policies or decisions by the Department of Justice (DOJ)?

- i. Implementing a “zero tolerance” policy for immigrants illegally entering the country, which resulted in the separation of thousands of children from their parents.**

No.

- ii. The DOJ's decision to drop its longstanding position that Texas's 2011 voter-ID law was passed with racially discriminatory intent.**

No.

- iii. The Attorney General's directive to federal prosecutors to charge offenses that “carry the most substantial guidelines sentence, including mandatory minimum sentences.”**

No.

- iv. Rescinding the Deferred Action for Childhood Arrivals program (commonly known as “DACA”).**

No.

- v. Withdrawal of a prior DOJ memo that set a goal of reducing and ultimately eliminating the department's use of private prisons.**

No.

- vi. The Attorney General's directive that DOJ leadership review all consent decrees with law enforcement, described in a March 31, 2017 memorandum.**

No.

vii. The filing of an amicus brief (or working on the arguments within) in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.

No.

viii. The withdrawal of Title IX guidance that protected transgender students.

No.

ix. Rescinding previous DOJ guidance on the enforcement of federal marijuana laws.

No.

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?

As noted in response to Question 26(a) on my Senate Judiciary Questionnaire, I interviewed with officials from the White House and the Department of Justice on July 24, 2018. I do not recall everything discussed in that interview. To the best of my knowledge and memory, I was not asked about my views on administrative law.

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?

To the best of my knowledge and memory, I have not been asked by the Federalist Society or the Heritage Foundation about my views on administrative law.

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 issues that could come before me if confirmed. *See* Code of Conduct for United States Judges, Canons 2 & 3. If confirmed, I would faithfully apply Supreme Court and Fifth Circuit precedent governing issues of administrative law.

9. When is it appropriate for judges to consider legislative history in construing a statute?

Supreme Court precedent provides that courts may consider legislative history when the statutory language at issue is ambiguous.

10. 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.

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

I read and considered the questions, conducted legal research when necessary, and drafted answers. I sought feedback from the Executive Office of U.S. Attorneys to ensure that my answers were compliant with the Department of Justice's privilege policies. After reviewing and editing my answers, I sent my draft answers to the Office of Legal Policy at the Department of Justice. I discussed my answers with attorneys in that office and then revised and finalized my answers as I believed appropriate. My answers are my own.

Questions for the Record for James Wesley Hendrix
From Senator Mazie K. Hirono

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.

**Nomination of James Wesley Hendrix
United States District Court for the Northern District of Texas
Questions for the Record
Submitted March 12, 2019**

QUESTIONS FROM SENATOR BOOKER

1. Do you consider yourself an originalist? If so, what do you understand originalism to mean?

I agree with Justice Kagan’s testimony before this Committee that “[s]ometimes [the Framers] laid down very specific rules. Sometimes they laid down broad principles. Either way, we apply what they say, what they meant to do. So in that sense, we are all originalists.” The Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States: Hearing Before the Senate Committee on the Judiciary, S. Hrg. 111-1044, at 62 (2010). But if I were fortunate enough to be confirmed as a district court judge, I would be bound by the Supreme Court’s and Fifth Circuit’s interpretation of constitutional provisions at issue in the cases before me. I would faithfully apply that precedent.

2. Do you consider yourself a textualist? If so, what do you understand textualism to mean?

Supreme Court precedent provides that “[t]he starting point in discerning congressional intent is the existing statutory text,” and “when the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.” *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) (internal citation and quotation marks omitted). If confirmed as a district court judge, I would faithfully follow this precedent. Absent controlling precedent from the Supreme Court or Fifth Circuit, I would start my analysis with the plain language of the statute, regulation, provision, or contract at issue. If the plain language clearly resolved the issue, then my analysis would stop there. If the text were ambiguous, I would apply accepted canons of statutory construction to determine its meaning.

3. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress’s intent. Most federal judges are willing to consider legislative history in analyzing a statute, and the Supreme Court continues to cite legislative history.

- a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

Supreme Court precedent makes clear that courts may consider legislative history when the statutory language at issue is ambiguous.

- b. If you are confirmed to serve on the federal bench, your opinions would be subject to review by the Supreme Court. Most Supreme Court Justices are willing to consider legislative history. Isn’t it reasonable for you, as a lower-court judge, to evaluate any

relevant arguments about legislative history in a case that comes before you?

Please see my answer to Question 3(a).

4. According to a Brookings Institution 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* than blacks to sell drugs.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 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.

- b. 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 studied the issue of implicit racial bias in our criminal justice system. I have attended presentations on the topic of implicit bias. If confirmed as a district court judge, I would strive to treat all parties that come before me fairly and equally regardless of race. Racial bias should have no role in our justice system, and I would commit to keeping it out of my courtroom.

¹ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <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, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

⁴ *Id.*

- c. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.⁵ Why do you think that is the case?

I have not studied this issue or these statistics. If confirmed as a district court judge, I would treat all parties that come before me fairly regardless of their race, and I would strive to avoid any unwarranted sentencing disparity.

- d. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.⁶ Why do you think that is the case?

I have not studied this issue or the cited academic study, so I am not in a position to give an opinion on this topic.

- e. What role do you think federal appeals judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

As a nominee to the district court, I do not presume to opine on the circuit court's role in addressing implicit racial bias. Case law does, however, make clear that circuit courts may review a defendant's sentence for reasonableness. In the Fifth Circuit, a sentence is substantively unreasonable if it "(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." *United States v. Peltier*, 505 F.3d 389, 392 (5th Cir. 2007) (internal quotation marks omitted).

5. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.⁷ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.⁸

- a. Do you believe there is a direct link between increases in 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 am not familiar with the Pew Charitable Trusts fact sheet and have not studied

⁵ U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (Nov. 2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf.

⁶ Sonja B. Starr & M. Marit Rehani, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)

⁷ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

⁸ *Id.*

the issue, so I am not in a position to give an opinion on this topic.

- b. Do you believe there is a direct link between decreases in 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 5(a).

6. 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.

7. Do you believe that *Brown v. Board of Education*⁹ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Brown v. Board of Education is a landmark decision of the Supreme Court, and it corrected an egregious wrong by overruling *Plessy v. Ferguson*'s separate-but-equal doctrine. As with all Supreme Court precedent, I would faithfully apply it. As prior federal judicial nominees have noted, I cannot offer my personal view on the correctness of Supreme Court precedent. *See* Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary, 111th Cong. 64 (2010) (statement of Hon. Elena Kagan) ("I think that . . . it would not be appropriate for me to talk about what I think about past cases, you know, to grade cases."); *see also* Code of Conduct for United States Judges, Canons 2, 3(a), and 5. I recognize, however, the overwhelming consensus of the legal community that *Brown* properly overruled *Plessy*.

8. Do you believe that *Plessy v. Ferguson*¹⁰ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

The Supreme Court unanimously overruled *Plessy* in *Brown v. Board of Education*, making clear that *Plessy* was incorrectly decided.

⁹ 347 U.S. 483 (1954).

¹⁰ 163 U.S. 537 (1896).

9. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

No.

10. President Trump has stated on Twitter: “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”¹¹ Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

Supreme Court precedent provides that “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). I would faithfully apply all binding precedent. As a federal judicial nominee, I cannot offer personal views on the subject or give opinions on issues that might come before me if confirmed as a district judge. See Code of Conduct for United States Judges, Canons 2, 3(a)(6), and 5.

¹¹ Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

**Questions for the Record from Senator Kamala D. Harris
Submitted March 12, 2019
For the Nomination of**

James Wesley Hendrix, to the U.S. District Court for the Northern 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?**

I would approach sentencing on a case-by-case basis and with an understanding of the impact the sentence will have on the defendant, the victim or victims, family members, and the community. In every case, I would aim to impose a sentence that is “sufficient, but not greater than necessary, to comply with” the sentencing considerations outlined in 18 U.S.C. § 3553(a). To do so, I would consider the probation officer’s presentence report (“PSR”), the parties’ objections to the PSR, arguments at sentencing, the defendant’s allocution, victim-impact statements, the advisory Sentencing Guidelines, the sentencing factors outlined in 18 U.S.C. § 3553(a), and relevant precedent.

- 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?**

Supreme Court precedent provides that “a district judge must give serious consideration to the extent of any departure from the Guidelines and must explain his conclusion that an unusually lenient or an unusually harsh sentence is appropriate in a particular case with sufficient justifications.” *Gall v. United States*, 552 U.S. 38, 46 (2007). The Court noted that, “even though the Guidelines are advisory rather than mandatory, they are, as we pointed out in *Rita v. United States*, 551 U.S. 338 (2007)], the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions.” *Id.* The Sentencing Guidelines list specific circumstances that can justify a departure from the advisory Guidelines range, including substantial assistance to the authorities and aggravating or mitigating circumstances not adequately taken into consideration by the Guidelines. *See* USSG Ch.5, Pt.K. Under Supreme Court precedent, the sentencing factors listed in 18 U.S.C. § 3553(a) may also justify varying from the advisory Guidelines range.

- 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?**

The inclusion of mandatory-minimum sentences in criminal statutes is reserved to Congress’s judgment. As a pending judicial nominee, it would be inappropriate for me to comment on this matter. *See* Code of Conduct for United States Judges, Canons 2, 3(A)(6), 5. If confirmed, I would follow the law regardless of my personal view regarding the deterrent effect of mandatory-minimum sentences.

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).

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).

iv. Former-Judge John Gleeson has 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?**

If confirmed, I would faithfully apply the law passed by Congress, including mandatory minimums, and the Constitution. I would also respect the Constitution’s separation of powers, which reserve for Congress the power to make the law and for the Executive the power to enforce the law. If I were required to impose an unjust and disproportionate sentence, I would consider addressing it as appropriate and noting the circumstances in my sentencing explanation.

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>

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).

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).

- 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?**

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?**

Absolutely. The judicial oath requires every judge to “solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me . . . under the Constitution and laws of the United States. So help me God.” Fidelity to that oath requires every judge to help ensure that our justice system is fair and equitable.

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

It is my understanding that people of color are disproportionately represented in our nation’s jails and prisons. If confirmed as a district court judge, I would strive to treat all parties that come before me fairly and equally regardless of race and to avoid any unwarranted sentencing disparity. Racial bias should have no role in our justice system, and I would commit to keeping it out of my courtroom.

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

- a. **Do you believe 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 ensure that qualified minorities and women are given serious consideration during the hiring process.