

**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.