

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

Franklin Ulyses Valderrama, to be United States District Judge for the Northern District of Illinois

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 understand that imposing a sentence is one of the most important and serious duties of a United States District Court Judge. If confirmed, I will make an individualized assessment for each defendant, in order to arrive at a sentence that is sufficient, but not greater than necessary, to comply with the purposes of sentencing set forth in 18 U.S.C. §3553(a).

I would carefully review the Presentence Investigation Report, the recommendation of the United States Probation Office, the trial record or plea agreement, any sentencing agreement between the parties, the parties' sentencing memoranda and supporting materials, including any victim impact statements, and letters submitted on behalf of the defendant. After reviewing the record, I would consider the objectives and statutory factors set forth in §3553(a), in order to arrive at a fair and just sentence for each defendant.

During the sentencing hearing, I would provide the defendant and, if applicable, victim(s), an opportunity to address the court, and would consider their statements and the arguments of counsel. In deciding what sentence to impose, I would rely on Section 3553, the United States Sentencing Commission Guidelines, and relevant Supreme Court and Seventh Circuit precedent.

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

In addition to my answer to Question 1(a), I would carefully consider the decisions by other judges in comparable cases. Specifically, I would examine sentencing data in the Northern District of Illinois, as well as data from across the nation.

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

The Sentencing Guidelines are advisory, not mandatory, so district courts may depart from them in appropriate circumstances. See *Booker v. United States*, 543 U.S. 220 (2005).

d. Judge Danny Reeves of the Eastern District of Kentucky—who also serves on the U.S. Sentencing Commission—has stated that he believes mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing.¹

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

I have not studied the impact of mandatory minimum sentences on the crime rate. As a judicial nominee, it would not be appropriate for me to comment on Congress’s decisions regarding mandatory minimum sentences as this is a matter of public policy. See Canons 2(A), 3(A)(6) and 5(C) of the Code of Conduct for United States Judges.

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

Please see my answer to 1(d)(i).

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

Please see my answer to 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 make a record regarding the sentence imposed. However, under the separation of powers, a district court judge has an obligation to faithfully apply laws enacted by Congress, including mandatory minimum sentences. That said, in

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>.

an exceptional case, it may be appropriate for a district court judge to call attention to the injustice of a sentence as applied to a specific defendant.

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

The Constitution vests charging decisions in the executive branch, not the judicial branch. If, however, I believed that a U.S. Attorney's charging policies were leading to abuse or injustice, I would base any action on my ethical duties, consistent with the Code of Judicial Conduct.

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

The Constitution vests decisions about clemency in the executive branch, not the judicial 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?**

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.**

Yes. It is my understanding that African-Americans are arrested at higher rates, are charged more often, and receive longer sentences than whites who engage in comparable conduct. If confirmed, I commit to treating all litigants who appear before me with dignity and respect.

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 and my hiring record as a state court judge reflects my commitment to having a diverse staff.

- 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.