

**Senator Chuck Grassley
Questions for the Record**

**Pedro A. Delgado Hernandez
Nominee, U.S. District Judge for the District of Puerto Rico**

1. **According to your questionnaire you resigned from the Puerto Rico Court of Appeals in 1996 after one year to return to private practice.**

- a. **Can you offer some insight as to why you reached that decision?**

Response: My first wife and I divorced by mutual agreement in 1996, and I needed a higher income to pay for child support and related expenses. My two daughters were 15 years old at the time. Consequently, even though I enjoyed my job in the Circuit Court of Appeals of Puerto Rico, I decided to resign from the Court and return to private practice at O'Neill & Borges, where I have worked for the past 17 years.

- b. **Why do you want to be a United States District Judge?**

Response: I graduated from law school in 1983, and was admitted to practice law the same year. Throughout my career, I have had the opportunity to represent private parties and public entities before different judges in state and federal court, to clerk in the state and federal court systems, and to serve as a judge in Puerto Rico. The experience has provided me with the foundation to appreciate and confirm the importance of the United States District Court in applying the law to the facts in the cases brought before it. As a United States District Judge I would be able to serve the public in this position of trust, with the benefit of the experience and lessons learned in my years of practice.

- c. **What are your plans and commitment to serving in this position, if confirmed?**

Response: If confirmed, I am fully committed to serving in this position and plan to devote myself to the task with discipline and hard work.

2. **Would you please describe your judicial philosophy? What judges or justices would you hope to emulate?**

Response: My judicial philosophy is to apply the law to the facts of the case in a fair, impartial, and diligent manner, limiting myself to the issues that are properly presented, while treating litigants, witnesses, jurors, staff, and the public, with dignity, courtesy, and respect. I would hope to emulate Judge Juan Torruella, whom I had the privilege to clerk for

in the United States District Court for the District of Puerto Rico, and in the United States Court of Appeals for the First Circuit. Judge Torruella is a source of inspiration, embodying the characteristics I have referred to in describing my judicial philosophy.

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

Response: If confirmed, I intend to give the Sentencing Guidelines significant deference. A lot of work and effort went into creating the Guidelines. They contain a framework of relevant factors to be applied to promote uniformity and consistency in sentencing.

4. 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: If by empathy it is meant the need to fully understand the facts and the parties' legal positions, empathy has a role in adjudication. However, the judge should never place his thumb on the scales of justice to tilt it in favor of the proverbial little guy.

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

Response: The most important attribute of a judge is integrity. I possess this attribute.

6. 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: A judge should be patient, tolerant, open-minded, and decisive yet flexible to ensure the fair, impartial, and diligent application of the law to the facts of the case. The most important element of temperament is patience. I meet that standard.

7. 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: Yes.

8. 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: When confronting a case of first impression, I would initially review the plain language of the statute. If the language were unambiguous, I would apply it. Should statutory language be ambiguous, I would rely on principles of statutory construction used by precedents of the Supreme Court and the United States Court of Appeals for the First Circuit, which reviews the decisions of the United States District Court for the District of Puerto Rico.

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

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

Response: Congressional enactments are presumed constitutional. A federal court may only declare a statute enacted by Congress unconstitutional when Congress has exceeded its constitutional authority or when the statute violates an express prohibition of the Constitution.

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

Response: If confirmed, I am fully committed to apply the law to the facts of the case, respecting the text of the law and precedent rather than any underlying political ideology or motivation. As a judge in the Circuit Court of Appeals of Puerto Rico I had and was guided by the same commitment, and served accordingly.

12. 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: Earlier in my career I faced the same challenge when I was appointed as a Judge in the Circuit Court of Appeals of Puerto Rico. As a judge I put my personal views aside, and was fair to all who appeared before me. If confirmed by the Senate I would similarly put my personal views, if any, aside and will be fair to all who appear before me.

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? Please explain.

Response: In my view, it is not proper for judges to rely on foreign law or on the views of the world community in determining the meaning of the Constitution.

14. If confirmed, how do you intend to manage your caseload?

Response: Docket management is a critical task for a District Court judge. If confirmed, I intend to use a case management protocol to determine how each case filed could most efficiently and effectively proceed to resolution, including the amount of time it may appropriately and realistically take to be litigated, and manage the case accordingly through the different stages of the litigation.

15. 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, judges have a role in controlling the pace and conduct of litigation. If confirmed, I intend to control the docket through a case management protocol, thoroughly reviewing case files to identify complex cases requiring special attention, setting and maintaining reasonable deadlines, discouraging unnecessary extensions of time, conducting status conferences to keep abreast of case progress, promptly ruling on motions and issues, and encouraging litigants to highlight and streamline the issues in the dispute and to discuss and engage in settlement negotiations.

16. You have spent most of your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: I would examine the pleadings and written submissions, and review and study applicable law and precedent. The most difficult part of the transition will be to transcend the litigator's mindset to become an advocate for the rule of law proper, so as to apply it to the facts of the case. A successful transition requires commitment and self-discipline. I accomplished that transition as a judge in the Circuit Court of Appeals of Puerto Rico.

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

- a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.**

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

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

Response: On September 18, 2013 I received the questions by email from a representative of the Department of Justice and started to work on the responses, which I sent to the Department of Justice on September 19, 2013. After receiving comments, I made revisions and authorized the submission of my responses to the Committee on September 23, 2013.

19. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Pedro A. Delgado Hernandez
Nominee, U.S. District Judge for the District of Puerto Rico

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 to apply the law to the facts of the case in a fair, impartial, and diligent manner, limiting myself to the issues that are properly presented, while treating litigants, witnesses, staff, jurors, and the public, with dignity, courtesy, and respect. I have not undertaken Supreme Court scholarship which would allow me to responsibly identify and discuss Supreme Court Justices’ judicial philosophy.

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: The Supreme Court has examined original intent and original public meaning of the Constitution. *See United States v. Heller*, 554 U.S. 570 (2008). If confirmed, I will follow Supreme Court and applicable circuit precedent.

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, it will not be my role to overrule precedent.

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: This excerpt from *García v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985) remains binding precedent, which I would apply if confirmed.

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

Response: In resolving questions under the Commerce Clause and the Necessary and Proper Clause, I would rely on authoritative precedent. In this regard, the Supreme Court has recognized that Congress has authority to regulate: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *See United States v. Lopez*, 514 U.S. 549, 558-559 (1995); *United States v. Morrison*, 529 U.S. 598, 608-609 (2000). *See also Gonzales v. Raich*,

545 U.S. 1, 19 (2005) (upholding application of federal controlled substances law to prohibit home-grown cultivation and home-use of marijuana “because production of the commodity meant for home consumption, be it wheat or marijuana has a substantial effect on supply and demand in the national market for that commodity”), *id.* at 37-38 (Scalia, J., concurring in judgment) (noting that “Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce”).

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

Response: The Supreme Court has stated that “[t]he President’s authority to act, as with the exercise of any government power, ‘must stem either from an act of Congress or from the Constitution itself.’” *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (Jackson, J., concurring)). These limitations on the President’s authority are judicially enforceable.

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

Response: The Supreme Court has held that the “Due Process Clause specially 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 (1997) (citations omitted). If confirmed, I would follow Supreme Court and applicable circuit precedent with respect to the identification of “fundamental” rights for purposes of substantive due process.

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

Response: The Supreme Court has ruled that “equal protection analysis requires strict scrutiny of a legislative classification when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class.” *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). See also *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985) (noting that strict scrutiny applies to classifications based on “race, alienage or national origin” or when “laws impinge on personal rights protected by the Constitution”; otherwise “heightened” review applies to classifications based on gender and illegitimacy).

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, I would apply the holding in *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), and any other precedent in this area regardless of any expectation I might have.