

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

Roderick C. Young, to be United States District Judge for the Eastern District of Virginia

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?**

Based on my experience as an Assistant United States Attorney and as a U.S. Magistrate Judge, I would approach sentencing as follows: I would review the Presentence Investigation Report (PSR), including the advisory sentencing guideline range within the PSR. I would review sentencing memoranda and other evidence submitted by the parties. At the defendant's sentencing hearing, I would consider all of the above, any evidence adduced at the sentencing hearing, the argument of counsel, and any allocution by the defendant. I would also rule on any departure motions under the guidelines and any motions for a variance sentence pursuant to 18 U.S.C. § 3553(a). I would consider all factors in 18 U.S.C. § 3553(a), including the need for the sentence to reflect the nature and circumstances of the offense and the history and characteristics of the defendant. I would also consider whether a mandatory minimum sentence applies. I would then impose a sentence that is sufficient but not longer than necessary to meet the objectives of the sentencing statute. Finally, I would articulate and explain my reasons for selecting a particular sentence.

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

I would follow the steps outlined in my response to question 1(a) above. Additionally, I would also draw on my years of experience participating in sentencing hearings as a U.S. Magistrate Judge, an Assistant United States Attorney, a Special Assistant United States Attorney, an Assistant Commonwealth's Attorney, and an Assistant Public Defender.

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

The United States Sentencing Guidelines, which are advisory in nature, set forth the potential grounds for departure including, *inter alia*, a departure for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, and, assistance to law enforcement, *see* U.S.S.G. § 5K1.1. Of course, a departure under the advisory sentencing guidelines is distinct from a variance sentence under 18 U.S.C. § 3553(a). If confirmed, I would use these tools in order to craft a sentence that is sufficient but not longer than necessary to meet the objectives of the sentencing

statute.

- 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?**

Congress has established mandatory minimum sentences for certain federal crimes. If confirmed, I will fully and faithfully apply all applicable mandatory minimums established by Congress. As a sitting magistrate judge and district judge nominee, I believe it would be improper for me to comment or opine on congressional policy matters.

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 and faced with these circumstances, I will carefully consider the law and facts of each case, as well as my ethical obligations, and render judgment accordingly.

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

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>.

Generally, charging decisions are the exclusive province of the executive branch. Please also 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)(2).

- 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. I would consider such alternatives to the extent consistent with applicable law and justified by the relevant facts.

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 statistics, including from the United States Sentencing Commission, indicating that the rate of incarceration is higher for African-American men than for white men. If confirmed, I will treat each person who comes before me with fairness, dignity, and respect, regardless of color or creed.

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, diversity will be a priority, as it has always been for me.