

Questions for the Record from Senator Kamala D. Harris
Submitted July 1, 2020
For the Nomination of:

Hala Y. Jarbou, to be United States District Judge for the Western District of Michigan

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, before sentencing any defendant, I will (1) review the Rule 11 Plea Agreement of the parties, if any, (2) review the presentence report prepared by the probation department, (3) review the advisory sentencing guidelines, (4) review any sentencing memorandums submitted by the parties, (5) consider the arguments of the parties, (6) consider the allocution of the defendant and any victim, if applicable, and (7) consider the sentencing factors identified in 18 U.S.C. § 3553(a).

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

If confirmed, I will determine what constitutes a fair and proportional sentence by using the process described above and consult with other judges, when appropriate, for feedback and insight to consider. I will also consider other sentences imposed in similar cases to ensure consistency in sentences.

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

The Supreme Court in *United States v. Booker*, 543 U.S. 220 (2005), determined that the United States Sentencing Guidelines are advisory rather than mandatory. However, § 5K of the United States Sentencing Guidelines does provide circumstances where it might be appropriate to depart from the calculated guideline range (for example, a downward departure for providing substantial assistance in the prosecution of another, § 5K1.1; or an upward departure for when death resulted from the crime of conviction, § 5K2.1). If confirmed, I will faithfully apply federal sentencing laws along with Sixth Circuit and Supreme Court precedent in determining a sentence.

- 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

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

i. **Do you agree with Judge Reeves?**

I am not familiar with Judge Reeves' comments or his basis for those comments. The issue of mandatory minimum sentences is a policy issue to be addressed by Congress. If I am confirmed as a district court judge I will faithfully apply federal sentencing laws and any applicable Sixth Circuit and Supreme Court precedent.

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

The issue of mandatory minimum sentences is a policy issue to be addressed by Congress. If I am confirmed as a district court judge I will faithfully apply federal sentencing laws and any applicable Sixth Circuit and Supreme Court precedent.

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

The issue of mandatory minimum sentences is a policy issue to be addressed by Congress. If I am confirmed as a district court judge I will faithfully apply federal sentencing laws and any applicable Sixth Circuit and Supreme Court precedent.

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.¹ **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 issue of mandatory minimum sentences is a policy issue to be addressed by Congress. If I am confirmed as a district court judge I will faithfully apply federal sentencing laws and any applicable Sixth Circuit and Supreme Court precedent.

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

Charging decisions are within the sole discretion of the executive branch. Discussing charging policies with the U.S. Attorney

¹ 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>.

would be inappropriate as it might encroach on the separation of powers.

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

Clemency considerations are within the sole discretion of the executive branch. Discussing clemency considerations with the U.S. Attorney would be inappropriate as it might encroach on the separation of powers.

- 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?**

Yes.

- 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.**

I am aware of studies that show there are racial disparities in our criminal justice system, although I do not have specific examples.

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?**

Yes.