

Response of Nitza I. Quinones Alejandro
Nominee to be District Judge for the Eastern District of Pennsylvania
to the Written Questions of Senator Chuck Grassley

- 1. You were a member of the Philadelphia Fellowship Commission's Board of Directors for four years, including while you were a judge. This organization has been involved in a number of activities that potentially could have come before the courts, including victim's compensation and handgun controls. Why was it appropriate for you to remain on this Board, even after you became a judge?**

Response: When I was on the board of the Fellowship Commission, the scope of our meetings dealt primarily with concerns about equal rights issues. It appears that in recent years, the Board may have been involved with victim's compensation and handgun control concerns. These concerns arose after I left the Board and were never issues discussed while I was a Board member. I have not been involved in any organization where issues of this nature or any issue that could come before the court have been a major focus. Had I been a Board member when these matters arose, I would have immediately resigned from the Board. More generally, I have always carefully followed the applicable ethical and other standards governing recusal in cases where my impartiality could be questioned, and I would continue to do so, if confirmed as a federal district court judge.

- 2. You have had some reversals that raise a question as to whether or not you are pro-defendant. In one case, the defendant drug dealer ran from the police and was subsequently found to be in possession of illegal substances. In another, the officer saw the defendant stuff a brown paper bag containing cocaine under his seat during the course of a traffic stop.**

- a. I recognize that search and seizure and probable cause determinations are fact specific. Without getting into the specifics of the cases, please describe your approach to these types of cases.**

Response: In the cases alluded to, these matters came before me as motions to suppress evidence. I heard the evidence, made a determination of the relevant facts based upon the evidence presented, and applied the law as I understood it. In the first matter, though reversed by the Superior Court, I was subsequently affirmed by the Pennsylvania Supreme Court. In the second matter, the appellate court differed with my analysis and I respect the court's opinion. In this latter ruling, the appellate court provided a clearer guideline as to when a search of a front seat passenger in a stopped vehicle was permissible. Although my rulings in these two cases were in favor of the

defendant, I have presided over 1,500 criminal matters. In a substantial number of these cases, I have found the defendant guilty of criminal offenses.

b. To what sources do you look and what principles guide you?

Response: When deciding these particular motions to suppress, I looked to prevailing precedents, including, *Terry v. Ohio*, 392 U.S. 1 (1968), *California v. Hodari D.*, 499 U.S. 621 (1991), *Commonwealth v. Edmunds*, 586 A.2d 887 (1991), and *Commonwealth v. Jeffries*, 311 A.2d 914 (1973). The principles that guide me in all cases are to determine the relevant facts and to apply existing precedent to the facts.

c. Why did that process not lead you to a correct ruling in the cases mentioned above?

Response: In the first case mentioned above, the process did lead me to the correct ruling, as ultimately determined by the Pennsylvania Supreme Court. In the other case, the appellate court opined that in the particular factual scenario before me, the police were justified in requiring that the passenger be searched. I respect the appellate court opinion.

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

Response: The most important attribute for a judge to possess is integrity. This includes a commitment to and respect for the rule of law, precedents, and the matters that come before the court. In exercising integrity, the judge must also be a good listener, patient, fair, impartial, courteous, reasonable, ethical, and decisive. I believe I possess these qualities.

4. 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: Judicial temperament requires that a judge show respect for the law and everyone who appears before the court; treat everyone with dignity, fairness, and impartiality; be willing to listen to the testimony and arguments made, and understand the facts and law; and be objective, clear, and decisive in disposing of matters. I believe that I have demonstrated these qualities during my 22 years of public service as a state court judge.

5. 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.

- 6. 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: I have had the occasion to rule on several cases of first impression. In deciding cases of first impression, I first review the specific wording of the statute to determine whether the meaning of the statute is clear or ambiguous. If the meaning of the statutory text is clear, then that meaning must be given effect. If the meaning is ambiguous, I look at the legislative intent, legislative history, and to other cases involving analogous issues.

- 7. 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 would apply the decision rendered by the appellate courts despite any personal disagreement.

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

Response: There are two instances when it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional: when Congress has exceeded its authority and when the statute violates a constitutional right.

- 9. 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: Foreign law or views of the world community have no place in determining the meaning of the Constitution.

- 10. 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: As a trial judge, I strongly adhere to the doctrine of *stare decisis*. This doctrine provides the court and the community with an understanding of what to expect in a particular circumstance and how the court is to rule. That is, it provides stability and predictability in the law. My 22 year record as a state court judge demonstrates that I have been guided by the doctrine of *stare decisis* and not by political ideology and/or personal views.

- 11. 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: See my answer to Question 10.

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

Response: During my 22 years on the state court, I have handled numerous criminal and complex civil matters, and have managed trial programs from the initial filing of pleadings to trial. I have established internal systems in addition to the established case management system that already exists in the courts. I have worked closely with attorneys to establish realistic deadlines that control the flow of cases through the trial stage. I have ruled on dispositive motions and other motions in a timely manner. If confirmed, I plan to continue these practices. I will carefully review the status of each case assigned, and hold status hearings with counsel to prioritize cases, define the issues, and schedule the matter for resolution.

- 13. 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. If confirmed, I would first inquire as to the case management system that currently exists in the district court, and would utilize that system if I believed it was efficient and effective. I would establish deadlines for specific events, in consultation with counsel, when appropriate, and after these deadlines have been established, a continuance would be granted based only upon good cause. See also my answer to Question 12.

- 14. 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: How a case is decided depends on the status of the case. If the matter comes to me as a motion, I review all the pleadings and briefs filed. If there is a novel issue, I also conduct additional research, including reviewing relevant case law and statutes. When necessary, a hearing is scheduled to allow counsel to make oral argument. If warranted, a review of the legislative history is conducted to understand the intent of the law. As promptly as possible, a decision is rendered.

If the matter is a trial, the parties will be allowed to present their respective motions, evidence, and arguments. The evidence is properly weighed, the law applied to the facts presented, and the decision is made.

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

Response: On February 20, 2013, I received a series of questions and personally drafted my answers on the same day. I reviewed the draft of my responses with an official in the Department of Justice before submitting these to the Committee.

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

Response: Yes, these answers reflect my true and personal views.

Response of Nitza I. Quiñones Alejandro
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 US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy consists of a belief that each branch of the government plays an important role in our governance. The role of a member of the judicial branch is to faithfully determine the facts, apply the law to the facts, rely on precedential interpretation of the law, and set aside one's own personal beliefs. My judicial philosophy is consistent with my definition of the role of the judiciary. I strive to always be prepared, fair, impartial, respectful, and willing to let the parties have their day in court. I have never compared my judicial philosophy with those held by any Supreme Court Justices.

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 looked to original understanding to interpret the Constitution, and has used the language of original intent and original public meaning in various cases. *See, e.g.,* District of Columbia v. Heller, 554 U.S. 570 (2008).

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 federal court judge, I would never overrule a precedent.

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: If confirmed as a federal judge, I would be bound to follow the holding of *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985), as well as any subsequent precedent on this issue from the Supreme Court or the Third Circuit Court of Appeals, regardless of whether I disagreed with the precedent.

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 regarding the Commerce Clause and non-economic activities, I would rely on *United States v. Lopez*, 514 U.S. 549, 558-559 (1995), which essentially held that Congress may regulate commerce in the use of the channels of interstate commerce; may regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; or may regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce. *See also* *United States v. Morrison*, 529 U.S. 598, 608-609 (2000).

Presidential Power

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

Response: It is my understanding that the President's ability to issue executive orders or executive actions must stem either from the Constitution or from an act of Congress. When the President exceeds the stated authority and the relevant executive order or action is challenged in court, it is the judiciary's responsibility to invalidate that order or action.

Individual Rights

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

Response: In general, a right specifically guaranteed by the Constitution, including the Bill of Rights, or one that is deeply rooted in our Nation's history, is deemed to be fundamental for the purpose of substantive due process. *See* *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). If confirmed, I will adhere to the established precedents on this issue and the Constitution.

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

Response: If a classification burdens a fundamental right, the court should apply strict scrutiny to inquire as to whether a compelling state interest is involved. Heightened scrutiny applies when a law's classification is based on a suspect or quasi-suspect classification (race, gender, etc.). *See* *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985).

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