

Responses of Fernando M. Olguin
Nominee to be United States District Judge for the Central District of California
to the Written Questions of Senator Chuck Grassley

1. In 1989, you authored an article in which you wrote that “the United States has been instrumental in establishing a Central American political system ‘characterized by the dominance of a wealthy landed elite governing...almost always with the collaboration of the military.’” You continued, “this system has resulted in extreme inequality, injustice, and poverty in most of the region.”

- a. Does this article reflect your current views on the issues you raised in the article?

Response: No, I do not have any current views on the issues raised in the article.

- b. You continued, in that article, “[a]s the people in Central America have challenged the inequality and poverty that exists in their respective countries, the local leaders have obtained US support in putting down the indigenous revolutionary movements by labeling them ‘communist.’” Is it your view that this characterization of revolutionary movements was inaccurate? Did the US improperly provide support to local leaders?

Response: I wrote this article as my master’s thesis and, in preparing it, I relied exclusively on secondary sources that are now more than 20 years old. Since the completion of the article, I have not done any research or study of any of the issues raised in the article nor have I been involved in any foreign policy work. Thus, I have no view as to whether the characterization of revolutionary movements was inaccurate nor do I have a basis to opine as to whether the United States improperly provided support to local leaders in Central America.

- c. If confirmed, how would your view of international relations affect your judicial decision making process?

Response: If I am fortunate enough to be confirmed as a United States District Judge, I would be obligated and duty-bound to apply the decisions of the Ninth Circuit Court of Appeals and the United States Supreme Court, regardless of my views on international relations. My views on international relations have not had any bearing on my judicial decision-making as a Magistrate Judge for 11 years, and this would not change if I were confirmed.

- d. Later, you wrote that the estimated number of refugees worldwide is likely too low because it does not include “the millions of illegal aliens who are neither receiving aid or recognized as refugees. Designation of these aliens as ‘illegal’ or ‘economic migrants’ reveals one of the major deficiencies in the

current international refugee instruments.” Could you clarify what you meant by this statement? Does this statement reflect your current views on the issue?

Response: The statement was intended to indicate that the number of refugees may be undercounted. Since I have not done any research or study of any of the issues raised in the article since the completion of the article more than 20 years ago, I have no current views on the issue.

2. **In the same article, you wrote that the implementation of the 1986 Immigration Reform and Control Act “will have and already has had an adverse effect on the Central Americans. The 1982 cut-off date disqualified most Central Americans from amnesty, and the IRCA increased border surveillance during a time of rising unemployment.” Later, as the Education Director of the Mexican American Legal Defense and Education Fund (MALDEF), you were reported as saying that a national identification system might scare some undocumented parents into keeping their children at home. Given these strong personal views, what evidence can you provide to the committee to indicate, should you be confirmed, that you will uphold U.S. immigration laws?**

Response: I believe that my 11-year record as a United States Magistrate Judge demonstrates that I am committed to the rule of law and will apply and uphold all laws of the United States, irrespective of my personal views on any particular area of law.

3. **While you were Education Director at MALDEF, you stated that efforts to eliminate affirmative action would “undermine diversity in education, particularly at the university level.” Should you be confirmed, would you have any difficulty in upholding a repeal of affirmative action laws? Please explain.**

Response: No. If confirmed, I would strictly follow and apply the law regardless of my personal views in all cases, including any matters involving affirmative action.

4. **Judge Muecke has been described as a “fiercely liberal” judge who “wore his liberalism as a badge of honor and once called to scold a reporter who had dared to write that there were no liberal judges in Arizona.” Please describe your experience in working as a law clerk for Judge Muecke, and include any lessons you learned from the experience that you would apply to your own potential service as a District Court judge.**

Response: I learned several lessons from my clerkship that I have applied as a Magistrate Judge and would continue to apply if I am fortunate enough to be confirmed as a United States District Judge. The clerkship instilled in me the importance of adhering to the rule of law and always beginning the legal analysis with the text of the law at issue. I also learned that a judge cannot pre-judge any matter that comes before the court. Finally, I

learned that the position of a District Judge requires a lot of hard work and an unwavering commitment to the fair and impartial application of the law to the facts of each case.

5. **During your confirmation hearing, you stated in reference to your speech on Judge Carlos Moreno that “some of the wording was inappropriate” and “I did not mean to suggest that compassion should be involved in the judicial decision making process.” Your response is appreciated. For clarity, do you believe compassion or empathy has any role in adjudication?**

Response: No, I do not believe that compassion or empathy has any role in judicial decision-making. Compassion or empathy may only come into play in how a judge treats litigants or witnesses in his or her courtroom, i.e., with dignity and respect rather than disdain or condescension.

6. **In *Stevenson v. Huntington Memorial Hospital*, you represented a client alleging wrongful termination from her employment based on age discrimination. Part of your handling of the case included requesting the state of California recognize a common law cause of action for wrongful termination based on age discrimination, even though the California Fair Employment and Housing Act (FEHA) already provided a clear statutory remedy for such an act. While I believe that actions taken on behalf of a client should not be viewed as indicative of what a lawyer personally believes, would you please explain why you decided to pursue recognition of a common law cause of action when a statutory remedy was readily available?**

Response: The plaintiff’s trial counsel retained my firm to prepare the briefing before the California Supreme Court. The procedural posture of the case was established by the time I got involved. My recollection is that the plaintiff, who initially was proceeding pro se, failed to exhaust her remedies under California’s Fair Employment and Housing Act (FEHA). Therefore, there was no statutory remedy available to the plaintiff. The common law wrongful termination cause of action was the only cause of action available to the plaintiff. Finally, as the California Supreme Court explained in the *Stevenson* case, the argument my colleagues and I made on behalf of our client was supported by precedent. The California Supreme Court had previously concluded that “the FEHA does not supplant other state laws, including claims under the common law, relating to employment discrimination[.]” Rojo v. Kliger, 52 Cal.3d 65, 70 (1990).

7. **A minority of the ABA Standing Committee on the Federal Judiciary found you “Not Qualified” for this position. What additional information can you provide the Committee about your background and experience that demonstrates you are fully qualified to sit as a federal district court judge?**

Response: I believe I am qualified to sit as a United States District Judge based upon my 23 years of experience as a United States Magistrate Judge and a civil litigator. I have served as a Magistrate Judge for the Central District of California for 11 years. As a Magistrate Judge, I preside over both civil and criminal matters. With respect to civil

matters, I handle cases in a variety of areas, including habeas corpus petitions, pro se civil rights cases, social security disability appeals, admiralty, extradition, applications for writs of attachment, and general civil cases (e.g., trademark, breach of contract, ERISA, etc.) where the parties have consented to the Magistrate Judge's jurisdiction for all purposes. Another significant portion of my civil duties involves discovery motions and settlement conferences. My criminal work involves taking guilty pleas and imposing sentences, bail and detention matters, making probable cause determinations on search and arrest warrants, and ruling on requests for pen registers, trap and trace devices, and electronic communications records.

Prior to my appointment as a United States Magistrate Judge, I spent most of my legal career in federal court. After law school, I completed a two-year judicial clerkship with a United States District Judge from the District of Arizona. Following my clerkship, I was selected to be a member of the United States Attorney General's Honors Program, where I was assigned to work as a career trial attorney in the Civil Rights Division of the United States Department of Justice. While at the Justice Department, I litigated in federal courts throughout the country. After I left the Department of Justice, many of the cases I handled were complex class action and civil matters that were litigated in federal court. In short, my tenure as a United States Magistrate Judge coupled with my experience working for the government as well as for private clients have provided me with the skills and experiences necessary to make me an effective United States District Judge.

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

Response: In my view, integrity is the most important attribute of a judge. Integrity means being committed to the rule of law and making decisions in a fair and impartial manner, without regard to the judge's personal background and beliefs. In carrying out this process, I would give all litigants an opportunity to be heard and explain the basis for my decisions. I believe that my experience as a Magistrate Judge demonstrates that I possess this attribute.

9. 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 must treat all litigants, witnesses, attorneys and court staff with dignity, respect and patience. A judge's demeanor must be calm and even-handed. I have and will continue to work towards meeting and maintaining this standard.

10. 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.

- 11. 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 a case of first impression involving a statute, I would first look to the text of the applicable statute, and apply the canons of statutory construction and consider the parties' arguments in determining the meaning of the statute. If, after conducting this analysis, the meaning of the statute is still unclear, I would then look to the structure and framework of the statute as a whole to interpret the subject statute. If the statute is still unclear, then I would look at cases from the United States Supreme Court and the Ninth Circuit and, if necessary, persuasive authorities from other circuits that discussed and/or addressed analogous statutes.

- 12. What would you do if you believed the Supreme Court or the Court of Appeal 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 continue to do what I have done for the 11 years that I have served as a United States Magistrate Judge. That is, I will continue to fairly and impartially apply the decisions of the United States Supreme Court and the Ninth Circuit Court of Appeals, irrespective of whether or not I personally agree with those decisions.

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

Response: A statute enacted by Congress is presumed constitutional. A court may declare a statute unconstitutional only when Congress has exceeded its authority under the Constitution or when the statute violates a provision of the Constitution.

- 14. 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: In my view, unless directed to do so by binding precedent, I do not believe it is proper for judges to rely on foreign law or the views of the "world community" in determining the meaning of the Constitution. The text of the Constitution itself and case law interpreting the Constitution are the only sources that should be used in determining the meaning of the Constitution.

- 15. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: One of the more difficult challenges judges face today is achieving and maintaining a balance between a large caseload and ensuring that all litigants receive their day in court. To achieve this balance, it is important for judges to develop and implement effective case management systems. As a Magistrate Judge for 11 years, I am familiar with the caseload for District Judges in my district and have had extensive experience managing a heavy docket. I monitor all the cases on my docket and set firm, realistic case deadlines. I conduct hearings on dispositive motions and other significant case-related issues and rule on motions in a timely manner. If confirmed, I would continue my current case management practices and, after consultation with more experienced District Judges, modify and/or adopt new case management practices to address the larger and more complex caseload maintained by District Judges.

16. 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: Judges have perhaps the most significant role in controlling the pace and conduct of litigation. If confirmed as a District Judge, I would meet with the parties early and as frequently as necessary to move the cases towards resolution. In addition to utilizing the procedures set forth in question 15, I would consult with more experienced District Judges to educate myself as to the case management practices they utilize and adopt the best practices for my chambers.

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

Response: After receiving the questions, I prepared responses and forwarded them to the Department of Justice (DOJ) on July 6, 2012. That same day, I spoke with a representative from the DOJ about finalizing my responses. I then requested the DOJ to submit my responses to Senator Grassley.

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

Response: Yes.