

**Responses of Marco A. Hernandez
Nominee to be United States District Judge for the District of Oregon
to the Written Questions of Senator Jeff Sessions**

- 1. In 2008, President Obama said,**

“We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”

Do you agree with the President’s statement?

Response: I do not know what criteria the President used in making his nominations. In reaching decisions in cases, judges should avoid using bias, sympathy or prejudice.

- 2. When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: Judges should make decisions based on the facts and the law.

- 3. During her confirmation hearings, Justice Sotomayor rejected President Obama’s so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?**

Response: Yes.

- 4. Under the Supreme Court’s decision in *United States v. Booker*, the federal sentencing guidelines are now advisory, rather than mandatory.**

- a. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

Response: Yes.

- b. Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

Response: Departure sentences are provided for in the sentencing guidelines. The Supreme Court has provided guidance regarding departure sentences. *Gall v. United States*, 552 U.S. 38 (2007). If confirmed as a District Court judge, I would follow the Supreme Court’s guidance.

5. **According to an October 28, 2010 article in the *Legal Intelligencer*, there is a recent trend among federal judges to reject the sentencing guidelines for child pornography crimes as “too harsh.” What are your views with respect to these guidelines?**

Response: I do not believe the sentencing guidelines are “too harsh.”

6. **Have you ever expressed an opinion regarding whether the death penalty constitutes cruel and unusual punishment under the Constitution? If so, what opinion did you express?**

Response: I have never expressed such an opinion.

7. **Do you have a personal view regarding whether the death penalty is constitutional?**

Response: I do not have a personal view on this. The Supreme Court has stated the death penalty is constitutional.

8. **Do you believe that the death penalty is an acceptable form of punishment?**

Response: Yes.

9. **Do you hold any personal views that would preclude you from enforcing the death penalty?**

Response: No.

10. **At your hearing, Senator Whitehouse asked for your comments on the following:**

“It is my belief that judges must do a number of things. One is to respect the role of Congress as the duly elected representatives of the American people in our system of American democracy. Two is to decide cases based on the facts and the law, nothing else. Three is to not prejudge any case, but listen to every party that comes before you, powerful or weak, rich or poor, irrespective of station or position; to respect the precedent that the Supreme Court and the circuit courts for your districts have laid down and the precedent that exists within your own district; and, finally, to limit yourself in your decisions to the issues that the court must decide that are properly presented before it. It is my belief that those disciplines, which must be self-imposed by judges, are key to the successful operation of the carefully balanced system of government that the Founding Fathers created and that we all honor and enjoy the fruits of.

You responded:

“I agree, as well. I think that I would add to the mixture that it is important for judges to do all of those things with a great deal of judicial temperament and

evenness so that the parties that are appearing before you trust that you are judging these cases in a fair and just way.”

Do you also agree that when Congress, in its role as the legislative branch, enacts a law that is contrary to the Constitution or takes action not authorized by some enumerated power therein, a court must either invalidate the Congressional action or, where appropriate, limit its application on an “as applied” basis?

Response: Yes.

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

Response: I received the questions on November 23, 2010. I also consulted with representatives of the Department of Justice regarding my responses, and then finalized them before authorizing their transmittal to the Committee.

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

Response: Yes.