

**Response of Luis Felipe Restrepo**  
**Nominee to be United States District Judge for the Eastern District of Pennsylvania**  
**To the Written Questions of Senator Chuck Grassley**

- 1. As a magistrate judge, you have not yet presided over any criminal matters. This is not the normal pattern I have observed with other magistrate judges.**
  - a. Please explain how your cases are assigned and the extent to which have handled criminal matters as a United States Magistrate Judge.**

Response: Although I have not handled any criminal trials as a United States Magistrate Judge, I have handled hundreds of criminal matters. The Magistrate Judges in the Eastern District of Pennsylvania are assigned to “criminal duty” several times a year. During any given duty week I review, *inter alia*, many requests for search warrants, arrest warrants, pen registers, criminal complaints and warrants, sealing orders, requests for GPS surveillance, requests for pole cameras and the return of criminal indictments. I also preside over a wide variety of hearings in court including initial appearances, detention/bail hearings, removal hearings, identity hearings, arraignments, probable cause hearings and occasional misdemeanor pleas and sentencings.

- b. How prepared are you to preside over federal criminal matters? Please explain.**

Response: I am very prepared to preside over federal criminal matters. As noted above I have presided over a wide variety of criminal matters during my nearly 7-year term as a United States Magistrate Judge. During my tenure as an Assistant Federal Defender and as a private practitioner I participated in over 30 federal jury trials as lead counsel and represented hundreds of individuals who opted to plead guilty at sentencing hearings. I represented individuals from the pre-charging phase of the trial through the appellate process. I have also tried hundreds of cases as lead counsel in state court in both jury and non-jury trials and represented hundreds of others who opted to plead guilty at sentencing hearings. I have also represented many individuals at revocation of supervised release, probation, and bail hearings in both federal and state court.

- c. What assurances can you give that you will be fair to both prosecutors and criminal defendants who appear before you?**

Response: I am confident that my record presiding over a wide variety of criminal matters during my nearly 7-year tenure as a United States Magistrate Judge demonstrates that I have been and would continue to be fair to both prosecutors and criminal defendants that appear before me should I be confirmed as a District Judge.

**2. How will you use the Sentencing Guidelines to guide you in criminal cases?**

Response: As mandated by the Third Circuit the Sentencing Guidelines are an extremely important matrix in determining the appropriate sentence in criminal cases. I would follow Supreme Court and Third Circuit precedent with respect to the calculation and use of the Sentencing Guidelines in criminal cases.

**3. You are quoted as saying that “at least for defense lawyers, it is absolutely untrue that probation officers are independent, neutral fact gatherers.”**

**a. Is this your position today? Please explain**

Response: This was my view as a federal defender noting that attorneys should be present and vigilant when their clients are being interviewed by probation officers in anticipation of sentencing. My position remains that defense attorneys have an obligation to participate in all critical stages of the criminal justice process.

**i. If so, what effect does this have on the criminal justice system?**

Response: Our criminal justice system relies on an adversarial presentation of the facts and the law, and therefore, I think that defense attorneys have an obligation to participate in every crucial stage of the proceedings.

**ii. If so, how will this belief inform how you as you listen to probation officers as a judge?**

Response: My personal belief will not impact on my ability to listen to and seriously consider the position of a probation officer should I be confirmed as a District Court Judge. I have worked closely with both United States Pre-trial Services Officers and United States Probation Officers during my nearly 7-year tenure as a United States Magistrate

Judge and hope to continue to do so should I be confirmed as a District Court Judge.

4. **You are quoted (with regard to diversity issues) as saying, “Where it becomes important is to the people who use the system. If all they see day after day is people on the bench who can’t identify with their language or color, it is not healthy.”**

- a. **How diverse should a bench be to be considered healthy?**

Response: Our justice system overall benefits when it reflects the demographics of the community it serves.

- b. **Does the gender or ethnic background of a judge influence the way a judge views the law, shape a judge’s approach to interpreting text, or otherwise affect the judicial process?**

Response: The gender and/or ethnic background of a judge should in no way influence the way a judge views the law, shape a judge’s approach to interpreting text or otherwise affect the judicial process.

5. **You represented Oscar Antonio Grande, a member of the MS-13 gang. Please describe any other times you represented an alleged member of MS-13, including the circumstances of the cases, the jurisdiction, and the outcome of these cases.**

Response: To the best of my recollection Mr. Grande was the only member of the MS-13 gang that I ever represented.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is a firm commitment to following the rule of law. I believe that during my nearly 7-year term as a United States Magistrate Judge I have demonstrated that I possess this attribute.

7. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

Response: It is never the role of a judge to favor one party over another.

- 8. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: In my view, the appropriate temperament of a judge includes the qualities of impartiality, fairness, respectfulness, humility, integrity and the commitment to the rule of law. I believe that I have met these standards as a United States Magistrate Judge and that I would continue to meet these standards if confirmed as a United States District Court Judge.

- 9. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I am committed to following the precedents of higher courts faithfully and giving them full force and effect, even if I personally disagree with such precedents.

- 10. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In cases involving statutory interpretation, I would first turn to the text of the statute. In cases involving Constitutional interpretation, I would first turn to the text of the Constitution. If the text is not clear I would turn to analogous precedent from the Supreme Court and the Third Circuit Court of Appeals. Where such precedent is not available I would examine analogous precedent from other Circuit Courts and District Courts.

- 11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I must and would apply the decision(s) of the United States Supreme Court and the Third Circuit Court of Appeals. I would follow such precedent regardless of my own judgment or my personal beliefs.

- 12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Should a court determine that a statute enacted by Congress exceeded its authority or contradicts the Constitution it would be appropriate for a federal court to declare the statute unconstitutional. I would follow Supreme Court and Third Circuit precedent in making such a determination.

- 13. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?**

Response: Unless mandated to do so by the Supreme Court or the Court of Appeals it is not proper for judges to rely on foreign law or the view of the “world community” in determining the meaning of the Constitution.

- 14. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I am confident that my record as a United States Magistrate Judge for nearly 7 years can provide the Committee with assurance/evidence that, if confirmed, my decisions will continue to be grounded in precedent and the text of the law rather than any underlying political ideology or motivation.

- 15. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: I am confident that my record as a United States Magistrate Judge for nearly 7 years can provide the Committee with assurance/evidence that, if confirmed, I will put aside any personal views and be fair to all who appear before me.

- 16. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed I would actively manage my caseload with the assistance of chambers staff and staff from the clerk of court. I would make every effort to promptly dispose of motions and discovery disputes and I would strongly encourage the parties to engage in serious settlement discussions early in the case. I would also make myself available to counsel on short notice for telephone conferences in an effort to efficiently manage my caseload.

- 17. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, I believe that judges have a role in controlling the pace and conduct of litigation. If confirmed, I would set firm scheduling deadlines, promptly decide motions, encourage settlement discussions early in the litigation and promote the efficient resolution of discovery disputes.

- 18. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: I read the written submissions of the parties, review the cases cited by the parties, listen and consider any oral argument presented, and apply the law as set forth in the decisions of the United States Supreme Court and the Third Circuit Court of Appeals to the facts of the case.

**19. Please describe with particularity the process by which these questions were answered.**

Response: The questions were provided to me on the evening of February 20, 2013 by personnel from the Department of Justice. I prepared responses to the questions and reviewed them with a representative of the Office of Legal Policy of the Department of Justice on February 22, 2013 and asked that my responses be submitted to the Senate Judiciary Committee.

**20. Do these answers reflect your true and personal views?**

Response: These answers reflect my true and personal views.

**Response of Luis Felipe Restrepo  
Nominee to be United States District Judge for the Eastern District of Pennsylvania  
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

**Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: My judicial philosophy is based on a firm commitment to the rule of law and treating all litigants with respect and dignity. During my nearly 7-year tenure as a United States Magistrate Judge, my record demonstrates a commitment to applying Supreme Court and Third Circuit precedent to the facts established by the evidence.

Given the very different roles of a trial court and the Supreme Court I do not have a specific Justice of the Supreme Court whose judicial philosophy is most analogous to mine.

**Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: I believe that the original intent of the authors of the Constitution is extremely important in interpreting constitutional provisions. If confirmed as a District Court Judge, I would look to the plain meaning of the words or phrases of the Constitution and binding precedent from the Supreme Court and Third Circuit Court of Appeals.

**If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: If confirmed as a District Court Judge, I would be fully committed to following Supreme Court and Third Circuit precedent, regardless of my personal beliefs.

Congressional Power

**Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: As a nominee I do not feel it is appropriate to express my personal views about Supreme Court decisions. *Garcia* is binding precedent, and I would follow it regardless of my personal views.

**Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: In his concurring opinion in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia summarized the relevant Supreme Court precedent as follows: "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." Justice Scalia further noted: "Congress may regulate noneconomic intrastate activities only where the failure to do so 'could...undercut' its regulation of interstate commerce." *Id.* at 38. If confirmed as a United States District Court Judge, I would faithfully follow the Supreme Court's decisions in this area, including *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000).

Presidential Power

**What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: The President's authority to issue executive orders and executive actions is limited by the Constitution and federal statutes. If the President takes action that is not authorized by the Constitution or an act of Congress and a challenge to that action is properly brought, then a federal judge must invalidate the action as exceeding Presidential authority. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Individual Rights

**When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

Response: In discussing the "established method of substantive-due process analysis," the Supreme Court has observed that "the Due Process Clause specifically protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,'... and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). If confirmed as a United States District Court Judge, I would apply that precedent.

**When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: In accordance with Supreme Court precedent, a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it classifies based on race, alienage, national origin, or gender. The Court has also explained that heightened scrutiny should be applied when a classification burdens a right the Court has identified as "fundamental," such as the right to vote.



**Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).**

Response: If confirmed as a District Court Judge I would strictly follow and apply *Grutter* and all Supreme Court precedents concerning this issue regardless of my individual expectations.